

THIRD DIVISION

[A.M. No. P-99-1292, February 26, 1999]

**JULIETA BORROMELO SAMONTE, COMPLAINANT, VS. ATTY.
ROLANDO R. GATDULA, BRANCH CLERK OF COURT,
RESPONDENT.**

R E S O L U T I O N

GONZAGA-REYES, J.:

The complaint filed by Julieta Borrromeo Samonte charges Rolando R. Gatdula, RTC, Branch 220, Quezon City with grave misconduct consisting in the alleged engaging in the private practice of law which is in conflict with his official functions as Branch Clerk of Court.

Complainant alleges that she is the authorized representative of her sister Flor Borrromeo de Leon, the plaintiff in Civil Case No. 37-14552 for ejectment filed with the Metropolitan Trial Court of Quezon City, Branch 37. A typographical error was committed in the complaint which stated that the address of defendant is No. 63-C instead of 63-B, P. Tuazon Blvd., Cubao, Quezon City. The mistake was rectified by the filing of an amended complaint which was admitted by the Court. A decision was rendered in favor of the plaintiff who subsequently filed a motion for execution. Complainant however, was surprised to receive a temporary restraining order signed by Judge Prudencio Castillo of Branch 220, RTC, Quezon City, where Atty. Rolando Gatdula is the Branch Clerk of Court, enjoining the execution of the decision of the Metropolitan Trial Court. Complainant alleges that the issuance of the temporary restraining order was hasty and irregular as she was never notified of the application for preliminary injunction.

Complainant further alleges that when she went to Branch 220, RTC, Quezon City, to inquire about the reason for the issuance of the temporary restraining order, respondent Atty. Rolando Gatdula, blamed her lawyer for writing the wrong address in the complaint for ejectment and told her that if she wanted the execution to proceed, she should change her lawyer and retain the law office of respondent at the same time giving his calling card with the name "Baligod, Gatdula, Tacardon, Dimailig and Celera" with office at Rm. 220 Mariwasa Bldg., 717 Aurora Blvd., Cubao, Quezon City; otherwise she will not be able to eject the defendant Dave Knope. Complainant told respondent that she could not decide because she was only representing her sister. To her consternation, the RTC Branch 220 issued an order granting the preliminary injunction as threatened by respondent despite the fact that the MTC, Branch 37 had issued an Order directing the execution of the Decision in Civil Case No. 37-14552.

Asked to comment, respondent Atty. Gatdula recited the antecedents in the ejectment case and the issuance of the restraining order by the Regional Trial Court, and claimed that contrary to complainant Samonte's allegation that she was not

notified of the raffle and the hearing, the Notice of Hearing on the motion for the issuance of a Temporary Restraining Order was duly served upon the parties, and that the application for injunctive relief was heard before the temporary restraining order was issued. The preliminary injunction was also set for hearing on August 7, 1996.

The respondent's version of the incident is that sometime before the hearing of the motion for the issuance of a temporary restraining order, complainant Samonte went to court "very mad" because of the issuance of the order stopping the execution of the decision in the ejectment case. Respondent tried to calm her down, and assured her that the restraining order was only temporary and that the application for preliminary injunction would still be heard. Later the Regional Trial Court granted the application for a writ of preliminary injunction. The complainant went back to court "fuming mad" because of the alleged unreasonableness of the court in issuing the injunction.

Respondent Gatdula claims that thereafter complainant returned to his office, and informed him that she wanted to change counsel and that a friend of hers recommended the Law Firm of "Baligod, Gatdula, Tacardon, Dimailig and Celera," at the same time showing a calling card, and asking if he could handle her case. Respondent refused as he was not connected with the law firm, although he was invited to join but he chose to remain in the judiciary. Complainant returned to court a few days later and told him that if he cannot convince the judge to recall the writ of preliminary injunction, she will file an administrative case against respondent and the judge. The threat was repeated but the respondent refused to be pressured. Meanwhile, the Complainant's Motion to Dissolve the Writ of Preliminary Injunction was denied. Respondent Gatdula claims that the complainant must have filed this administrative charge because of her frustration in procuring the ejectment of the defendant lessee from the premises. Respondent prays for the dismissal of the complaint against him.

The case was referred to Executive Judge Estrella Estrada, RTC, Quezon City, for investigation, report and recommendation.

In her report Judge Estrada states that the case was set for hearing three times, on September 7, 1997, on September 17, and on September 24, 1997, but neither complainant nor her counsel appeared, despite due notice. The return of service of the Order setting the last hearing stated that complainant is still abroad. There being no definite time conveyed to the court for the return of the complainant, the investigating Judge proceeded with the investigation by "conducting searching questions" upon respondent based on the allegations in the complaint and asked for the record of Civil Case No. Q-96-28187 for evaluation. The case was set for hearing for the last time on October 22, 1997, to give complainant a last chance to appear, but there was again no appearance despite notice.

The respondent testified in his own behalf to affirm the statements in his Comment and submitted documentary evidence consisting mainly of the pleadings in MTC Civil Case No. 37-14552, and in RTC Civil Case No. Q96-28187 to show that the questioned orders of the court were not improperly issued.

The investigating judge made the following findings: