

## EN BANC

[ G.R. No. 184915, June 30, 2009 ]

### NILO T. PATES, PETITIONER, VS. COMMISSION ON ELECTIONS AND EMELITA B. ALMIRANTE, RESPONDENTS.

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

##### BRION, J.:

Our Resolution of November 11, 2008 dismissed the petition in caption pursuant to Section 3, Rule 64 of the Rules of Court which provides:

SEC. 3. *Time to file petition.*—The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

taking into account the following material antecedents:

- a. February 1, 2008 - The COMELEC First Division issued its Resolution (assailed in the petition);
- b. February 4, 2008 - The counsel for petitioner Nilo T. Pates (*petitioner*) received a copy of the February 1, 2008 Resolution;
- c. February 8, 2008 - The petitioner filed his motion for reconsideration (*MR*) of the February 1, 2008 Resolution (**4 days from receipt of the February 1, 2008 Resolution**)
- d. September 18, 2008 - The COMELEC *en banc* issued a Resolution denying the petitioner's MR (also assailed in the petition).
- e. September 22, 2008 - The petitioner received the COMELEC *en banc* Resolution of September 18, 2008

Under this chronology, the last day for the filing of a petition for *certiorari*, i.e., 30 days from notice of the final COMELEC Resolution, fell on a Saturday (October 18, 2008), as the petitioner only had the remaining period of 26 days to file his petition, after using up 4 days in preparing and filing his Motion for Reconsideration. Effectively, the last day for filing was October 20, 2008 - the following Monday or the first working day after October 18, 2008. The petitioner filed his petition with us on October 22, 2008 or two days late; hence, our Resolution of dismissal of November 11, 2008.

## ***The Motion for Reconsideration***

The petitioner asks us in his "Urgent Motion for Reconsideration with Reiteration for the Issuance of a Temporary Restraining Order" to reverse the dismissal of his petition, arguing that *the petition was seasonably filed under the fresh period rule enunciated by the Supreme Court in a number of cases decided beginning the year 2005*. The **"fresh period"** refers to the original period provided under the Rules of Court counted from notice of the ruling on the motion for reconsideration by the tribunal below, without deducting the period for the preparation and filing of the motion for reconsideration.

He claims that, historically, the fresh period rule was the prevailing rule in filing petitions for *certiorari*. This Court, he continues, changed this rule when it promulgated the 1997 Rules of Civil Procedure and Circular No. 39-98, which both provided for the filing of petitions within the remainder of the original period, the **"remainder"** being the original period less the days used up in preparing and filing a motion for reconsideration. He then points out that on September 1, 2000 or only three years after, this Court promulgated **A.M. No. 00-02-03-SC** bringing back the fresh period rule. According to the petitioner, the reason for the change, which we supposedly articulated in *Narzoles v. National Labor Relations Commission*,<sup>[1]</sup> was the tremendous confusion generated by Circular No. 39-98.

The fresh period rule, the petitioner further asserts, was subsequently applied by this Court in the following cases:

- (1) *Neypes v. Court of Appeals*<sup>[2]</sup> which thenceforth applied the fresh period rule to ordinary appeals of decisions of the Regional Trial Court to the Court of Appeals;
- (2) *Spouses de los Santos v. Vda. de Mangubat*<sup>[3]</sup> reiterating *Neypes*;
- (3) *Active Realty and Development Corporation v. Fernandez*<sup>[4]</sup> which, following *Neypes*, applied the fresh period rule to ordinary appeals from the decisions of the Municipal Trial Court to the Regional Trial Court; and
- (4) *Romero v. Court of Appeals*<sup>[5]</sup> which emphasized that A.M. No. 00-02-03-SC is a curative statute that may be applied retroactively.

A reading of the ruling in these cases, the petitioner argues, shows that this Court has consistently held that the order or resolution denying the motion for reconsideration or new trial is considered as the final order finally disposing of the case, and the date of its receipt by a party is the correct reckoning point for counting the period for appellate review.

## ***The Respondent's Comment***

We asked the respondents to comment on the petitioner's motion for reconsideration. The Office of the Solicitor General (OSG), citing Section 5, Rule 65 of the Rules of Court and its related cases, asked *via* a "Manifestation and Motion" that it be excused from filing a separate comment. We granted the OSG's manifestation and motion.

For her part, respondent Emelita B. Almirante (*respondent Almirante*) filed a comment stating that: (1) we are absolutely correct in concluding that the petition was filed out of time; and (2) the petitioner's reliance on Section 4, Rule 65 of the Rules of Court (as amended by A.M. No. 00-02-03-SC) is totally misplaced, as Rule 64, not Rule 65, is the vehicle for review of judgments and final orders or resolutions of the COMELEC. Respondent Almirante points out that Rule 64 and Rule 65 are different; Rule 65 provides for a 60-day period for filing petitions for *certiorari*, while Rule 64 provides for 30 days.

### **OUR RULING**

**We do not find the motion for reconsideration meritorious.**

#### **A. As a Matter of Law**

Section 7, Article IX-A of the Constitution provides that unless otherwise provided by the Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Court on *certiorari* by the aggrieved party within 30 days from receipt of a copy thereof. For this reason, the Rules of Court provide for a separate rule (Rule 64) specifically applicable only to decisions of the COMELEC and the Commission on Audit. This Rule expressly refers to the application of Rule 65 in the filing of a petition for *certiorari*, subject to the exception clause - "except as hereinafter provided."<sup>[6]</sup>

Even a superficial reading of the motion for reconsideration shows that the petitioner has not challenged our conclusion that his petition was filed outside the period required by Section 3, Rule 64; he merely insists that the fresh period rule *applicable to a petition for certiorari under Rule 65* should likewise apply to petitions for *certiorari* of COMELEC rulings filed under Rule 64.

Rule 64, however, cannot simply be equated to Rule 65 even if it expressly refers to the latter rule. They exist as separate rules for substantive reasons as discussed below. Procedurally, the most patent difference between the two - *i.e.*, the exception that Section 2, Rule 64 refers to - is Section 3 which provides for a special period for the filing of petitions for *certiorari* from decisions or rulings of the COMELEC *en banc*. The period is 30 days from notice of the decision or ruling (instead of the 60 days that Rule 65 provides), with the intervening period used for the filing of any motion for reconsideration deductible from the originally-granted 30 days (instead of the fresh period of 60 days that Rule 65 provides).

Thus, **as a matter of law**, our ruling of November 11, 2008 to dismiss the petition for late filing cannot but be correct. This ruling is not without its precedent; we have previously ordered a similar dismissal in the earlier case of *Domingo v. Commission on Elections*.<sup>[7]</sup> The Court, too, has countless times in the past stressed that the Rules of Court must be followed. Thus, we had this to say in *Fortich v. Corona*:<sup>[8]</sup>

Procedural rules, we must stress, should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. The requirement is in