

RE: COMPLAINT AGAINST JUSTICE ELVI JOHN S. ASUNCION OF THE COURT OF APPEALS

A.M. NO. 06-6-8-CA. March 20, 2007

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PER CURIAM:

The Cases

Before Us are two (2) administrative cases against Justice Elvi John S. Asuncion of the Court of Appeals [CA].

The first, docketed as A.M. No. 06-6-8-CA, stems from an unsigned letter dated February 17, 2006, addressed to Chief Justice Artemio V. Panganiban, complaining that Justice Elvi John S. Asuncion "has been sitting on motions for reconsideration for six months to more than a year unless the parties come across."^[1] On July 18, 2006, the Court resolved to refer the complaint to retired Supreme Court Justice Bernardo P. Pardo for investigation, report and recommendation within 90 days from receipt thereof.

Subsequently, on August 29, 2006, the Court also referred to Investigator-designate Justice Pardo an unsigned letter dated August 17, 2006, allegedly from an Associate Justice of the Court of Appeals, fully supporting the investigation of Justice Elvi John S. Asuncion, and citing "one particular case pending in his division that will show how he operates."^[2] The case mentioned in the letter is *Bank of Commerce v. Hon. Evelyn Corpus-Cabochan, et al.*, CA-G.R. No. 91258, allegedly involving an irregularly issued temporary restraining order [TRO].

The second administrative case, A.M. No. 06-44-CA-J, is based on a verified complaint dated August 22, 2006^[3] filed by Atty. Roberto C. Padilla with the Office of the Court Administrator, charging Justice Elvi John S. Asuncion with "culpable dereliction of duty, malicious delay in the administration of justice and gross ignorance of the law" in connection with CA-G.R. SP No. 60573, entitled "*Philippine National Bank v. NLRC and Erlinda Archinas*." The Court likewise referred this complaint to Justice Bernardo P. Pardo for investigation, report and recommendation.

On March 1, 2007, Justice Pardo submitted to this Court his Report and Recommendation [Report] dated February 28, 2007.

Justice Pardo reports that he conducted an investigation of the cases on August 10 and 30, September 14 and 27, October 4, 16 and 26, December 8, all in 2006, and on January 18, 2007. On each of these dates, the respondent was present, and in connection with A. M. No. 06-44-CA-J, respondent Justice Asuncion was represented by counsel.

Justice Asuncion's Antecedents

From the record, it appears that respondent Justice Elvi John S. Asuncion was appointed Associate Justice of the Court of Appeals on May 24, 1999, and assumed office on May 25, 1999. On July 5, 2004, he was assigned as Chairman, 18th Division of the CA, stationed in Cebu City. In an order dated July 7, 2004, CA Presiding Justice Cancio C. Garcia directed that all "Manila cases left by Justice Asuncion shall automatically be assigned to

Justice [Monina Arevalo] Zenarosa."[4] On November 3, 2004, Justice Asuncion was re-assigned to Manila, as Chairman, 17th Division, CA. From August 4, 2006 to date, he has been Chairman, 11th Division, CA, Manila.

The Investigation

A.M. No. 06-6-8-CA

The unsigned letter complaint, that gave rise to the instant case, reads:

"February 17, 2006

"Hon. Artemio V. Panganiban
Chief Justice, Supreme Court
Padre Faura, Manila

"Sir:

"Please direct an immediate judicial audit on Court of Appeals Justice Elvi Asuncion.

"This magistrate has been sitting on motions for reconsideration for six months to more than a year unless the parties come across.

"This CA Justice is an unmitigated disgrace to the judiciary. How he ever reached his lofty position is truly disconcerting. He is a thoroughly CORRUPT person who has no shame using his office to extort money from litigants. He is equally, if not more, deprave than Demetrio Demetria who was dismissed by the Supreme Court. Asuncion deserves not only dismissal but DISBARMENT as well. Because the law profession should also be purged of CROOKS like him.

"I hope you can terminate his service in the judiciary ASAP to save the institution. Thank you.

"Very truly yours,

"AN AGGRIEVED PARTY"

To the foregoing complaint, respondent Justice Asuncion filed his Comment dated August 30, 2006[5] in which he strongly denied the charge of deliberate inaction on pending motions for reconsideration in cases assigned to him unless the parties came across. He adverted to the unsigned letter as the work of the same group "that previously instigated false accusations which also resulted in my being investigated by the Supreme Court through the Hon. Justice Carolina C. Grino-Aquino." He admitted, however, to "some delays in the resolution of some motions for reconsideration", and cited the following "justifiable reasons": (1) The heavy caseload initially assigned to CA justices, coupled with the newly assigned cases raffled daily and the re-raffled cases originally handled by promoted or retired justices; (2) The reorganization of the CA and his assignment as Chairman of the 18th Division based in Cebu City, which "created some confusion" in the status of cases assigned to him; (3) The physical transfer of his office, "aggravated by a lapse in the monitoring system of my office"; and (4) The various administrative assignments, especially in helping organize special events, given to him by the CA Presiding Justice, which demanded time and attention.

On September 11, 2006, respondent filed his Comment[6] on the unsigned letter dated August 17, 2006 of an alleged CA Associate Justice. He denied that there was any irregularity in the issuance of the temporary restraining order and of the subsequent writ of preliminary injunction, stating that the same was done in the "sound exercise of the Court's discretion." The respondent stressed that the cited case, CA-G.R. SP No. 91258, was still pending in his division and not germane to the on-going investigation against him for supposed deliberate inaction on pending motions for reconsideration.

In this connection, the Investigating Justice reports that after making inquiries, he found that the Court of Appeals had not acted on the approval of the injunction bond in this case, thus, no writ of preliminary injunction has been issued to date.[7]

Meanwhile, in the August 31, 2006 investigation, Atty. Tessie L. Gatmaitan, Clerk of Court, CA en banc, submitted to the designated Investigator the list of cases raffled to respondent since his assumption of office in 1999, as follows:

"a) Master List of Criminal Cases Raffled to J. Asuncion from 11 June 1999 to 25 May 2006, consisting of 112 cases;

"b) Master List of Heinous Crimes Raffled to J. Asuncion from 20 Nov. 2004 to 22 June 2006, consisting of 33 cases;

"c) Master List of Civil Cases Raffled to J. Asuncion from 14 June 1999 to 16 August 2006, consisting of 625 cases; and

"d) Master List of Special Cases Raffled to J. Asuncion from 14 June 1999 to 31 July 2006, consisting of 651 cases."

The Investigating Justice also required the respondent to submit a report on the status of the cases contained in the handwritten list given to the respondent on September 14, 2006. In his written compliance,[8] the respondent reiterated his plea that justifiable reasons attended the delay in the resolution of some cases.

Subsequently, on October 4, 2006, the respondent submitted a report on the status of the cases in a new list given to him after the September 27, 2006 investigation[9]

This, and earlier reports on the status of cases assigned to respondent Justice Asuncion, would be the basis of the findings of the Investigating Justice.

A.M. No. 06-44-CA-J

As mentioned above, this second case is based on a verified complaint filed by Atty. Roberto C. Padilla, charging Justice Elvi John S. Asuncion with "culpable dereliction of duty, malicious delay in the administration of justice and gross ignorance of the law", in connection with CA-G.R. SP No. 60573, entitled "Philippine National Bank vs. NLRC and Erlinda Archinas".

The facts, as culled from the Investigating Justice's Report[10], are as follows:

"On June 27, 2000, the National Labor Relations Commission (NLRC) decided in her favor the claim of Ms. Erlinda Archinas for reinstatement and payment of back wages against the Philippine National Bank (PNB), affirming in toto the ruling of Labor Arbiter Celestino Daing ordering her reinstatement without loss of seniority rights and payment of back wages.

"On August 25, 2000, PNB filed with the Court of Appeals a petition for Certiorari under Rule 65 of the Rules of Court assailing the decision of the NLRC (CA-G.R. SP No. 60573).

"Meantime, the NLRC issued an Entry of Judgment making final and executory the decision of the labor arbiter as of July 17, 2000, pursuant to Sec. 2[c], Rule VIII of the NLRC Rules. Ms. Archinas filed a motion for a writ of execution for the uncontested amount of P1,096,233.97. PNB opposed the motion. In view of the pending petition with the CA, the labor arbiter deferred action on the motion for execution.

"On May 28, 2001, the Court of Appeals, through respondent Justice Asuncion, dismissed the petition of PNB and affirmed in toto the decision of NLRC in favor of Ms. Archinas.

"On June 13, 2001, PNB filed with the Court of Appeals a motion for reconsideration of the decision, to which Ms. Archinas filed, on June 25, 2001, an opposition. On June 25, 2001, PNB's motion for reconsideration was deemed submitted for resolution.

"In the interim, on June 18, 2001, the labor arbiter granted Ms. Archinas' motion for execution of the uncontested amount of P1,096,233.97, for which the Sheriff of the NLRC levied upon personal property of the PNB and scheduled an auction sale on July 25, 2001. Upon motion of PNB, on July 24, 2001, respondent Asuncion issued the questioned resolution, which granted a temporary restraining order to stop the auction sale by directing the labor arbiter to "temporarily enjoin" implementation of the writ of execution. It likewise ordered the parties to maintain the status quo pending resolution of PNB's motion for reconsideration.

"On October 30, 2001, respondent Justice Asuncion issued another resolution which reiterated the July 24, 2001 resolution "ordering the parties to maintain the status quo in this case pending resolution" of PNB's motion for reconsideration.

"On November 5, 2001, Ms. Archinas filed with the Court of Appeals a motion for reconsideration of the October 30, 2001 resolution.

"Despite Ms. Archinas' filing with the Court of Appeals of numerous motions for early resolution of the motion for reconsideration dated November 5, 2001, respondent Justice Asuncion failed to act and resolve the motion.

"Finally, on August 7, 2006, respondent Justice issued a resolution denying PNB's motion for reconsideration dated June 13, 2001. It, however, failed to directly address and resolve Archinas' November 5, 2001 motion for reconsideration. At any rate, it is noted that the denial of PNB's motion would render moot Mrs. Archinas' motion for reconsideration."

Respondent Justice Asuncion filed his Comment dated November 15, 2006 on the Padilla complaint, raising the following arguments: [1] That the July 24, 2001 and October 30, 2001 resolutions in CA-G.R. SP No. 60573 were collegial acts of the First Division, CA, duly concurred in by the two other CA justices of the division; [2] That the July 24, 2001 resolution did not grant PNB's motion for issuance of a temporary restraining order, and the October 30, 2001 resolution is not tantamount to a preliminary injunction issued ex parte; and [3] The delay in resolving the motion for reconsideration was not deliberate or maliciously motivated. The respondent restated therein the reasons he proffered in his Comment in A.M. No. 06-8-08-CA.

The Findings of the Investigating Justice

In the first administrative case, A.M. No. 06-6-8-CA, the Investigating Justice submits the following findings:

"After meticulous analysis of the record and the evidence submitted, the investigation would show that, as related in the unsigned letter of February 17, 2006, there were indeed several cases assigned to respondent Justice Asuncion with motions for reconsideration still remaining unresolved way beyond the ninety day period prescribed in Rule 52, Section 3 of the Rules of Court. Moreover, there were also numerous motions for reconsideration which respondent Justice resolved beyond the reglementary period.

"The master lists of cases submitted by the Clerk of Court, CA, en banc, disclose that, as of September 30, 2006, there were seventy one motions for reconsideration still pending resolution; further, there were one hundred seventy nine motions for reconsideration which were resolved beyond the ninety-day period[11]

x x x x x x x x

"What is more, there are several cases assigned to respondent Justice Asuncion which are still undecided, and those that were decided beyond the one (1) year period prescribed in the 1987 Constitution.

x x x x x x x x

"As of September 30, 2006, the following eighty-two cases remain undecided[12]:

x x x x x x x x

"Further, there were four hundred nine cases which had been decided beyond the twelve month period prescribed in the 1987 Constitution (Article VIII, Section 15[1]), to wit[13]:

x x x x x x x x

"In his comments dated August 30, 2006, and November 15, 2006, respondent Justice Asuncion admitted delay in the resolution of some motions for reconsideration of cases assigned to him albeit with obvious pride in his massive record of disposition of cases x x x In fact, respondent Justice Asuncion listed only nine cases that were still unresolved and pending as of his reassignment to the CA-Cebu Station.

"However, the record would show that there were motions for reconsideration filed as far back as 2000 that were still pending resolution, as of the (sic) July 18, 2006, when the Supreme Court took cognizance of the complaint. One was resolved on August 7, 2006, the PNB vs. NLRC and Ms. Erlinda Archinas docketed as CA-G.R. SP No. 60573, which is the subject of the verified complaint of Atty. Roberto C. Padilla (A. M. No. 06-44-CA-J). Such inaction in resolving motions for reconsideration for years in contrast to the ninety day prescribed period in the Rules of Court constitutes gross inefficiency and serious dereliction of duty that undermines the people's faith in the judiciary. x x x

"There are also cases that were raffled to respondent Justice Asuncion before July 7, 2004, that remained undecided. More so, there were several cases that were ordered transferred to Justice Monina Arevalo-Zenarosa but remained with, and unexplainedly decided by respondent Justice Asuncion, albeit beyond the reglementary period. How such cases supposedly transferred to Justice Zenarosa remained or returned to Justice Asuncion is not explained, obviously in contravention of Office Order No. 212-04-CG of the Presiding Justice, CA (Annex "E"). Indeed, respondent Justice Asuncion 'should have acted in such a manner as to avoid suspicion in order to preserve faith in the administration of justice'[14]

x x x x x x x x

"As excuses or justification, respondent Justice stated that the delay in resolving cases is partly due to the heavy initial caseloads of CA justices, the continuous raffling of new cases and the re-raffling of old cases handled by promoted and retired CA justices. We find this position unacceptable. It is necessary for newly-appointed justices to be assigned initial caseloads. No one is exempted. Further, in the raffling and re-raffling of subsequent cases, these are more or less equally distributed to all justices. Hence, not only respondent Justice, but all CA Justices are "swamped" with cases. This, however, is not a reason to violate the clear mandate in the Constitution and the Rules of Court to decide cases promptly and resolve motions for reconsideration within their reglementary period. x x x

"Again, respondent Justice attributes his admitted delay in resolving pending motions for reconsideration to various administrative functions assigned to him by the Court or Presiding Justice that took much of his time and attention. x x x

"We are not impressed or swayed that these administrative functions greatly burdened respondent Justice to the extent that he failed to discharge the basic duty of a justice with diligence and efficiency. It is evident that such additional tasks are seasonal in nature, hence, need not consume too much of his time to the detriment of pending cases. x x x

"Consequently, respondent Justice Asuncion must be reminded that decision-making is the primordial duty of a member of the bench. All other tasks must give way thereto. What is alarming is that respondent Justice seemed to have reveled in his extra-curricular activities of spearheading various celebrations and events that

are not judicial functions. These cannot take precedence over decision-making." [15]

In the second case, A.M. No. 06-44-CA-J, the findings of the Investigating Justice are, as follows:

"Complainant Padilla contends that respondent Justice Asuncion committed gross ignorance of the law in issuing the October 30, 2001 resolution which extended indefinitely the duration of the TRO issued on July 24, 2001, by ordering the parties to maintain the status quo, pending resolution of the PNB's motion for reconsideration, in violation of Rule 58, Section 5 of the Rules of Court. Atty. Padilla further contends that respondent's failure to speedily resolve PNB's motion for reconsideration dated June 13, 2001, Archinas' motion for reconsideration dated November 5, 2001 and her numerous motions for early resolution thereof constitute culpable dereliction of duty. Atty. Padilla stressed that respondent Justice's reliance on *Eternal Gardens Memorial Park Corporation v. Court of Appeals*, [16] decided in 1988, to justify the issuance of the two resolutions constitutes gross ignorance of the law, considering that the ruling thereon was set aside by the Supreme Court in 1993 in the case of *Santiago v. Vasquez* [17]. Further, he averred that the *Eternal Gardens* ruling was superseded by Rule 65, Section 7 of the Rules of Court (1997 Rules of Civil Procedure) which states that "the petition [in the Supreme Court or in the Court of Appeals] shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case."

"Respondent Justice Asuncion stressed that the July 24, 2001 and October 30, 2001 resolutions were the collegial acts of the First Division of the Court of Appeals, composed of three justices, unanimously approved by them after due deliberation, and not the acts of respondent justice alone. He denied that the July 24, 2001 resolution was, in fact, a TRO and maintained that the purpose thereof was merely to remind the parties to observe the status quo while PNB's motion for reconsideration was pending resolution. He also claimed that complainant Padilla mistook the October 30, 2001 resolution as extending the TRO, whereas there was no indication in the July 24, 2001 resolution that a TRO was ever granted. Respondent Justice stressed that the admonition to the parties to maintain the status quo was merely directory in view of the pending motion in the CA, following the principle of hierarchy of courts. Respondent justice cited *Eternal Gardens Memorial Park Corporation v. CA, Ibid.*, as basis for his action in issuing the July 24, 2001 and October 30, 2001 resolutions, which directed the parties to maintain the status quo pending resolution of PNB's motion for reconsideration.

"We are not convinced. The July 24, 2001 resolution was in fact and in reality essentially a TRO and the October 30, 2001 resolution effectively extended the same indefinitely. This dispositive portion of the July 24, 2001 resolution clearly states:

"WHEREFORE, to prevent irreparable injury, the public respondent is temporarily enjoined from implementing the assailed Writ of Execution dated June 19, 2001. The parties are ordered to maintain the status quo in this case pending the resolution of the petitioner's motion for reconsideration."

"Technically, status quo is "defined as the last actual, peaceful and uncontested status that precedes the actual controversy, that which is existing at the time of the filing of the case" [18] However, the Supreme Court has ruled that a status quo ante order has "the nature of a temporary restraining order" [19]. Thus, the decretal portion of the resolution of July 24, 2001, specifically ordered that the public respondent is 'temporarily enjoined' from implementing the assailed writ of execution. Respondent justice must be playing with words. When a judge or justice uses technical or legal terms with a well-defined meaning, such as a temporary restraining order or a status quo order, he must have intended those meaning; he cannot impute a "directory" meaning to confuse the parties. x x x On the other hand, he ought to know that a temporary restraining order cannot exist indefinitely; it has a lifetime of a non-extendible period of sixty days and automatically expired on the sixtieth day [20]. No judicial declaration that it has expired is necessary [21], and, the lower courts, including the Court of Appeals, have no discretion to extend the same [22]. A second TRO by the Court of Appeals after the expiration of the sixty day period is a patent nullity. [23]

"Respondent Justice cannot seek refuge behind the Eternal Garden case to justify the October 30, 2001 resolution. The Eternal Garden case involves a petition for certiorari filed before the Supreme Court, which could issue a temporary restraining order or a status quo order effective indefinitely or until further orders (Rule 58, Section 5, par. 4, Rules of Court. On the other hand, a temporary restraining order issued by the Court of Appeals is effective only for sixty days. (Ibid.) Hence, when respondent Justice Asuncion issued the October 30, 2001 resolution ordering the parties to maintain the status quo pending the resolution of PNB's motion for reconsideration, he extended the restraining order

until respondent could act on the PNB motion for reconsideration which he did only as late as August 7, 2006, a glaring five years from submission. His "interest" in the case is "manifest" in that, despite his assignment to Cebu City on July 7, 2004, he did not unload the case to Justice Zenarosa. (Office Order No. 212-04-CG, dated July 7, 2004). Worse, he recalled the case upon his return to the CA Manila station. (Underscoring supplied.)

"We agree with complainant Padilla that the deliberate act of respondent Justice Asuncion in extending indefinitely the temporary restraining order or the status quo order pending resolution of PNB's motion for reconsideration, relying on the Eternal Gardens Memorial Park case, betrays his culpable gross ignorance of the law. x x x

"x x x Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. x x x When a judge displays utter lack of familiarity with the rules, he erodes the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice.[24] Worse, respondent justice's ignorance of procedural law is exacerbated by his sloth in resolving PNB's motion for reconsideration (See Garchitorena case, 422 Phil. 246 [2001], on reconsideration, 426 Phil. 01 [2002]) To compound matters, Ms. Archinas motion for reconsideration date November 5, 2001, was not resolved at all."[25]

THE COURT'S RULING

We adopt the findings of the Investigating Justice.

The Constitution mandates lower collegiate courts to decide or resolve cases or matters within twelve months from date of submission.[26] Section 3, Rule 52 of the Revised Rules of Court requires motions for reconsideration to be resolved within ninety days. Section 5, Canon 6 of the New Code of Judicial Conduct provides that "(J)udges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness."

Indeed, the essence of the judicial function, as expressed in Section 1, Rule 124 of the Revised Rules of Court is that "justice shall be impartially administered without unnecessary delay."

In *Arap v. Judge Amir Mustafa*,[27] We held that:

The Court has constantly impressed upon judges the need to decide cases promptly and expeditiously, for it cannot be gainsaid that justice delayed is justice denied. Delay in the disposition of cases undermines the people's faith and confidence in the judiciary. Hence, judges are enjoined to decide cases with dispatch. Their failure to do so constitutes gross inefficiency and warrants the imposition of administrative sanction against them.

The record shows that, as of September 30, 2006, the respondent had not resolved seventy-one (71) motions for reconsideration within the prescribed ninety-day period, and he had resolved one hundred seventy-nine (179)

motions for reconsideration beyond the reglementary period. As of the same date, eighty-two (82) cases submitted for decision were still undecided, even after the lapse of the twelve-month period prescribed by the Constitution. He had also decided four hundred nine (409) cases beyond the one-year period.

Notably, of the seventy-one (71) motions for reconsideration pending resolution, forty-six were filed in 2004 or earlier, with one dating all the way back to 2000. Five were filed in 2001, sixteen in 2002, ten in 2003, and thirteen in 2004. Respondent's proffered justification is that the delay was caused by the reorganization of the CA, his assignment to the CA Cebu Station and his transfer back to Manila which, allegedly, caused "some confusion" in the assignment of cases and "a lapse in the monitoring system." The explanation miserably fails to persuade because the CA reorganization took place only in 2004, and at that time, there were at least thirty-two (32) motions for reconsideration crying out for resolution..

This intolerable inaction is aggravated by misrepresentation. Upon his assignment to the CA Cebu Station, respondent listed only nine (9) cases allegedly unresolved by and pending with him. The findings of the Investigator belie this assertion.

The excuse that respondent was burdened by a heavy caseload, owing to the cases initially assigned to him, those raffled daily and those re-raffled from among the cases originally handled by promoted or retired justices, must also fall flat. As aptly stated by the Investigating Justice, other CA justices are likewise subjected to such a heavy caseload, and yet, have not incurred such inexcusable delay. As to respondent's other administrative assignments, including organizing special events, the respondent should only be reminded that decision-making is the primordial and most important duty of a member of the judiciary.[28]

The delay incurred by respondent Justice Asuncion in deciding or resolving the numerous cases and matters mentioned above is, therefore, unjustified. Even in the case of PNB v. NLRC and Archinas alone, the respondent's failure to resolve PNB's June 13, 2001 motion for reconsideration until after the lapse of more than five (5) years, despite Archinas' four (4) motions urging immediate resolution of the same, truly smacks of gross inefficiency and serious dereliction of duty. Worse, it invites suspicion of malice, and casts doubt on the justice's fairness and integrity.

We have already ruled that the failure of a judge to decide a case within the required period constitutes gross inefficiency[29] which, if the case remains undecided for years, would become serious misconduct that would justify dismissal from the service.[30]

In the case of respondent Justice Asuncion, the prolonged delay in deciding or resolving such a staggering number of cases/matters assigned to him, borders on serious misconduct which could subject the respondent to the maximum administrative sanction.

In A. M. No. 06-44-CA-J, We agree with the Investigating Justice that respondent's "deliberate act of extending indefinitely the temporary restraining order or the status quo order pending resolution of PNB's motion for reconsideration, relying on the Eternal Gardens Memorial Park case, betrays his culpable gross ignorance of the law."

As correctly put by Investigating Justice Pardo, Eternal Gardens is totally inapplicable. The July 24, 2001 resolution, which "temporarily enjoined" the public respondent from implementing the assailed writ of execution, was a temporary restraining order, regardless of the nomenclature Justice Asuncion used to characterize it. As such, its full life span can only be sixty (60) days. Section 5, par. 4, Rule 58 of the Rules of Court is explicit: the Court of Appeals may issue a temporary restraining order only for a limited period of sixty days which cannot be renewed or extended. After sixty days, the restraining order immediately ceases, without need of any judicial

order terminating it.

The October 30, 2001 resolution, which ordered the maintenance of the status quo, effectively extended the temporary restraining order, in complete defiance of the aforesaid Rule. It was not a writ of preliminary injunction, because respondent Justice Asuncion himself disclaims that it was such. Besides, in the event of an injunctive writ, an injunction bond is required, unless exempted by the Court (Section 4, Rule 58, Rules of Court). Furthermore, there would have been no cause to issue such a writ, because earlier, on May 28, 2001, respondent Justice Asuncion had already dismissed the principal action for certiorari with prayer for the issuance of a writ of preliminary injunction.

Yet, the purpose was clear; the October 30, 2001 resolution was intended to extend the effectivity of the July 24, 2001 restraining order. It was, as the Investigating Justice would characterize it, "a renewed or second temporary restraining order proscribed by the rule and extant jurisprudence."

Such failure to follow basic legal commands embodied in the law and the Rules constitutes gross ignorance of the law, from which no one is excused, and surely not a judge.[31] In *Genil v. River*,[32] We declared that judges owe it to the public to be knowledgeable, hence they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules.

While a judge is presumed to act with regularity and good faith in the performance of judicial functions, a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining strict compliance therewith, upends this presumption and subjects the magistrate to administrative sanctions.[33]

Citing *Castanos v. Escano, Jr.*,[34] this Court, in *Macalintal v. The*,[35] had occasion to state:

"When the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both cases, the judge's dismissal is in order."

The respondent Justice would seek to extricate himself from any liability by invoking the convenient excuse that the resolutions of July 24, 2001 and October 30, 2001 were the collegial acts of the First Division of the Court of Appeals, composed of three justices, and not the acts of respondent justice alone. This, in fact, was the only significant subject dwelt on by respondent's lawyer in the cross-examination of the complainant Atty. Padilla. What respondent Justice Asuncion, in effect, is saying is that if he, as ponente in *PNB v. NLRC and Archinas*, were to be adjudged guilty of gross ignorance of the law, then the two other justices in the Division should be held equally culpable. Perhaps, under ordinary circumstances, such logic would be impeccable.

However, what We said in *Guerrero v. Villamor*[36] is instructive:

"For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive.[37] x x x

"Conversely, a charge for either ignorance of the law or rendering an unjust judgment will not prosper against a judge acting in good faith. Absent the element of bad faith, an erroneous judgment cannot be the basis of a charge for any said offenses, mere error of judgment not being a ground for disciplinary proceedings." [38]

Using this pronouncement as the norm, We now must consider the totality of the charges against the respondent, as well as the convergence of attendant and subsequent events. On May 28, 2001, with respondent Justice as ponente, the First Division of the Court of Appeals dismissed the *PNB* petition for certiorari with prayer for the issuance of a writ of preliminary injunction, affirming in its entirety the decision of the National Labor Relations

Commission. On June 13, 2001, PNB filed a motion for reconsideration. On June 25, 2001, Archinas (private respondent in the petition for certiorari) filed her opposition to PNB's motion for reconsideration. On July 24, 2001, acting upon PNB's urgent motion for issuance of a TRO, respondent issued the resolution enjoining the public respondent from implementing the Writ of Execution. On October 30, 2001, the resolution ordering the maintenance of the status quo was issued. On November 5, 2001, Archinas filed her motion seeking reconsideration of the October 30, 2001 resolution. Archinas filed four (4) urgent motions for early resolution of the pending motion/s for reconsideration, on December 28, 2001, June 13, 2002, September 24, 2002, and August 23, 2005. Meantime, on July 5, 2004, respondent Justice Asuncion was assigned to CA Cebu Station. With this transfer, respondent's caseload was assigned to Justice Zenarosa. On November 3, 2004, respondent was reassigned back to Manila. It was only on August 7, 2006 that respondent finally resolved the PNB motion for reconsideration.

From this sequence of events, a number of questions arise. If the respondent could issue the resolutions of July 24, 2001 and October 30, 2001 why did respondent not simply resolve the PNB motion for reconsideration of June 13, 2001? After all, he finally did so on August 7, 2006, with a mere three-page resolution. Why did it take more than five years to resolve this PNB motion? Why were the four motions for early resolution never addressed? If the Manila cases of respondent Justice Asuncion were "automatically assigned to Justice Zenarosa," how did Justice Asuncion continue to hold on to this case upon his reassignment in Manila?

The Investigating Justice supplies the answer in his Report thus: "His (respondent's) "interest" in the case is "manifest" in that, despite his assignment in Cebu City on July 7, 2004, he did not unload the case to Justice Zenarosa (Office Order No. 212-04-CG). Worse, he recalled the case upon his return to the CA Manila station."

To the Court, these are badges of bad faith and manifest undue interest attributable only to the respondent, and not to the other two justices of the CA Division. Accordingly, only the respondent must be made to suffer the consequences.

Besides, the five-year delay in the resolution of the PNB motion for reconsideration would already constitute serious misconduct that would justify dismissal from the service[39]

Administrative Penalties

In A. M. No. 06-6-08-CA, respondent is charged with undue delay in rendering a decision or order. Under Rule 140 of the Rules of Court,[40] undue delay in rendering a decision or order is classified as a less serious charge which may be penalized by (1) suspension from office without salary and other benefits for not less than one nor more than three months; or (2) a fine of more than P10,000 but not exceeding P20,000.

On the other hand, gross ignorance of the law, for which respondent is being faulted in A. M. No. 06-44-CA-J, is considered a serious charge, and carries the penalty of (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations: provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three but not exceeding six months; or (3) a fine of more than P20,000 but not exceeding P40,000.

The Investigating Justice recommends the maximum penalty for each of the two offenses.

WHEREFORE, in A. M. No. 06-6-08, for having incurred undue delay in the disposal of pending motions for reconsideration in several cases, as recommended by the Investigating Justice, Associate Justice Elvi John S. Asuncion of the Court of Appeals is **SUSPENDED** from office without pay, allowances and other monetary benefits for a period of **THREE MONTHS**.

In A. M. No. 06-44-CA-J, for gross ignorance of the law and manifest undue interest, Associate Justice Elvi John S. Asuncion of the Court of Appeals is hereby ordered DISMISSED FROM THE SERVICE with forfeiture of retirement benefits, except leave credits.

This Decision is final and immediately executory.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, and Nachura, JJ., concur.
Velasco, Jr., J., no part.

[1] Received in the Office of the Chief Justice on March 2, 2006.

[2] Annex "J", Report and Recommendation of Justice Bernardo P. Pardo.

[3] Annex "M", Report.

[4] Office Order No. 212-04-CG, issued by the Presiding Justice, CA.

[5] Annex "K", Report.

[6] Annex "N", Report.

[7] Report, pp. 7-8.

[8] Annexes "Q", "Q-1" to "Q-3", Report.

[9] Annexes "T" and "T-1", Report.

[10] Report, pp. 54-56.

[11] Report, p. 12.

[12] Report, p. 25.

[13] Report, p. 30.

[14] Report, citing *Ubarra v. Tecson*, 219 Phil. 04, 08 (1985).

[15] Report, pp. 51-52.

[16] G.R. No. L-50054, 164 SCRA 421 (1988).

[17] G.R. No. 99289-90, 217 SCRA 633 (1993).

[18] *Cortez-Estrada v. Heirs of Domingo Samut & Antonio Samut*, G.R. No. 154407, 451 SCRA 275, 289 (2005).

[19] *Nilo Dojillo v. Commission on Elections*, G.R. No. 166542, July 25, 2006, 496 SCRA 484, 503.

[20] Cf. *Golangco v. Villanueva*, 343 Phil. 937, 946 (1997), *Johannesburg Packaging Corporation v. Court of Appeals*, G.R. No. 95509, 216 SCRA 439 (1992).

[21] *Ibid.*, at p. 946.

[22] *Asset Privatization Trust v. Court of Appeals*, G.R. No. 101344, 214 SCRA 400, 406 (1992), citing *Golden Gate Realty Corporation v. Intermediate Appellate Court*, 152 SCRA 685 (1987), *Delbros Hotel Corporation v.*

Intermediate Appellate Court, G.R. No. 72566, April 12, 1988, *Paras v. Judge Roura*, A.C. No. 3180, 163 SCRA 01 (1988).

[23] Cf. *Carbungco v. Court of Appeals*, G.R. No. 78265, January 20, 1990, 181 SCRA 313, 315, cited in Justice Oscar M. Herrera, *Remedial Law*, Vol. III, 1993, p. 116.

[24] *Boiser v. Aguirre, Jr.*, A.M. No. RTJ-04-1886, May 16, 2005, 458 SCRA 430, 439.

[25] Report, pp. 56-60.

[26] Sec. 15(1), Article VIII, Philippine Constitution.

[27] A.M. No. SCC-01-7, 379 SCRA 1, 5 (2002), citing *Sanchez v. Vestil*, 298 SCRA 1 (1998) and *Bernardo v. Fabros*, A.M. No. MTJ-99-1189, 307 SCRA 28, 35 (1999).

[28] *Rivera v. Lamorena*, A.M. No. RTJ-97-139, 280 SCRA 633 (1997).

[29] *Medina v. De Guia*, A.M. No. RTJ-88-216, 219 SCRA 153 (1993).

[30] *Sabado v. Cajigal*, A.M. No. RTJ-91-666, 219 SCRA 800 (1993).

[31] *Guillen v. Canon*, 424 Phil. 81 (2002).

[32] A.M. No. MTJ-06-1619, January 23, 2006.

[33] *Caguioa v. Lavina*, A.M. No. RTJ-00-1553, 345 SCRA 49, 52 (2000).

[34] A.M. No. RTJ-93-955, 251 SCRA 174 (1997).

[35] A.M. No. RTJ-97-1375, 280 SCRA 623 (1997).

[36] A.M. No. RTJ-90-483, 296 SCRA 88 (1988).

[37] Citing *Dela Cruz v. Concepcion*, A.M. No. RTJ-93-1062, 235 SCRA 597 (1994).

[38] *Id.*

[39] *Sabado v. Cajigal*, A.M. No. RTJ-91-666, 219 SCRA 800 (1993).

[40] As amended by A.M. No. 01-8-10, September 11, 2001.

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