

EN BANC

**[A.M. Nos. 07-115-CA-J and CA-08-46-J
(Formerly OCA IPI No. 08-131-CA-J), August 20,
2008]**

**ATTY. VICTORIANO V. OROCIO, COMPLAINANT VS. JUSTICE
VICENTE Q. ROXAS, RESPONDENT.**

RESOLUTION

CORONA, J.:

To be, or not to be: that is the question; x x x
For who would bear the whips and scorns of time,
Th' oppressor's wrong, the proud man's contumely,
The pangs of despised love, the **law's delay**, x x x^[1]

Delay is the implacable foe of justice. For justice delayed is justice denied. Thus, this Court must ever be vigilant to slay the dragon of delay whenever it rears its ugly head.

We are again confronted with the problem of judicial delay in this administrative complaint for dishonesty, grave misconduct, violation of the Code of Judicial Conduct and dereliction of duty against respondent Justice Vicente Q. Roxas of the Court of Appeals.

THE COMPLAINT

Complainant Atty. Victoriano V. Orocio acted as counsel for the retired employees of the National Power Corporation (NPC) in a civil case^[2] against the NPC in the Regional Trial Court of Quezon City, Branch 217.^[3] After the contending parties arrived at a compromise agreement, complainant filed a motion for the approval of his charging lien. Through the said motion, he sought to enforce the provision in his retainer agreement with his clients entitling him to 15% of whatever amount or value of assets that may be recovered by his clients.

Upon approval of his lien,^[4] complainant moved for the issuance of a writ of execution. This was granted in an order dated July 25, 2006 and a writ of execution^[5] and notice of garnishment^[6] were thereafter issued in his favor.

However, Edmund P. Angulan and Lorna T. Dy, members of the board of directors of the NPC, filed a petition for certiorari (with urgent prayer for issuance of a temporary restraining order [TRO] or writ of preliminary injunction) in the Court of Appeals. The petition, docketed as CA-G.R. SP No. 95786, was raffled to the Sixteenth Division with respondent as *ponente*.

On August 28, 2006, a TRO was issued enjoining the implementation of the July 25, 2006 order, the writ of execution and notice of garnishment.

Meanwhile, on August 22, 2006, NPC also filed a petition for certiorari with prayer for the issuance of a TRO in the Court of Appeals. This was docketed as CA-G.R. SP No. 95946 and consolidated with CA-G.R. SP No. 95786.

On October 31, 2006, the Court of Appeals issued a resolution ordering the issuance of a writ of injunction in CA-G.R. SP Nos. 95786 and 95946. Complainant moved for the reconsideration of the October 31, 2006 resolution. After petitioners (in the CA) filed their comment on December 12, 2006, complainant submitted a "manifestation with urgent motion to resolve" on December 15, 2006. *No action was taken on complainant's motion for reconsideration.*

On January 29, 2007, the Court of Appeals, in a decision penned by respondent, annulled and set aside the trial court's July 25, 2006 order, July 26, 2006 writ of execution and July 28, 2006 notice of garnishment. It limited complainant's collectible attorney's fees to a maximum of P3,512,007.32.

On February 21, 2007, complainant moved for reconsideration of the January 29, 2007 decision of the Court of Appeals. Angulan and Dy filed their comment on complainant's motion on March 29, 2007.

Pending resolution of complainant's motion for reconsideration, he filed this administrative complaint against respondent as *ponente* of the decision, assailing the January 29, 2007 decision of the Court of Appeals as "full of fabrication, distortion and misrepresentation of facts." He claimed that the attorney's fees he was asking for was the complete and final amount of attorney's fees due him, and that his motion for reconsideration of the January 29, 2007 decision remained unresolved as of September 24, 2007, the date he filed this complaint in the Office of the Court Administrator (OCA).

RESPONDENT'S COMMENT

In his comment, respondent claimed that this case was simply a harassment suit filed by a losing litigant. Complainant allegedly vented his ire on him because of the significant reduction of his attorney's fees (notwithstanding respondent's explanation in his January 29, 2007 decision why the attorney's fees sought by complainant were unreasonable.)

Respondent stressed that the January 29, 2007 decision was rendered by a collegiate body, not by him alone. If complainant was not satisfied with the decision, he should have appealed to this Court.

Respondent denied that he failed to resolve complainant's motion for reconsideration. He claimed that he was a topnotcher in case disposal in the Court of Appeals and had a zero backlog of cases.

RECOMMENDATION OF THE OCA

In its memorandum, the OCA recommends the dismissal of the complaint for dishonesty, grave misconduct and violation of the Code of Judicial Conduct. The

January 29, 2007 decision was rendered by the Court of Appeals as a collegiate body, not by respondent alone. The conclusions in the said decision were reached in consultation and rendered as a collective judgment after due deliberation.^[7] Thus, the filing of charges of misconduct and unethical behavior against respondent was inappropriate.^[8] Moreover, an administrative complaint was not the appropriate remedy since judicial recourse was still available.^[9]

The OCA also suggests the dismissal of the charge of delay in resolving the motion for reconsideration of the January 29, 2007 decision for complainant's failure to prove the exact date when the Court of Appeals received the comment on the motion for reconsideration.

Nonetheless, the OCA opines that respondent can be held administratively liable for his failure to resolve complainant's motion for reconsideration of the October 31, 2006 resolution ordering the issuance of a writ of injunction, as this constituted undue delay in rendering a decision or order, a less serious offense.^[10] It may be penalized by suspension from office without salary and other benefits for not less than one month nor more than three months or a fine of more than P10,000 but not exceeding P20,000.^[11]

The OCA submits the following recommendation:

(a) the dismissal of the complaint for dishonesty, grave misconduct and violation of the Code of Judicial Conduct and

(b) the imposition of a P10,500 fine on respondent for his failure to resolve a motion for reconsideration, with a warning that a repetition of the same or similar offense in the future will be dealt with more severely.

THE COURT'S ACTION

The charges for dishonesty and grave misconduct in connection with the rendition of the January 29, 2007 decision are improper. The correctness of a decision cannot be challenged in an administrative complaint against the judge who rendered it. An administrative complaint is not the proper remedy where judicial recourse is still available.^[12] Complainant should have challenged the correctness of the January 29, 2007 decision in a petition for review on certiorari.^[13] Furthermore, the said decision was rendered by the Former Sixteenth Division of the Court of Appeals, a collegial act, not respondent's individual enterprise.^[14]

Nevertheless, we find respondent liable for failure to resolve the motion for reconsideration of the October 31, 2006 resolution. He should also be held accountable for undue delay in resolving the motion for reconsideration of the January 29, 2007 decision.

While actions on motions, papers and other incidents of a case pending in the Court of Appeals are actions of that court as a collegial body, the 2002 Internal Rules of the Court of Appeals provides that it is the *ponente* who initiates the actions on said motions, papers and pleadings.^[15] Hence, there can be no action on a motion, paper or any other incident except upon prior instruction of the *ponente*.^[16] He has