

THIRD DIVISION

[A.M. No. RTJ-99-1493, June 20, 2000]

JAIME L. CO, COMPLAINANT, VS. JUDGE DEMETRIO D. CALIMAG, JR., RESPONDENT.

RESOLUTION

MELO, J.:

Respondent Judge Demetrio Calimag, Jr. stands charged with serious misconduct and inefficiency in office in this administrative complaint filed by complainant Jaime L. Co.

On June 23, 1998, the Court designated respondent judge, then presiding over Branch 35 of the Regional Trial Court stationed in Santiago City, as Acting Presiding Judge of the Regional Trial Court of Echague, Isabela in addition to his regular duties. Later that year, however, Judge Bonifacio Ong took over as the regular judge of the Echague court.

On December 2, a complaint for legal separation was filed by Eva Co against her husband, herein complainant Jaime L. Co. The suit, wherein it was also prayed that a temporary restraining order be issued, was filed with the Echague court. Despite Judge Ong's having already assumed office as presiding judge thereof, respondent immediately took cognizance of the case. Considering the prayer for issuance of a temporary restraining order to be one of extreme urgency, respondent in *ex parte* proceedings, temporarily enjoined herein complainant "from incurring any obligations, collecting rentals/overdue obligations from debtors, disposing, transferring, administering or managing the conjugal properties and the family business of the spouses, real or personal found in the Philippines" (Rollo, p. 8). In conjunction therewith, respondent set the summary hearing of the application for restraining order for the next day, December 3. With complainant failing to appear, respondent extended the operation of the temporary restraining order and set the hearing of the application for preliminary injunction for December 10, 1998.

On December 10, 1998, complainant filed a motion to suspend the hearing, raising Article 58 of the Family Code as basis therefor. Likewise, he filed an Objection to the Temporary Restraining Order/Injunction and Administration. Eva Co, on the other hand, filed a supplemental motion for the issuance of a preliminary injunction. Respondent required the parties to submit, within five days, their respective affidavits or memoranda in support or denial of the aforesaid motion to suspend hearing.

Complainant now alleges that on December 26, 1998, respondent called him up at around 8 to 8:30 p.m. to tell him that he (respondent) would not issue an injunction in exchange for some money to be purportedly used for respondent's confinement in the hospital. Complainant claims that the next morning, he gave an envelope

containing P10,000.00 to Norma Cariño, an employee of his, with instructions to give the same to respondent. However, upon receiving the envelope and counting the cash contained therein, respondent allegedly returned the same to Norma Cariño, saying "This is not the amount we talked about. You return this to Mr. Co" (TSN, Dec. 1, 1999, p. 15).

On December 29, 1998, respondent issued a writ of injunction and, immediately after signing the same, furnished a copy to Eva Co. The latter likewise immediately disseminated said order to all the debtors of the conjugal partnership.

Complainant anchors his charge of serious misconduct against respondent on the latter's alleged lack of authority to take cognizance of the legal separation case filed by Eva Co against complainant, as well as the respondent's alleged extortion attempt against complainant.

While it is true that Judge Bonifacio Ong formally assumed office on November 9, 1998, it must be pointed out that, per the certification issued by the Clerk of Court of the Echague court, Judge Ong did not hear and/or try cases from November 9 to December, 1998 because he was still undergoing orientation and immersion during said period. Thus, respondent still had the authority to take cognizance of old and newly filed cases in the Echague court during that period, notwithstanding the appointment of a new judge to said *sala*. In the words of the Court Administrator, in a memorandum dated August 9, 1999, "[a]n Acting Presiding Judge can take action on old and newly filed cases in the *sala* assigned to him, especially so in this particular instance where the newly appointed judge was still undergoing orientation and/or immersion program." The charge of misconduct due to lack of authority to take cognizance of cases leveled against respondent, thus, has no leg to stand on.

Likewise, complainant claims that he was denied due process when respondent, instead of conducting a hearing on the question of whether or not to issue a writ of preliminary injunction, required the parties to submit their affidavits/counter-affidavits and thereafter, considered the motion submitted for resolution.

Under Section 5 of Rule 58 of the 1997 Rules of Civil Procedure, "[n]o preliminary injunction shall be granted without hearing and prior notice to the party or party sought to be enjoined..." This does not mean, however, that all petitions for preliminary injunction must undergo a trial-type hearing, it being hornbook doctrine that "a formal or trial-type is not at all times and in all instances essential to due process" (*NFL vs. NLRC*, 283 SCRA 275 [1997]). Due process means giving every contending party the opportunity to be heard and the court to consider every piece of evidence presented in their favor (*Ginete vs. CA*, 296 SCRA 38 [1998]). In the instant case, there is no dispute that complainant was given opportunity to be heard, having submitted his counter-affidavit and memorandum in support of his position. Complainant cannot, thus, claim that he was denied due process by respondent.

With respect to the charge of extortion, complainant's allegation is supported only by the affidavit and testimony of Norma Cariño to the effect that she delivered an envelope containing money to respondent on December 27, 1998, but that the same was returned allegedly because it was not in the amount agreed upon by complainant and respondent. In corroboration, complainant presented in evidence the envelope which purportedly contained the money delivered to respondent.