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for it. There was utterly no showing that respondent Judge had been motivated by, or had acted in, bad faith or malice. With regard to the claim that respondent resolved the motion for payment of attorney's fees to Atty. Helenea Dauz with undue haste, the order of 11 April 1995 would show that the motion was granted only when Banawe Realty had failed to file any comment thereon, let alone an opposition thereto, despite the opportunity given by the trial court.

WHEREFORE, the administrative case filed against Judge Pastor V. De Guzman is hereby DISMISSED.

Let the amount of fifty thousand pesos (P50,000.00) withheld from his retirement benefits in the Court's resolution of 19 November 1996 be released to him immediately.

SO ORDERED.

Romero (Chairman), Panganiban, Purisima, and *Gonzaga-Reyes, JJ.,* concur.

THIRD DIVISION

[A.M. RTJ-98-1409. February 18, 1999]

SPOUSES BENEDICTO & ROSE GODINEZ, *complainants, vs.* **HON. ANTONIO S. ALANO and SHERIFF ALBERTO RICARDO C. ALANO, Regional Trial Court, Branch 36, General Santos City,** *respondents.*

SYNOPSIS

Complainants charged Judge Alano and his son, Sheriff Alano, with having committed irregularities in connection with Civil Case No. 5634, in that the Judge acted favorably on the motion for

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issuance of a preliminary attachment filed by the plaintiff Evelyn Bairoy in said case, and by virtue of the writ, Sheriff Alano levied and seized items from the house of the spouses Godinez which were then brought to the house of the judge.

Assailing the deportment of both judge and sheriff, spouses Godinez asserted that Judge Alano had abused his discretion by issuing the writ of preliminary attachment despite overwhelming number of badges badges of fraud on the promissory note. Sheriff Alano, on the other hand, was accused of partiality and corruption in implementing the writ.

It may well be true, considering the content of the affidavit and the allegations in the pleadings of the plaintiff Bairoy, that the respondent judge had erred in ordering the issuance of the writ of attachment; nevertheless, it should be borne in mind that not every error of a judge in the performance of his official duties necessarily renders him liable and accountable therefor. Absent a clear showing that the judge has acted arrantly, the issue becomes judicial in character and would not properly warrant the imposition of administrative punishment.

It cannot be denied, however, that the judge had tolerated the actuations of his sheriff son if storing the attached properties in his (judge's) house. His action constituted misconduct which the Court cannot allow to be countenanced. Respondent Sheriff certainly had committed misconduct in placing the attached property in the house of his father not for free but with the expectation of collecting rentals from the complainants.

SYLLABUS

1. **REMEDIAL LAW; PROVISIONAL REMEDIES; ATTACHMENT; GROUNDS; WHERE THE PARTY AGAINST WHOM A CASE IS INSTITUTED HAS BEEN GUILTY OF FRAUD IN CONTRACTING DEBT; MANIFESTATION OF INTENT TO DEFRAUD.**— Among the grounds expressed in Rule 57 of the Rules of Court to warrant an issuance of a writ of attachment includes a case where the party against whom a case is instituted "has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof." The applicant must be able to show that the debtor has intended to defraud the creditor. Fraud, being a

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state of mind, need not be proved by direct evidence, and it can well be inferred from attendant circumstances. In *Adlawan vs. Torres,* the Court has said: "x x x. Proof of fraud is mandated by paragraphs (d) and (e) of Section 1, Rule 57 of the Revised Rules of Court on the grounds upon which attachment may issue. Thus, the factual basis on defendant's intent to defraud must be clearly alleged in the affidavit in support of the prayer for the writ of attachment if not so specifically alleged in the verified complaint. x x x Bare allegation that an encumbrance of a property is in fraud of the creditor does not suffice. Factual bases for such conclusion must be clearly averred."

2. **ADMINISTRATIVE LAW; JUDGES; MISTAKE IN THE PERFORMANCE OF OFFICIAL DUTIES; WHEN SUBJECT TO DISCIPLINARY ACTION.**— Not every error or mistake of a judge in the performance of his official duties necessarily renders him liable and accountable therefor. In order to merit a disciplinary sanction, the error or mistake committed by a judge should be patent, gross, malicious, deliberate, or done in bad faith. Absent a clear showing that the judge has acted arrantly, the issue becomes judicial in character and would not properly warrant the imposition of administrative punishment.

3. **ID.; ID.; LIABLE FOR TOLERATING AN ACT CONSTITUTING MISCONDUCT.**— It cannot here be denied, however, that respondent Judge has tolerated the actuations of his sheriff son in storing the attached vehicle, as well as the other personal property of complainants, in his house. His action constitutes misconduct which the Court cannot allow to be countenanced. A judge is bound to constantly conduct himself in a manner which will reasonably merit the respect and confidence of the people whom he, by his oath, has sworn to serve. It is his duty to avoid any kind of impropriety or even a mere impression of impropriety, and he must at all times seek to protect the image and integrity of the judiciary instead of opening it down to possible criticism and controversy. Respondent Sheriff certainly has committed misconduct in placing the attached property in the house of his father not for free but with the expectation of collecting rentals from complainants.

4. **LEGAL ETHICS; LAWYERS; DUTY TO ADVISE CLIENTS ON THE CONFIDENTIAL NATURE OF ADMINISTRATIVE PROCEEDINGS.** — The records would disclose that complainants furnished the Offices of the President and the Vice-

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President, a number of Senators, as well as some members of the media, with copies of the supplemental complaint. Administrative proceedings before the Court are confidential in nature in order to protect the respondents therein who may later turn out to be innocent of the charges. It can take years to build a reputation and only a single accusation, although unfounded, to destroy it. It is the duty of counsel to see to it that clients are properly advised to this fact; regrettably, at times, such admonitions either fail or, indeed, are not given.

APPEARANCES OF COUNSEL

Flaviano Canja Oclarit & Associates for complainants.

D E C I S I O N

VITUG, *J.*:

In a complaint, dated 08 November 1995, the spouses Benedicto and Rose Godinez charged Judge Antonio S. Alano with having committed irregularities in connection with Civil Case No. 5634, entitled *"Evelyn Bairoy vs. Spouses Eduardo Benedicto Godinez and Rose Godinez,* doing business under the name and style EBG Marketing." A supplemental complaint, dated 09 February 1996, was later filed to include Sheriff Alberto Ricardo C. Alano, son of Judge Alano, to be the second respondent.

The case was referred, in a resolution of the Court on 24 February 1997, to Associate Justice Conchita Carpio Morales of the Court of Appeals for investigation, report and recommendation.

In her report, dated 20 May 1998, following the investigation, Justice Morales concluded, as follows:

"The undersigned investigator finds respondent judge to have abused his discretion in precipitately issuing the order for a writ of attachment without facts-bases thereof having been laid in the complaint and/or affidavit of the plaintiff.

"While a judge should not be faulted for every error or mistake he commits, by respondent judge's comment – 'why did [the Godinezes]

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not pay the just claim of the plaintiff' – even while the case had not been heard yet and amidst the claim of the Godinezes that the promissory note – actionable document was forged, which comment amounts to a pre-judgment of the case, he has shown his lack of impartiality in the administration of justice.

"Anent the storage of the properties in *custodia legis* at respondent judge's house with the expectation and intention of gathering benefits therefrom by way of collecting rentals therefor, he and his co-respondent sheriff son are guilty of impropriety and misconduct.

"x x x x x x x x x.

"The undersigned hereby recommends that respondent judge and his co-respondent son-sheriff be faulted for impropriety and *misconduct* and that each be reprimanded and fined the amount of P50,000.00.

"With respect to respondent judge, it is further recommended that he be admonished for exhibiting lack of *impartiality* in the administrative of justice."[1]

The facts of the case would appear to have been sufficiently established.

On 22 September 1995, Evelyn Bairoy filed a complaint against the spouses Eduardo Benedicto Godinez and Rose Godinez, both doing business under the name and style of "EBG Marketing," for a sum of money, damages and attorney's fees. The case, docketed Civil Case No. 5634, was raffled to Branch 36 of the Regional Trial Court of General Santos City presided over by Judge Antonio S. Alano who had been temporarily assigned thereat in addition to his being the Presiding Judge of Branch 35.[2] Bairoy alleged in her complaint that in June 1992, the spouses Godinez took over her home appliance and furniture shop, known to be the Twin B Marketing, including its assets and receivables, upon the understanding that the defendants would eventually buy the entire business. Nevertheless, despite realizing profits they had derived, the spouses failed to make good their promise. On 02 April 1995, upon the proddings of Bairoy, Benedicto

[1] Report, pp. 10-11.

[2] Administrative Order No. 81-95, dated 26 July 1995. The designation was revoked in Administrative Order No. 170-95, dated 28 November 1995.

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Godinez executed in favor of the former a promissory note in the following tenor; *viz.:*

"For the value of the total Net Assets of 'Twin Marketing,' which I took over last June of 1992, I, Eduardo Benedicto Godinez, severally promise to pay Ms. Evelyn B. Bairoy, the sum of P2,000,000.00 (Two Million Pesos), in Philippine currency, on or before July 10, 1995, at the rate of 2% per month interest, upon execution of this note, without any further demand, that I pay only to Miss Evelyn B. Bairoy.

"If the amount due on this note is not paid at it's maturity and this note is place in the hands of an attorney for collection, I agree to pay, in addition to the aggregate of the principal amount and interest due, a sum equivalent to 25%, as attorneys fees.

"I agree that any action to enforce payment of this note may be brought by holder at her option in the proper court she desired.

"I hereto affixed my signature on this 2nd day of April, 1995, at Cebu City, Philippines."[3]

The promissory note was not honored. Claiming that the defendants had been avoiding her and that they could have "already absconded or (were) about to do so or (might) have disposed of their properties or (were) about to do so" with intent of defrauding her, the plaintiff prayed for the issuance of a writ of preliminary attachment. On 28 September 1995, respondent Judge, acting favorably on the motion, ordered the issuance of a writ of preliminary attachment upon the filing by the plaintiff of a bond of P1,000,000.00. Upon the posting of the bond, the writ was issued and the assets of EBG Marketing in General Santos City were seized.

On 27 October 1995, respondent Sheriff Alberto Ricardo C. Alano, Sheriff IV assigned to Branch 36, levied and seized items of personal property in the house of the spouses Godinez, that included a Volkswagen car, a Weinstein piano and a Yamaha electone organ. The seized items were then brought to the house of respondent Judge in General Santos City.

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[3] *Rollo*, p.7. The promissory note was found to be a forgery by the Philippine National Police Crime Laboratory, Regional Unit 7, Cebu City.

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Assailing the deportment of both respondents, complainants asserted that Judge Alano had abused his discretion by issuing the writ of preliminary attachment despite "overwhelming number of badges of fraud or unmistakable grounds for suspicion" on the promissory note, thus:

"a.) The subject matter of the promissory note is an alleged taking over of a certain business which is supposed to happen almost three (3) years ago (on June 1992). Why would Mr. Benedicto Godinez ever sign a promissory for a business transacted almost three (3) years ago? The tale is just too suspicious.

"b.) The consideration or price in the staggering amount of P2,000,000.00 was allegedly promised to be paid in so short a time of about three (3) months. The fantastic amount payable in so short a time makes it a perfect swindler's tale.

"c.) Not content with the fantastic amount, the bogus note even provided for a two percent (2%) monthly interest.

"d.) With so much consideration, it was not covered by any public document. It was not even witnessed by any third person.

"e.) In the complaint of Ms. Bairoy where she asked for a writ of attachment, she even mentioned that Mr. Benedicto Godinez was 'pressured' resulting in the alleged promissory note. The respondent judge should have been alerted and place on guard, especially in the face of numerous marks of fraud, from issuing such a damning writ with staggering amount a leeway, more than enough to destroy anything or anybody forever."[4]

Sheriff Alano, in his case, was accused of partiality and corruption in implementing the writ of attachment.

In his defense, respondent Judge argues that the writ of attachment was granted and issued in accordance with Section 3, Rule 57, of the Revised Rules of Court; he adds:

"A cursory reading of the said complaint will readily show that the same has no merit and consequently should be dismissed outright by this Honorable Court. However, considering that a judge should rely on the merits of his defense against complaint filed against him *(Coral vs.*

[4] *Rollo*, p. 2.

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Serrano, 60 SCRA 1) the undersigned will endeavor to answer all the points raised by the complainants.

"It should be noted, however, that the order of this Court (Annex '1') authorizing the issuance of a writ of attachment against the properties of the defendants, complainants herein, dated September 28, 1995, is clear and self-explanatory, yet to satisfy the complainants, the following are given:

> "It is a settled rule that a writ of attachment may be ordered issued even *ex-parte* provided that there is compliance with Section 3 of Rule 57 of the Rules of Court. (*Consolidated Bank and Trust Corporation vs. Court of Appeals,* 197 SCRA 663), and Section 3 of our Rules of Court provides that an order of attachment shall be granted only when it is made to appear by the affidavit of the applicant x x x who personally knows the facts, that:
>
> a) sufficient cause of action exists;
>
> b) that the case is one of those mentioned in Section 1 hereof;
>
> c) that there is no other sufficient security for the claim sought to be enforced by the action; and
>
> d) the affidavit and the bond are filed with the Clerk or Judge.

"All of the above requirements have been complied with before the writ of preliminary attachment was issued, as shown by the order itself (see Annex '1' hereof).

"Counsel for the complainants, however, maintains (which is of course wrong) that aside from the above requirements, the judge must still determine that:

1) the promissory note, subject of the action is not fantastic, forged or falsified.

2) that the promissory note is not subject to suspicion, etc.,

all of which must necessarily entail a hearing, which is not required by law of the Rules. As held in a case, our Supreme Court ruled:

> "Notice to the adverse party or hearing of the application is not required inasmuch as the time which the hearing will take could be enough to enable the defendant to abscond or dispose of his property before a writ of attachment issues. (*Cuartero vs. Court of Appeals,* 212 SCRA 260),'

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"On the claim that the respondent Judge did not study his law and did not ascertain the facts before the issuance of the writ, is belied by the order of the Court, dated 28 September 1995 (Annex '1') hereof.

"Likewise, complainants assertion that the undersigned did not act like Ceasar's wife and did not practice the cold neutrality of an impartial judge is further belied by the order (Annex '1') and the further fact that the same is pre-mature as the case is still pending in Court. In fact the case has not even reached pre-trial stage. If the counsel for the complainants knows his law, he should have filed a motion to declare the writ of attachment as illegally and improperly issued if he believes that such was the case, and claim damages from the bond posted by the plaintiff instead of immediately filing a case against the judge as he did."[5]

On the allegation of corruption, respondent Judge belittles the asservations of complainants; he explains:

"Also, the unbelievable claim of complainants that the undersigned conspired with counsel for the plaintiff for him to receive P1,000,000.00 of his P 10,000,000.00 EBG Marketing Business, clearly shows that the same emanates from his perverted mind. For if indeed the complainants have P10,000,000.00 assets in their business, why did they not pay the just claim of the plaintiff in the amount of only P2,000,000.00? Hence, the complaint is without merit. The further fact that complainants do not reside in General Santos City and do not know the reputation of the Judge, whose life is an open book and can look at anybody straight in the eye in his more than six (6) years stint in the judiciary, and is a complete stranger to the complainants, can attest to the fallacy of their claim. Likewise their claim against Sheriff Alano, who happened to be the incumbent Sheriff of Branch 36 before the undersigned was designated in that Court is not well taken, as he only did his duty for he made a complete return to the Court of his attachments as found in the records of this case. This imputation of complainants of a dishonest motive on the part of the undersigned is vehemently denied, it being based on mere speculation and rumors and not on facts hence must be thrown out for lack of merit."[6]

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[5] *Rollo*, pp. 63-64.

[6] *Rollo*, p. 64.

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Respondent Sheriff, on his part, averred that the storage of the car at the open garage in the house of respondent Judge was justified since there was no other available covered storage facility and because he was forewarned that a case for robbery was being filed against him by the spouses Daniel and Maria Corazon Carbonquillo who had claimed to have earlier bought the seized property from the spouses Godinez.[7] He then decided to bring the vehicle to the covered garage. Respondent Sheriff denied having received any centavo for it.

In her report to the Court, the Honorable Investigating Justice, Mme. Justice Conchita Carpio Morales of the Court of Appeals, stated:

"The undersigned investigator finds that respondent/judge gravely abused his discretion when he issued the order for the issuance of a writ of preliminary attachment.

"The questioned order reads:

> "Finding the allegations in the complaint for sum of money with a prayer for the issuance of a writ of Preliminary Attachment to be sufficient in form and substance, *it appearing that defendants are guilty of fraud in contracting or incurring the obligation sued upon as defendants have no intention at the outset of the transaction to pay the amount due the plaintiff as manifested by the fact that they have already absconded or about to do so with evident intent to defraud the plaintiff: that these grounds fall under Section 1, pars. (d) and (e) of Rule 57 of the Rules of Court;* that there is no sufficient security to satisfy the plaintiff's claim; and that the plaintiff is willing to post the necessary bond to answer for damages which defendant may be adjudged entitled, the application for a writ of attachment is GRANTED.
>
> "x x x x x x x x x.

"As earlier stated, the plaintiff alleged in her complaint that the defendants are guilty of fraud in contracting the debt and even *learned* that they 'have already absconded or are about to do so or have disposed of their properties or are about to do so with evident intent of defrauding

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[7] The documents of sale were allegedly found by respondent Sheriff to be fictitious.

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the plaintiff,' and in support of her prayer for the issuance of preliminary attachment as well as in the affidavit in support thereof she merely reiterated her allegation that the 'defendants are guilty of fraud. x x x.' These allegations were echoed by respondent judge in his order as grounds-bases for issuance of a writ of attachment in accordance with Section 1 (d) and (e) of Rule 57 which read:

"Section 1. *Grounds upon which attachment may issue.*

"x x x x x x x x x

"(d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought;

"(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

"x x x x x x x x x

"There is no factual basis, however, for the allegation that the defendants are guilty of *dolo causante* or fraud in contracting the obligation. And with respect to the alleged absconding of the defendants' properties, the same is clearly hearsay. Thus the complaint betrays lack of factual knowledge on the part of the plaintiff when she alleged that she '*learned*' about the alleged absconding of the properties. The insufficient allegations in the complaint and affidavit notwithstanding and despite respondent judge's professed knowledge of the pertinent provision of the rules of Court which mandates that:

"SEC. 3 *Affidavit and bond required.* – An order of attachment shall be granted only when it is made to appear by the affidavit of the applicant, or of some other person *who personally knows the facts*, that a sufficient cause of action exists, that the case is one of those mentioned in Section 1 hereof, that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims. The affidavit, and the bond required by the next succeeding section, must be duly filed with the clerk of court or judge of the court before the order issues (Rule 57),

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respondent judge issued the order for a writ of attachment.

> "'[T]he general rule is that the affidavit is the foundation of the writ, and if none be filed or one be filed which *wholly fails to set out some facts required by law to be stated therein*, there is no jurisdiction and the proceedings are null and void.' *(Jardine-Manila Finance, Inc. v. Court of Appeals,* 171 SCRA 636 [1989] Italics supplied).

"Attachment being a harsh extraordinary and summary remedy, the rules governing its issuance must *be strictly construed against the applicant.* Concrete and specific ground, *not general averments quoting perfunctorily the words of the Rules (D.P. Lub Oil Marketing Center, Inc. v. Nicolas,* 191 SCRA 423 [1990]), as what the plaintiff did in his complaint and affidavit, must be alleged.

"x x x x x x x x x

"The undersigned finds that respondent judge's own comment to the administrative complaint betrays his partiality towards the plaintiff and his pre-judgment of her complaint which comment is requoted below:

> "'Also, the unbelievable claim of complainants that the undersigned conspiracy with counsel for the plaintiff for him to receive P1,000,000.00 of his P10,000,000.00 EBG Marketing Business, clearly shows that the same emanates from his perverted mind. For *if indeed the complainants have P10,000,000.00 as assets in their business, why did they not pay the just claim of plaintiff in the amount of only P2,000,000.00?* Hence, the complaint is without merit.'

"x x x x x x x x x.

"*The alleged sharing* by the judge and his son of so much of the herein complainants' business was not substantiated. It was hearsay and has remained so.

"*With respect to the storage by the sheriff of the confiscated car and of the other personal properties in the garage and a room, respectively, of the house of his father-respondent judge with the latter's consent,* however, the same leaves much to be desired.

"The sheriff's justification for the storage of the car in his judge-father's house – that he did it as the Carbonquillos who had charged him with robbery in connection with the seizure of the personal properties found in the residence of the Godinezes in Cebu City – does not lie considering that the complaint for robbery and violation of the Anti-

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Graft and Corrupt Practices Act against him (sheriff) was filed by the third-party claimants – Carbonquillos at the Office at the Ombudsman at Cebu City on November 15, 1995, whereas the car which was seized on October 27, 1995, was brought from the General Santos City wharf direct to the judge's house (TSN, May 15, 1997, p. 97).

"That respondent judge allowed his garage and a room in his house to be used as the storage of the personal properties attached by his sheriff-respondent son with the intention of charging either Evelyn Bairoy or the Godinezes ('I will charge them') for storage fees at P500.00 a month (*vide* TSN, May 15, 1997, pp. 74-75) betrays his and his son's impropriety and misconduct."[8]

Among the grounds expressed in Rule 57 of the Rules of Court to warrant an issuance of a writ of attachment includes a case where the party against whom a case is instituted "has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof." The applicant must be able to show that the debtor has intended to defraud the creditor.[9] Fraud, being a state of mind, need not be proved by direct evidence, and it can well be inferred from attendant circumstances.[10] In *Adlawan vs. Torres*,[11] the Court has said:

"x x x. As held in *Carpio v. Macadaeg*, 9 SCRA 552 (1963), to justify a preliminary attachment, the removal or disposal must have been made with intent to defraud defendant's creditors. Proof of fraud is mandated by paragraphs (d) and (e) of Section 1, Rule 57 of the Revised Rules of Court on the grounds upon which attachment may issue. Thus, the factual basis on defendant's intent to defraud must be clearly alleged in the affidavit in support of the prayer for the writ of attachment if not so specifically alleged in the verified complaint. x x x.

"Bare allegation that an encumbrance of a property is in fraud of the creditor does not suffice. Factual bases for such conclusion must be clearly averred."[12]

[8] Report, pp. 6-10.

[9] *Liberty Insurance Corporation vs. Court of Appeals*, 222 SCRA 37.

[10] *Ibid.*

[11] 233 SCRA 645.

[12] At pp. 653-655.

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Respondent Judge could not have known that the promissory note was a forgery even while the report of the Philippine National Police Crime Laboratory of the Regional Unit 7, Cebu City, would indicate that the document was indeed received only on 18 December 1995 while the complaint was filed back in September 1995. The affidavit executed by Evelyn Bairoy in support of her prayer for the issuance of the writ of preliminary attachment read:

"That I, *EVELYN BAIROY,* of legal age, Filipino, single, and a resident of General Santos City, under oath, depose and say:

"1. That I am the plaintiff in this case;

"2. That there is *A* sufficient cause of action herein;

"3. That there is *NO* sufficient security for the claim which is sought to be obtained herein;

"4. That defendants are guilty of fraud in contracting the debt or incurring the obligation sued upon as they have no intention at the outset to pay me of the amount due as manifested by the fact that they have already absconded or are about to do so or have disposed of their properties or are about to do so, with evident intent of defrauding me; That these ground fall under *SECTION 1, par. (d) and (e) of Rule 57 of the Rules of Court* where a writ of preliminary attachment may be issued;

"5. That the amount due to me is as much as the sum for which an order of attachment may be granted above all legal counterclaims;

"6. That I offer such sum or sums as this Honorable Court may impose but not exceeding the principal amount of *TWO MILLION (P2,000,000.00) PESOS exclusive of interest and other litigation expenses,* conditioned to pay all the costs and damages which defendants might suffer if this Honorable Court finally adjudge that I am not entitled thereto."[13]

The complaint, in turn, stated:

"7. Then on 02 April 1995, after having been pressured to pay, the defendant *EDUARDO BENEDICTO GODINEZ* executed and signed to a promissory note wherein he promised to pay the plaintiff the sum of *TWO MILLION (P2,000,000.00) PESOS* on or before 10 July 1995 at *TWO PERCENT (2%)* interest per month from the date of execution of

[13] *Rollo*, p. 13.

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the note without any further demand. (True copy of the promissory note is hereto attached as *ANNEX 'A'*);

"8. That upon due date, not a shadow of the defendants showed up to pay the promised amount plus interest;

"9. That in the subsequent months several personal demands to pay have been made by the plaintiff upon the defendants, which all fell on deaf ears;

"10. That, lately, the defendants had been avoiding the plaintiff, and the latter even learned that they have already absconded or are about to do so or have disposed of their properties or are about to do so with evident intent of defrauding the plaintiff";[14]

It may well be true, considering the content of the affidavit and the allegations in the pleadings, that respondent judge has erred in ordering the issuance of the writ of attachment; nevertheless, it should be borne in mind that not every error or mistake of a judge in the performance of his official duties necessarily renders him liable and accountable therefor.[15] In order to merit a disciplinary sanction, the error or mistake committed by a judge should be patent, gross, malicious, deliberate, or done in bad faith.[16] Absent a clear showing that the judge has acted arrantly, the issue becomes judicial in character and would not properly warrant the imposition of administrative punishment.

It cannot here be denied, however, that respondent Judge has tolerated the actuations of his sheriff son in storing the attached vehicle, as well as the other personal property of complainants, in his house. His action constitutes misconduct which the Court cannot allow to be countenanced. A judge is bound to constantly conduct himself in a manner which will reasonably merit the respect and confidence of the people whom he, by his oath, has sworn to serve.[17] It is his duty to avoid any kind of impropriety or even a mere impression of impropriety, and he must at all times

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[14] *Rollo*, pp. 9-10.

[15] *Riego vs. Leachon, Jr.*, 268 SCRA 777.

[16] *Del Callar vs. Salvador*, 268 SCRA 320.

[17] See *Chan vs. Agcaoli*, 233 SCRA 331.

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seek to protect the image and integrity of the judiciary instead of opening it down to possible criticism and controversy.[18]

Respondent Sheriff certainly has committed misconduct in placing the attached property in the house of his father not for free but with the expectation of collecting rentals from complainants; he testified:

"INVESTIGATOR:

"Where do you keep these properties which you took from Cebu City?

"WITNESS:

"At present, Mam, I placed them in a small room which I used to rent as a store in General Santos City which I converted into a storage facility.

"INVESTIGATOR:

"Who is paying for the storage fees?

"WITNESS:

"Actually, there is no storage fees yet.

"INVESTIGATOR:

"Why not? Because you are renting that room?

"WITNESS:

"I used to . . .

"INVESTIGATOR:

"Is that your personal property, that room which you are using as a storage?

"WITNESS:

"No, Mam.

"INVESTIGATOR:

"Whose property is that?

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[18] *Nazareno vs. Almario*, 268 SCRA 657.

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"WITNESS:

"That is the property of my father, Mam since my house is a small one. I am only renting a house.

"INVESTIGATOR:

"You are renting a house from whom?

"WITNESS:

"From Rogas, a certain Sgt. Rogas.

"INVESTIGATOR:

"What about the house occupied by your father, is that being rented by him or that is his own property?

"WITNESS:

"His real property. . .

"INVESTIGATOR:

"Real property, so it is in a room belonging to your father that you are storing the properties that you took from the complainants?

"WITNESS:

"Yes, Mam.

"INVESTIGATOR:

"And you are not paying anything for that? There is no storage fee being paid for the use of that room?

"WITNESS:

"I told my mother, Mam, that since they are paying for the amortization of the house I would share, Mam because I am the one exclusively using that room.

"INVESTIGATOR:

"You would share in the . . .?

"WITNESS:

"Part, a minimum of only P500, Mam, for whatever properties that I keep in that house.

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"INVESTIGATOR:

"So you are personally shouldering the expenses for the storage?

"WITNESS:

"Actually, Mam, they are not collecting anything from me up to the present. I have not paid yet.

"INVESTIGATOR:

"But you are volunteering P500?

"WITNESS:

"For the rental of the room considering that rentals in General Santos are already . . .

"INVESTIGATOR:

"So you are saying that you are actually paying P500 for the rental of that room where you store the properties, yes or no?

"WITNESS:

"Yes, Mam.

"INVESTIGATOR:

"You are not going to pass on the burden of payment either to complainant Evelyn Bairoy or to the defendant Godinezes?

"WITNESS:

"I will, Mam because we are allowed by rules . . .

"INVESTIGATOR:

"You will . . .

"WITNESS:

"I will charge them storage fees.

"INVESTIGATOR:

"After the case. . .?

"WITNESS:

"After the case has been decided, Mam.

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"INVESTIGATOR:

"So P500 a month?

"WITNESS:

"Yes, Mam, I think that is reasonable considering that the attached properties are of so much value, Mam."[19]

All considered, the Court adopts the recommendation of the Investigating Justice but decreases the fine sought to be imposed from P50,000.00 to P10,000.00 on each respondent.

A passing remark. The records would disclose that complainants furnished the Offices of the President and the Vice-President, a number of Senators, as well as some members of the media, with copies of the supplemental complaint. Administrative proceedings before the Court are confidential in nature in order to protect the respondents therein who may later turn out to be innocent of the charges. It can take years to build a reputation and only a single accusation, although unfounded, to destroy it. It is the duty of counsel to see to it that clients are properly advised of this fact; regrettably, at times, such admonitions either fail or, indeed, are not given.

WHEREFORE, the Court finds Judge Antonio S. Alano and Sheriff Alberto Ricardo C. Alano guilty of misconduct and directs each of said respondents to pay a FINE of TEN THOUSAND PESOS (P10,000.00), with a warning that the commission of similar or other infractions in the future will be dealt with severely.

SO ORDERED.

Romero (Chairman), Panganiban, Purisima, and *Gonzaga-Reyes, JJ.,* concur.

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[19] TSN, Sheriff Alberto Ricardo C. Alano, 15 May 1997, pp. 71-76.