

## SECOND DIVISION

[ A.M. No. RTJ-04-1836, July 14, 2004 ]

**DR. JAIME O. SEVILLA, COMPLAINANT, VS. JUDGE ABRAHAM B. BORRETA, RTC, BRANCH 154, PASIG CITY, RESPONDENT.**

### R E S O L U T I O N

**QUISUMBING, J.:**

On September 19, 2002, Dr. Jaime O. Sevilla filed a verified complaint against Presiding Judge Abraham B. Borreta, Regional Trial Court of Pasig City, Branch 154, accusing him of Ignorance of the Law in violation of Canon 3, Rule 3.01 and Delay of Justice under Canon 1, Rule 1.02, both of the Code of Judicial Conduct, in connection with Civil Case No. 37822 entitled *Carmelita C. Sevilla v. Dr. Jaime O. Sevilla*, for Support.<sup>[1]</sup>

The pertinent facts in this administrative matter are undisputed.

On September 25, 2001, Mrs. Carmelita C. Sevilla filed a **Motion for Execution** of the Order dated July 4, 2001 issued by Presiding Judge Ramon R. Buenaventura of the RTC of Pasig, Branch 154. The motion for execution pertained to a complaint for support against her estranged husband, Dr. Sevilla, who was ordered to pay P40,000 to Mrs. Sevilla and P32,000 to their son, Carlos Rafael Sevilla.

On October 1, 2001, respondent assumed office as Presiding Judge of Branch 154, RTC of Pasig City.

On November 16, 2001, Mrs. Sevilla filed a **Motion for Execution and Issuance of a Hold-Departure Order (HDO)**, alleging that Dr. Sevilla failed to remit P72,000, the total amount of accumulated unpaid support, as ordered by the court, nor has he shown any intention to obey the said order.

On April 3, 2002, respondent granted Mrs. Sevilla's motion.<sup>[2]</sup> On May 8, 2002, the Court directed the Bureau of Immigration and Deportation (BID) to include the name of Dr. Sevilla in its hold-departure order list.<sup>[3]</sup>

Complainant Dr. Sevilla thru counsel immediately filed a **Motion for Reconsideration** dated May 30, 2002 of the HDO, alleging that it had no factual nor legal basis and was a clear infringement of his client's constitutional right to travel.<sup>[4]</sup>

On June 6, 2002, complainant paid P72,000, evidenced by the Sheriff's Return dated June 28, 2002.<sup>[5]</sup>

On June 17, 2002, complainant filed a **Supplement to the Motion for**

**Reconsideration** alleging that the Writ of Execution had already been satisfied and prayed for the cancellation of the HDO. During the hearing of the said motion on June 28, 2002, complainant alleged that the respondent openly refused to look at the receipt of the payment and was visibly irked when complainant's counsel pointed out that the issuance of the HDO violated Circular No. 39-97,<sup>[6]</sup> providing that an HDO can only be issued in criminal cases. Respondent then required a comment from the opposition within 5 days because the Sheriff's Return had not been filed at the time of the hearing.

On July 22, 2002, complainant filed another **Urgent Ex Parte Motion to Lift Hold-Departure Order** on the ground that the basis for the issuance of the HDO – the non-compliance with the July 4, 2001 Order – was already moot and academic. Noteworthy, on August 9, 2002, respondent lifted the HDO upon the filing of a new **Motion to Lift Hold-Departure Order** dated August 5, 2002.

On September 19, 2002, the herein complaint was filed. Complainant contends that the issuance of the HDO is a clear manifestation of respondent's incompetence and ignorance of the law. According to complainant, the respondent judge should know that an HDO can be issued only in criminal cases as provided by Circular No. 39-97, the basis of the Court's issuance of the HDO.<sup>[7]</sup> Furthermore, complainant avers, respondent unduly delayed rendering an order to lift the HDO.

In his **Comment**, respondent judge avers that his issuance of the HDO had legal basis and the decision to issue the HDO was left to his sound judgment and discretion. Respondent, explaining the alleged lack of legal basis of the HDO, contends that complainant's refusal and/or erratic failure to give support, may give rise to an action for contempt of court which is in the nature of a criminal action<sup>[8]</sup> and was punishable by imprisonment – his basis for his issuance of the HDO.

On the accusation that he failed to act promptly in lifting the HDO, respondent claims that he acted on the motion with dispatch, in good faith, without malice, and in accordance with law. He points out that what complainant wanted was to dictate on the calendar of the court. Respondent adds that his intention in requiring Mrs. Sevilla to comment on the motion to lift the HDO was to give her due process, and ascertain the compliance of the judgment for support thru the Sheriff's Return, to the extent that he even directed the sheriff to explain why the latter lifted the garnishment without an order from the court.

On the instructions of this Court to the Office of the Court Administrator (OCA) to investigate, and report its findings on the complaint, the OCA found that on the matter of delay, more than one month had lapsed from June 28, 2002, the date of the hearing of the motion for execution and the HDO. Also, the motion to lift the HDO was filed on August 5, 2002 and the Order lifting the HDO was given four days later on August 9, 2002. According to the OCA, considering that complainant was a retained physician of Cathay Pacific Airlines, charged with accompanying ailing passengers on flight, respondent should have acted on the motion to reconsider more promptly since an HDO on complainant meant he would not be able to perform his professional obligations. Besides, respondent should have taken into account that ₱72,000 was too modest an amount for complainant to think of absconding.

On the charge of ignorance of the law, the OCA opined that indeed contempt of