

EN BANC

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

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

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

**ATTY. ROBERTO C. PADILLA, COMPLAINANT, VS. ASSOCIATE
JUSTICE ELVI JOHN S. ASUNCION, COURT OF APPEALS,
RESPONDENT.**

DECISION

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]