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EN BANC

[A.M. No. 07-8-3-SC. March 28, 2008]

RE: QUERY ON THE EFFECT OF THE 10% SALARY INCREASE UNDER EXECUTIVE ORDER NO. 611 ON THE SPECIAL ALLOWANCE FOR THE JUDICIARY (SAJ) OF JUSTICES, JUDGES AND COURT OFFICIALS WITH EQUIVALENT RANK OF COURT OF APPEALS JUSTICES OR REGIONAL TRIAL COURT JUDGES.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SALARY; SPECIAL ALLOWANCE FOR JUDICIARY UNDER R.A. NO. 9227 (SAJ); CONSIDERED AN IMPLEMENTATION OF ANY SUBSEQUENT INCREASE IN SALARY RATES. — On the monthly Special Allowance for the Judiciary (SAJ) of incumbent justices, judges and court officials with the equivalent rank of Court of Appeals (CA) justices or Regional Trial Court (RTC) judges, Section 6, Republic Act (R.A.) No. 9227 provides: Sec. 6. *Effects of Subsequent Salary Increase.* — Upon implementation of any subsequent increase in the salary rates provided under Republic Act No. 6758, as amended, all special allowances granted under this Act to justices and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws and any additional allowance granted to other personnel of the Judiciary shall be considered as an implementation of the said salary increases as may be provided by law. ***The special allowance equivalent to the increase in the basic salary as may be provided by law shall be converted as part of the basic salary: Provided, that, any excess in the amount of special allowance not converted as part of the basic salary shall continue to be granted as such.*** The law is clear. The SAJ is to be considered as an implementation of any subsequent increase in salary rates. This would include the 10% increase in basic salary under E.O. No. 611. Hence, the 10% increase in basic salary shall be made to apply to

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justices, judges and other court personnel of ranks equivalent to CA justices and RTC judges but will be sourced from the SAJ funds and result in a corresponding 10% reduction in SAJ.

2. ID.; ID.; ID.; ID.; ID.; THE VERY PURPOSE FOR WHICH R.A. NO. 9227 WAS ENACTED, TO ATTRACT LAWYERS THROUGH AN ATTRACTIVE COMPENSATION PACKAGE, WOULD BE DEFEATED. — The net effect of converting 10% of the monthly SAJ to basic salary is a corresponding decrease in the monthly income of incumbent justices, judges and judiciary officials of equivalent rank, since the 10% increase in their salary, formerly part of their SAJ, will now be subject to income taxation. Other court personnel who are not direct beneficiaries under R.A. No. 9227 may be expected to benefit with higher additional allowance, in view of the expected increase in the surplus by reason of the 10% deduction from the monthly SAJ of incumbents. Assuming further across-the-board increases in the salary rates as may be authorized by law, it will reach a point where the incumbent justices and other officials of equivalent rank, who are presently receiving their monthly SAJ, will be in the same position as they were before the grant of the SAJ under R.A. No. 9227 in relation to other government personnel. Every subsequent increase in the basic salary will mean a corresponding decrease of an equivalent amount in the monthly SAJ of justices, judges and other officials of equivalent rank. When their present salaries will have reached a 100% increase in subsequent years, they will no longer be receiving their SAJ, as this would have been completely converted to salary pursuant to Section 6, R.A. No. 9227. Moreover, they would be receiving less than before, since their salaries would then be subject to tax. Other government personnel, on the other hand, would have likewise received the same 100% increase in their salaries without any corresponding decrease in allowance. Thus, it would appear that the very purpose for which R.A. No. 9227 was enacted, to attract lawyers to the Judiciary through an attractive compensation package, would be defeated.

3. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THERE IS NO ESCAPING THE EXPRESS PROVISIONS OF THE LAW. — While continued, long-term implementation of Section 6, R.A. No. 9227 would, indeed, defeat the very purposes for which said law was passed, there is no escaping the express provisions of

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the law. Well-established is the rule that "*from the words of the statute there should be no departure*." ***Hindi dapat lumihis sa mga titik ng batas.*** Where, by the use of clear and equivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced even though it is absurd or mischievous. Hence, there is nothing to do but to allow the 10% increase in basic salary of justices, judges and those other officials likewise directly benefiting from R.A. No. 9227 to be sourced from the SAJ fund, and to allow the corresponding 10% reduction in SAJ. *Dura lex sed lex.* The law may be harsh but it is the law. ***Ang batas ay maaaring mahigpit ngunit ito ang batas***.

4. ID.; ID.; ID.; ID.; ID.; ID.; COURT CAN NOT GO BACK ON ITS PREVIOUS RULINGS THAT THE SAJ FORMS PART OF THE BASIC SALARY. — Besides, We cannot go back on our previous rulings on the nature of SAJ as being part of the basic salary of justices and judges. In *Re: Request of Retired Justices of the Supreme Court for Upgrading of their Retirement Gratuities*, We reiterated our recognition of the SAJ as forming part of basic salary, to wit: x x x As we have ruled in the Resolution dated 01 December 2004 and reiterated in the Resolution dated 25 January 2005, the special allowance under RA 9227 is intended to be part of the basic salary of the justices, judges and all other positions in the judiciary of equivalent rank. Section 6 of RA 9227 categorically states that "the special allowance equivalent to the increase in the basic salary as may be provided by law shall be converted as part of the basic salary." ***The first sentence on Section 6 is clear. All special allowances granted under RA 9227 shall be considered as an implementation of the salary increases or subsequent increases in the salary rates provided under RA 6758 as amended. In other words, the special allowance is merely an advance salary increase for the justices, judges and all other positions in the Judiciary with equivalent rank. An advance salary increase is still a salary increase. When a new law is enacted providing for all government officials and employees, said special allowance will be converted formally as part of the basic salary and any excess in the amount of special allowance not formally converted as part of the basic salary shall continue to be granted as such.*** x x x And we have stated in the Resolution dated 01 December 2004, that since the special allowances that are being received

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by incumbent justices under R.A. No. 9227 are actually part of their increased basic salary, *a fortiori*, such increased salary of the incumbent justice becomes the basis of the retirement pension of the retiree at the time of his cessation in office.

R E S O L U T I O N

REYES, R.T., *J.*:

IN her Memoranda of June 26, 2007, July 4, 2007 and November 20, 2007, Deputy Clerk of Court and Chief of Office, Fiscal Management and Budget Office (FMBO), Corazon G. Ferrer-Flores seeks clarification as to the effect of the ten percent (10%) increase authorized under Executive Order (E.O.) No. 611[1] on the monthly Special Allowance for the Judiciary (SAJ) of incumbent justices, judges and court officials with the equivalent rank of Court of Appeals (CA) justices or Regional Trial Court (RTC) judges in view of the provision under Section 6, Republic Act (R.A.) No. 9227[2] which provides:

Sec. 6. *Effects of Subsequent Salary Increase*. — Upon implementation of any subsequent increase in the salary rates provided under Republic Act No. 6758, as amended, all special allowances granted under this Act to justices and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws and any additional allowance granted to other personnel of the Judiciary shall be considered as an implementation of the said salary increases as may be provided by law. ***The special allowance equivalent to the increase in the basic salary as may be provided by law shall be converted as part of the basic salary: Provided, that, any excess in the amount of special allowance not converted as part of the basic salary shall continue to be granted as such.*** (Emphasis supplied)

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[1] Authorizing Compensation Adjustments to Government Personnel.

[2] An Act Granting Additional Compensation in the Form of Special Allowances for Justices, Judges and All Other Positions in the Judiciary with the Equivalent Rank of Justices of the Court of Appeals and Judges of the Regional Trial Court, and for Other Purposes.

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In said Memoranda, Flores requests instructions on (1) whether to deduct 10% from the monthly SAJ of incumbent justices, judges and judiciary officials with the equivalent rank of CA justices and RTC judges to correspond to the 10% increase in the basic salary as authorized under E.O. No. 611; and (2) whether to source this 10% salary increase from the SAJ fund.

The Facts

On March 14, 2007, President Gloria Macapagal-Arroyo issued E.O. No. 611 directing the implementation of a 10% increase in the basic monthly salaries of civilian government personnel whose positions are covered by the Compensation and Position Classification System under R.A. 6758, as amended, effective July 1, 2007.

On June 18, 2007, the Department of Budget and Management (DBM) issued National Budget Circular No. 511 prescribing the rules and regulations governing the grant of compensation adjustments authorized under E.O. No. 611. It failed, however, to provide guidelines as to the effect of E.O. No. 611 on the SAJ of justices, judges and those of equivalent rank in light of Section 6 of R.A. No. 9227. The Court's Joint Circular with the DBM dated January 13, 2004 providing guidelines for the implementation of R.A. No. 9227 served no better as a source of enlightenment in this issue. That being the case, Flores, in her first Memorandum dated June 26, 2007, sought guidance from the Court.

On July 2, 2007, during the technical hearing on the Calendar Year (CY) 2008 budget of the Court and the lower courts, DBM representatives referred to the afore-cited provision of R.A. No. 9227 and advised that 10% should be deducted from the SAJ of justices, judges and court officials of equivalent rank corresponding to the 10% increase in the salary effective July 2007. When informed that National Budget Circular No. 511 does not provide for the mechanics of this adjustment, the DBM representatives said that a circular on the implementing guidelines was being prepared and would be issued soon.

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The DBM panel further explained that the 10% to be deducted from the SAJ of justices, judges and court officials of equivalent rank would not be remitted to the National Treasury but would still be kept in the SAJ fund until such time when 100% conversion of the SAJ into salary has been effected. It appears, however, that fund releases by the DBM for basic salaries of justices, judges and court officials who are entitled to SAJ shall be the net of the 10% increase. This 10% deficiency shall then be sourced from the SAJ fund pursuant to Section 6, R.A. No. 9227. The DBM said they would only provide funding for the 10% increase in the basic salary of court officials and employees who are not direct beneficiaries under R.A. No. 9227.

Forthwith, the DBM issued its Circular Letter No. 2007-9 of June 29, 2007 providing for additional guidelines on the release of funds to cover compensation adjustments of national government personnel effective July 1, 2007. The circular letter provides:

> 4.0 In cases where personnel of national government agencies have been granted special allowances under special laws and said allowances are considered as advance payment of any future increase in basic salary as may be provided by law, the following policies shall be adopted:
>
> 4.1 The special allowance equivalent to the amount of authorized increase under EO No. 611 shall be integrated into the basic salary.
>
> 4.2 Any excess in the amount of special allowance not converted as part of the basic salary shall continue to be granted as such.

Flores promptly brought the court up-to-date on the above developments with a second Memorandum dated July 4, 2007.

Flores' most recent Memorandum of November 20, 2007, has brought to our attention the DBM's issuance, on November 13, 2007, of the Special Allotment Release Order (SARO) No. SARO-BMB-C-07-0006137[3] in the amount of One Hundred

[3] Annex "A" to Memorandum dated November 21, 2007.

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Sixty-Five Million Pesos (₱165,000,000.00) to cover the subsidy from the national government for the SAJ pursuant to paragraph 2, Section 3[4] of R.A. No. 9227.

In the Advice of SARO Issued[5] on even date, the DBM qualifies the purpose for which the ₱165 Million was issued, providing therein that the release of allotment is "*to cover the Special Allowance for the Judiciary (SAJ) authorized under 9227/10% compensation adjustment*." It further states that:

> In accordance with Republic Act No. 9227, this release likewise covers the implementation of the 10% salary adjustment under Executive Order No. 611 dated March 14, 2007 as implemented under National Budget Circular No. 511 dated June 18, 2007 for Justices, Judges and all other positions with equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court in the Judiciary.
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> The 10% increase in the basic salary of the Justices and Judges shall result in a parallel reduction in the amount of special allowance they receive; while the total monthly compensation will remain unchanged.

It would therefore appear that the DBM qualified the purpose of the subject SARO on the basis of Section 6 of R.A. No. 9227. Thus, applying the condition set forth in the subject SARO, the basic monthly salary of incumbent justices, judges and officials with the equivalent rank of CA justices or RTC judges will get a 10% increase pursuant to E.O. No. 611, which shall be sourced from the ₱165 Million subsidy. The monthly SAJ will, in turn, have a corresponding reduction of 10%.

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[4] Sec. 3. *Funding Source*. — x x x

In the event that the said amounts are insufficient to cover the grant of allowances on the last year of implementation of this Act, the National Government shall subsidize the special allowance granted for justices, judges and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws in an amount not exceeding One hundred Sixty-Five Million Pesos (₱165,000,000.00) per annum.

[5] Annex "B" to Memorandum dated November 21, 2007.

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Issues

1. Whether to deduct 10% from the monthly SAJ of incumbent justices, judges and judiciary officials with the equivalent rank of CA justices and RTC judges corresponding to the 10% increase in their basic salary as authorized under E.O. No. 611; and

2. Whether to source the 10% salary increase from the SAJ fund.

Our Ruling

The law is clear. The SAJ is to be considered as an implementation of any subsequent increase in salary rates. This would include the 10% increase in basic salary under E.O. No. 611. Hence, the 10% increase in basic salary shall be made to apply to justices, judges and other court personnel of ranks equivalent to CA justices and RTC judges but will be sourced from the SAJ funds and result in a corresponding 10% reduction in SAJ.

Continued implementation of Sec. 6 would defeat the purpose of R.A. No. 9227.

The confusion, however, over the effects of Section 6, R.A. No. 9227 is understandable, given the foreseeable long-term consequences of said provision.

Under Section 6, R.A. No. 9227, the following allowances granted to officials and personnel under this law are supposed to be affected by the implementation of the increase in salary under E.O. No. 611:

1) The SAJ under R.A. No. 9227 to justices, judges and all other positions in the Judiciary with the equivalent ranks of justices of the CA and judges of the RTC; and

2) Any additional allowances granted to other personnel of the Judiciary.

Pursuant to the aforesaid Section 6 of R.A. No. 9227, a percentage of the SAJ being received by incumbent justices, judges and officials with equivalent rank of CA justices or RTC judges shall be converted as part of the basic salary to correspond

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to the 10% increase in the basic salary authorized under E.O. No. 611. Thus, upon implementation of the 10% increase in the basic salary authorized under E.O. No. 611 in July 2007, the monthly SAJ of incumbents shall correspondingly be decreased by 10%.

The additional allowances granted to other personnel of the judiciary referred to in Section 6, R.A. No. 9227 are the allowances sourced from the surplus of the SAJ fund which are given to court personnel, who are not direct beneficiaries under R.A. No. 9227, pursuant to paragraph 3 of Section 3 of the law.[6]

Since this additional allowance is variable in amount and is not consistently and regularly granted, the grant thereof being dependent on availability of funds, the question now arises as to how the 10% increase may affect the additional allowances granted to other personnel of the Judiciary in order to be considered as an implementation of the said salary increase.

The net effect of converting 10% of the monthly SAJ to basic salary is a corresponding decrease in the monthly income of incumbent justices, judges and judiciary officials of equivalent rank, since the 10% increase in their salary, formerly part of their SAJ, will now be subject to income taxation. Other court personnel who are not direct beneficiaries under R.A. No. 9227 may be expected to benefit with higher additional allowance, in view of the expected increase in the surplus by reason of the 10% deduction from the monthly SAJ of incumbents.

Assuming further across-the-board increases in the salary rates as may be authorized by law, it will reach a point where the incumbent justices and other officials of equivalent rank, who are presently receiving their monthly SAJ, will be in the same position as they were before the grant of the SAJ under R.A. No. 9227 in relation to other government personnel. Every

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[6] If the collections from any increase in current fees and any new fees imposed after the effectivity of this Act exceed the amount needed to fund the special allowances granted to justices, judges and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws, the surplus may be used by the Chief Justice of the Supreme Court to grant additional allowances exclusively to other court personnel not covered by the benefits granted under this Act.

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subsequent increase in the basic salary will mean a corresponding decrease of an equivalent amount in the monthly SAJ of justices, judges and other officials of equivalent rank. When their present salaries will have reached a 100% increase in subsequent years, they will no longer be receiving their SAJ, as this would have been completely converted to salary pursuant to Section 6, R.A. No. 9227.

Moreover, they would be receiving less than before, since their salaries would then be subject to tax.[7] Other government personnel, on the other hand, would have likewise received the same 100% increase in their salaries without any corresponding decrease in allowance. Thus, it would appear that the very purpose for which R.A. No. 9227 was enacted, to attract lawyers to the Judiciary through an attractive compensation package, would be defeated.

In the long run, the real beneficiaries of R.A. No. 9227 would not be those intended by the framers of the law to benefit, but the so-called "indirect" beneficiaries under paragraph 3, Section 3 which provides as follows:

> If the collections from any increase in current fees and any new fees imposed after the effectivity of this Act exceed the amount needed to fund the special allowances granted to justices, judges and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws, ***the surplus may be used by the Chief Justice of the Supreme Court to grant additional allowances exclusively to other court personnel not covered by the benefits granted under this Act.*** (Emphasis supplied)

However, these other court personnel not directly covered by R.A. No. 9227, already have their salaries augmented by the Judiciary Development Fund (JDF), which purposefully grants a higher allowance to those with lower basic salaries.[8]

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[7] *Nitafan v. Commissioner on Internal Revenue*, G.R. No. 103524, April 15, 1992, 152 SCRA 284.

[8] Presidential Decree No. 1949, Sec. 1. Establishing a Judiciary Development Fund and for Other Purposes.

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Section 4 of R.A. No. 9227 provides for the continuation of the grant of JDF despite the indirect benefit other court personnel gain from the SAJ:

> Sec. 4. *Continuance and Non-Diminution of Benefits under the Judiciary Development Fund.* — The existing allowance and other fringe benefits, if any, of the members and personnel of the Judiciary which are currently paid or augmented chargeable against the increase in the rates of the legal fees prescribed in the amendments to Rule 141 of the Rules of Court which accrue to the Judiciary Development Fund established under Section 1 of Presidential Decree No. 1949 shall all continue to be funded and paid chargeable against said Development Fund, and in no case shall these be stopped or discontinued by reason of the implementation of this additional compensation.

Clearly, this distribution of surplus SAJ to other court personnel was intended to be a mere incidental benefit to the main objective of the law, which was to augment the salaries of members of the Judiciary in an effort to entice more lawyers thereto. The continuing implementation of Section 6 of said law would defeat this main objective. In actual practice and with the passage of time, it puts to the fore the interests of other personnel, instead, whose interests are more properly and directly addressed *via* the grant to them of the JDF.

Verba Legis Non Est Recedendum

While continued, long-term implementation of Section 6, R.A. No. 9227 would, indeed, defeat the very purposes for which said law was passed, there is no escaping the express provisions of the law. Well-established is the rule that "*from the words of the statute there should be no departure*." ***Hindi dapat lumihis sa mga titik ng batas.*** Where, by the use of clear and equivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced even though it is absurd or mischievous.[9] Hence, there is nothing to do but to allow the 10% increase in basic salary of justices, judges and those other officials likewise directly benefiting from R.A. No. 9227 to be

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[9] *Lord Esher M.R., R. v. City of London Court*, 1 Q.B. 273, 290 (1892).

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sourced from the SAJ fund, and to allow the corresponding 10% reduction in SAJ. *Dura lex sed lex*. The law may be harsh but it is the law. ***Ang batas ay maaaring mahigpit ngunit ito ang batas.***

The Court has previously ruled on the nature of SAJ as basic salary.

Besides, We cannot go back on our previous rulings on the nature of SAJ as being part of the basic salary of justices and judges. In *Re: Request of Retired Justices of the Supreme Court for Upgrading of their Retirement Gratuities*,[10] We reiterated our recognition of the SAJ as forming part of basic salary, to wit:

> x x x As we have ruled in the Resolution dated 01 December 2004 and reiterated in the Resolution dated 25 January 2005, the special allowance under RA 9227 is intended to be part of the basic salary of the justices, judges and all other positions in the judiciary of equivalent rank. Section 6 of RA 9227 categorically states that "the special allowance equivalent to the increase in the basic salary as may be provided by law shall be converted as part of the basic salary." ***The first sentence on Section 6 is clear. All special allowances granted under RA 9227 shall be considered as an implementation of the salary increases or subsequent increases in the salary rates provided under RA 6758 as amended. In other words, the special allowance is merely an advance salary increase for the justices, judges and all other positions in the Judiciary with equivalent rank. An advance salary increase is still a salary increase. When a new law is enacted providing for all government officials and employees, said special allowance will be converted formally as part of the basic salary and any excess in the amount of special allowance not formally converted as part of the basic salary shall continue to be granted as such.***
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> x x x x x x x x x
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> x x x And we have stated in the Resolution dated 01 December 2004, that since the special allowances that are being received by incumbent justices under R.A. No. 9227 are actually part of their increased basic salary, *a fortiori*, such increased salary of the

[10] A.M. No. 04-11-06-SC, March 14, 2006.

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incumbent justice becomes the basis of the retirement pension of the retiree at the time of his cessation in office. (Emphasis supplied)

Seeing that We have previously established the nature of the SAJ as to be considered basic salary for purposes of computation of retirement benefits, We can hardly flip-flop on the issue in order to declare the SAJ free of income tax and to steer clear of deductions therefrom corresponding to each salary increase, no matter how ludicrous the overall long-term effect of the implementation of Section 6 may be. Future legislation is encouraged to rectify this blip in the law.

In sum, this ruling is guided by an obligation to be consistent with the wording of the law as well as previous rulings of the Court on the nature of the SAJ fund. It is instilled with a spirit of generosity towards other court personnel and with self-sacrifice for, indeed, it runs contrary to Our own self-interests. The distortion in pay that the law may very well cause can be addressed properly by future legislation.

WHEREFORE, the Deputy Clerk of Court and Chief of the Fiscal Management and Budget Office Corazon G. Ferrer-Flores is hereby instructed:

1. To deduct 10% from the monthly SAJ of incumbent justices, judges and judiciary officials with the equivalent ranks of CA justices and RTC judges, corresponding to the 10% increase in their basic salary as authorized under E.O. No. 611; and

2. To source the 10% salary increase from the SAJ fund.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, and *Brion, JJ.,* concur.

Ynares-Santiago, J., on official leave per Special Order No. 497 dated March 14, 2008.