

## SECOND DIVISION

[ **A.M. No. RTJ-99-1496, October 13, 1999** ]

**EDESIO ADAO, COMPLAINANT, VS. JUDGE CELSO F. LORENZO,  
REGIONAL TRIAL COURT, BRANCH 1, BORONGAN, EASTERN  
SAMAR, RESPONDENT.**

### DECISION

**MENDOZA, J.:**

This is a complaint filed against Judge Celso F. Lorenzo of the Regional Trial Court, Branch 1, of Borongan, Eastern Samar in connection with the issuance by him of a temporary restraining order in Civil Case No. 3391, entitled "Nerio B. Naputo v. Edesio Adao and the Municipal Local Government Officer of Taft, Eastern Samar." The case was assigned by special raffle to Branch 2 of the RTC of Borongan, Eastern Samar to which respondent judge had been designated as Acting Presiding Judge. The administrative complaint charges that, in issuing the TRO, respondent acted with gross inexcusable negligence, manifest partiality, and evident bad faith.

Complainant Edesio Adao was elected barangay captain of Mabuhay, Taft, Eastern Samar. It is alleged that after his proclamation as barangay captain, the losing candidate, Nerio Naputo, filed against him an election protest, which was docketed as Civil Case No. 56-97 in the Municipal Trial Court of Taft, Eastern Samar; that on June 13, 1997, Naputo's lawyers, Attys. Edwin B. Docena and Rodolfo Joji A. Acol, Jr., also filed a complaint for injunction (Civil Case No. 3391) to prevent complainant from being elected president in the elections held on June 14, 1997 for officers of the Association of Barangay Captains of the Municipality of Taft, Eastern Samar; that on the same day the said complaint was filed (June 13, 1997), respondent judge issued a temporary restraining order; that on June 23, 1997, after successfully preventing complainant from participating in the elections, Naputo's lawyer, Atty. Edwin Docena, filed a notice of dismissal of Civil Case No. 3391; that complainant objected; that until now complainant's objection to the dismissal of the case remains unacted upon; that respondent judge acted in violation of Supreme Court Administrative Circular 20-95, as the temporary restraining order was issued by him without notice to complainant and a summary hearing and in the absence of urgency for the issuance of the same; that respondent judge was politically motivated in issuing the TRO because he was promoted to RTC judge through the efforts of former Rep. Jose Ramirez, one of whose supporters is Nerio Naputo's lawyer, Atty. Edwin Docena; and that respondent judge is guilty of violation of §3, par. 2 (Dishonesty and violation of the Anti-Graft and Corrupt Practices Act); §3, par. 3 (Violation of the Code of Judicial conduct); and §3, par. 9 of Rule 140 (Gross ignorance of the law and procedure) and the following provisions of the Code of Judicial Conduct:

Rule 2.03 — A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor

convey or permit others to convey the impression that they are in a special position to influence the judge.

Rule 2.04 – A judge shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency.

Rule 3.02 – In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interests, public opinion or fear of criticism.

Respondent judge filed two comments. In his first comment, dated July 7, 1999, respondent judge alleged that after Civil Case No. 3391 had been brought to his attention on June 13, 1997, he issued an order requiring herein complainant to comment within ten (10) days from notice on the application for preliminary injunction; that he later issued a temporary restraining order after “careful perusal of the petition and the attached affidavit of merit of complainant” and after concluding that “no fair and reasonable redress can be had by petitioner unless a temporary restraining order is issued”; that his issuance of the temporary restraining order was in accordance with §8 of the Interim Rules<sup>[1]</sup> that despite receipt of the temporary restraining order at 8:30 in the morning of July 14, 1997, complainant never questioned the propriety of the same; that while former Rep. Ramirez had helped him get appointed as RTC judge, this fact did not influence him to issue a temporary restraining order in favor of Nerio Naputo; and that the present complaint was filed only after one year and 11 months from the issuance of the temporary restraining order and was intended to malign him and put pressure on him because he was trying criminal cases for attempted and frustrated murder against some relatives of the complainant.

In his second comment, dated July 14, 1999, respondent judge further alleged that Civil Case No. 3391 was assigned by special raffle to Branch 2 to which he had been designated Acting Presiding Judge; that it was “almost physically impossible” for him to act on complainant’s objection to the notice of dismissal of said case because of his multifarious duties as Presiding Judge of Branch 1, Acting Presiding Judge of Branch 2, and Judge-Designate of Branch 4 at Dolores and Branch 5 at Oras, Eastern Samar; and that he did not resolve the matter because he thought it best that it be resolved by the permanent judge of the RTC, Branch 2, Borongan, considering that complainant had filed both an administrative and a criminal complaint against him.

The complaint is meritorious.

#### A. Re Issuance of Temporary Restraining Order

It is not clear whether respondent judge issued the temporary restraining order in Civil Case No. 3391 in his capacity as Executive Judge or as Acting Presiding Judge of Branch 2 of the RTC of Borongan, Eastern Samar. There is a difference with respect to the requisites for the issuance of a temporary restraining order and the life of the TRO when it is issued by an Executive Judge or by a Presiding Judge of a court.

If the temporary restraining order was issued by respondent in his capacity as Executive Judge, the TRO was good for 72 hours only. Within that period he was

required to summon the parties to a conference before issuing the TRO and then assign the case by raffle. Thus, par. 3 of Administrative Circular No. 20-95 provides:

If the matter is of extreme urgency, such that unless a TRO is issued, grave injustice and irreparable injury will arise, the Executive Judge shall issue the TRO effective only for seventy-two (72) hours from issuance but shall immediately summon the parties for conference and immediately raffle the case in their presence. Thereafter, before the expiry of the seventy-two (72) hours, the Presiding Judge to whom the case is assigned shall conduct a summary hearing to determine whether the TRO can be extended for another period until a hearing in the pending application for preliminary injunction can be conducted. In no case shall the total period of the TRO exceed (20) days, including the original seventy-two (72) hours, for the TRO issued by the Executive Judge. (Emphasis added)

On the other hand, if the TRO was issued after Civil Case No. 3391 had been raffled to Branch 2 and respondent judge issued it in his capacity as Acting Judge, then he should have complied with the following provision of Administrative Circular No. 20-95, par. 2:

The application for a TRO shall be acted upon only after all parties are heard in a summary hearing conducted within twenty-four (24) hours after the records are transmitted to the branch selected by raffle. The records shall be transmitted immediately after raffle.

The TRO issued by respondent judge indicates that the same was issued by him as "Executive Judge." The heading of the order shows it was issued by Branch 1 of the RTC of which he was the Presiding Judge, thus:

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Eighth (8th) Judicial Region  
BRANCH 1  
Borongan, Eastern Samar

The same information appears in another order of respondent judge of the same date, June 13, 1997, requiring complainant to file his answer to the complaint for injunction. The order, according to respondent judge, was issued prior to the temporary restraining order. The heading of subsequent pleadings filed by the parties in Civil Case No. 3391 (plaintiff's Notice of Dismissal and herein complainant's Memorandum in opposition thereto) also show that Civil Case No. 3391 was heard in Branch 1. It would thus appear that respondent issued the temporary restraining order and the order requiring answer, both dated June 13, 1997, in his capacity a Executive Judge. Respondent himself states in his comment, dated July 7, 1999, that "my issuance of the TRO may be said to be necessary and incidental to the performance of my functions as [executive judge] despite the fact that I am burdened by workload, that aside from being the executive judge, I am also the judge designate of branches 4 and 5 located at Dolores and Oras, Eastern Samar approximately more or less one hundred kilometers from the municipality of Borongan, Eastern Samar." (Emphasis added)

However, respondent judge alleges at the same time that he issued the TRO after Civil Case No. 3391 had been assigned by special raffle to Branch 2 of which he was