exercised his judgment; (*c*) where there may be danger of a failure of justice; (*d*) where an appeal would be slow, inadequate, and insufficient; (*e*) where the issue raised is one purely of law; (*f*) where public interest is involved; and (g) in case of urgency.[22]

None of these exceptions are present in this case. Again, it is my position that no damage will be caused in granting the petition—there is no conflict with settled jurisprudence, and relief is finally afforded to petitioner who has taken decades chasing after it.

ACCORDINGLY, I vote to GRANT the petition in order to release the benefits due to petitioner with dispatch.

EN BANC

[G.R. No. 237428. May 11, 2018]

REPUBLIC OF THE PHILIPPINES, represented by SOLICITOR GENERAL JOSE C. CALIDA, *petitioner, vs.* **MARIA LOURDES P. A. SERENO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR INTERVENTION; AN ANCILLARY REMEDY FOR A THIRD PARTY, NOT ORIGINALLY IMPLEADED IN THE PROCEEDINGS, TO BECOME A LITIGANT THEREIN; REQUIREMENTS; POSSESSION OF LEGAL INTEREST IN THE MATTER IN LITIGATION AND THAT NO DELAY SHOULD RESULT IN THE ADJUDICATION OF THE RIGHTS OF THE ORIGINAL PARTIES, ELUCIDATED.— Intervention is a remedy by which a third party, not originally

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[22] *Pahila-Garrido v. Tortogo*, 671 Phil. 320, 338 (2011) [Per *J.* Bersamin, First Division], citing *Francisco Motors v. Court of Appeals*, 535 Phil. 736 (2006) [Per *J.* Velasco, Jr., Third Division].

Supreme Court E-Library

impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings. Nevertheless, the remedy of intervention is not a matter of right but rests on the sound discretion of the court upon compliance with the first requirement on legal interest and the second requirement that no delay and prejudice should result as spelledout under Section 1, Rule 19 of the Rules of Court.

2. **ID.; ID.; ID.; ID.; ID.; MOVANT-INTERVENORS FAILED TO ESTABLISH ANY LEGAL INTEREST OF SUCH NATURE THAT THEY WILL EITHER GAIN OR LOSE BY THE DIRECT LEGAL OPERATION OF THE JUDGMENT; CASE AT BAR.—** Clearly, herein movant-intervenors' sentiments, no matter how noble, do not, in any way, come within the purview of the concept of "legal interest" contemplated under the Rules to justify the allowance of intervention. Movant-intervenors failed to show any legal interest of such nature that they will "either gain or lose by the direct legal operation of the judgment." Even the IBP's assertion of their "fundamental duty to uphold the Constitution, advocate for the rule of law, and safeguard the administration of justice", being the official organization of all Philippine lawyers, will not suffice. Admittedly, their interest is merely out of "sentimental desire" to uphold the rule of law. Meanwhile, Senators De Lima and Trillanes' claimed legal interest is mainly grounded upon their would-be participation in the impeachment trial as Senators-judges if the articles of impeachment will be filed before the Senate as the impeachment court. Nevertheless, the fact remains that as of the moment, such interest is still contingent on the filing of the articles of impeachment before the Senate. It bears stressing that the interest contemplated by law must be actual, substantial, material, direct and immediate, and *not simply contingent or expectant*. Indeed, if every person, not parties to the action but assert their desire to uphold the rule of law and the Constitution, were allowed to intervene, proceedings would become unnecessarily complicated, expensive, and interminable.

3. **ID.; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; USURPATION OF OFFICE IS A PUBLIC WRONG; AN ACTION FILED BY THE GOVERNMENT AGAINST INDIVIDUALS UNLAWFULLY HOLDING AN OFFICE.—** Emphatically, as provided in Section 1, Rule 66 of the Rules

Supreme Court E-Library

of Court, a *quo warranto* proceeding is an action by the government against individuals unlawfully holding an office. x x x The remedy of *quo warranto* is vested in the people, and not in any private individual or group, because disputes over title to public office are viewed as a public question of governmental legitimacy and not merely a private quarrel among rival claimants.

4. **ID.; ID.; ID.; ID.; THE ONLY TIME THAT AN INDIVIDUAL, IN HIS OWN NAME, MAY BRING AN ACTION FOR *QUO WARRANTO* IS WHEN SUCH INDIVIDUAL HAS A CLAIM OVER THE POSITION IN QUESTION; CASE AT BAR.—** As provided in Section 5 of Rule 66 of the Rules of Court, the only time that an individual, in his own name, may bring an action for *quo warranto* is when such individual has a claim over the position in question. x x x In this case, the movants-intervenors are neither individuals claiming to be entitled to the questioned position nor are they the ones charged with the usurpation thereof. Furthermore, it should be emphasized that the movants-intervenors, in their respective Motions, presented nothing more than a mere reiteration of respondent's allegations and arguments in her Comment.

5. **LEGAL AND JUDICIAL ETHICS; JUDGES; INHIBITION; BIAS AND PREJUDICE; MOVANT MUST PROVE GROUND OF BIAS AND PREJUDICE BY CLEAR AND CONVINCING EVIDENCE TO DISQUALIFY A JUDGE FROM PARTICIPATING IN A PARTICULAR TRIAL.—** Jurisprudence recognizes the right of litigants to seek disqualification of judges. Indeed, elementary due process requires a hearing before an impartial and disinterested tribunal. "A judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to its fairness and as to his integrity." However, the right of a party to seek the inhibition or disqualification of a judge who does not appear to be wholly free, disinterested, impartial and independent in handling the case must be balanced with the latter's sacred duty to decide cases without fear of repression. The movant must therefore prove the ground of bias and prejudice by clear and convincing evidence to disqualify a judge from participating in a particular trial."[W]hile it is settled principle that opinions formed in the course of judicial proceedings, based on the evidence presented and conduct observed by the judge, do not prove personal bias or prejudice on the part of the judge."

Supreme Court E-Library

6. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— A circumspect reading of Justice Tijam's statements in the Manila Times article reveals that the manifest intent of the statements was only to prod respondent to observe and respect the constitutional process of impeachment, and to exemplify the ideals of public accountability x x x As to the act of wearing a red tie which purportedly establishes Justices Tijam and Bersamin's Prejudice against her, the argument is baseless and unfair. There is no basis, whether in logic or in law, to establish a connection between a piece of clothing and a magistrate's performance of adjudicatory functions. Absent compelling proof to the contrary, the red piece of clothing was merely coincidental and should not be deemed a sufficient ground to disqualify them. x x x In this case, it does not appear that there are grounds for compulsory inhibition. As to voluntary inhibition, the mere fact that some of the Associate Justices participated in the hearings of the Committee on Justice determining probable cause for the impeachment of respondent does not make them disqualified to hear the instant petition. Their appearance thereat was in deference to the House of Representatives whose constitutional duty to investigate the impeachment complaint filed against respondent could not be doubted. Their appearance was with the prior consent of the Supreme Court *En Banc* and they faithfully observed the parameters that the Court set for the purpose. x x x Likewise, the Justices, including Justice Tijam, who appeared during the House Committee on Justice hearings, refused to form any conclusion or to answer the uniform query as to whether respondent's acts constitute impeachable offenses, as it was not theirs to decide but a function properly belonging to the Senate, sitting as an impeachment court. Evidently, no bias and prejudice on the part of the Justices could be inferred therein.

7. ID.; ID.; ID.; ID.; ID.; ID.; MERE CONJECTURES AND SPECULATIONS CANNOT JUSTIFY THE INHIBITION OF A JUDGE OR JUSTICE FROM A JUDICIAL MATTER; CASE AT BAR.— Absent strong and compelling evidence establishing actual bias and partiality on the part of the Justices whose recusal was sought, respondent's motions for inhibition must perforce fail. Mere conjectures and speculations cannot justify the inhibition of a Judge or Justice from a judicial matter. The presumption that the judge will undertake his noble role of dispensing justice in accordance with law and evidence, and without fear or favor, should not be abandoned without clear and convincing evidence to the contrary.

8. ID.; ID.; ID.; THE BEST PERSON TO DETERMINE THE PROPRIETY OF SITTING IN A CASE RESTS WITH THE MAGISTRATE SOUGHT TO BE DISQUALIFIED; THE PREVAILING RULE ALLOWS THE CHALLENGED MEMBERS OF THE HIGH COURT TO PARTICIPATE IN THE DELIBERATIONS ON THE MATTER OF THEIR DISQUALIFICATION.— It is timely to be reminded, too, that the Supreme Court is a collegial judicial body whose every Member has solemnly and individually sworn to dispense and administer justice to every litigant. As a collegial body, the Supreme Court adjudicates without fear or favor. The only things that the Supreme Court collectively focuses its attention to in every case are the merits thereof, and the arguments of the parties on the issues submitted for consideration and deliberation. Only thereby may the solemn individual oath of the Members to do justice be obeyed. x x x We deem it baseless, not to mention problematic, the respondent's prayer that the matter of inhibition of the six Associate Justices be decided by the remaining members of the Court *En Banc*. The respondent herself was cognizant that the prevailing rule allows challenged Justices to participate in the deliberations on the matter of their disqualification. Moreover, exclusion from the deliberations due to *delicadeza* or sense of decency, partakes of a ground apt for a voluntary inhibition. It bears to be reminded that voluntary inhibition, leaves to the sound discretion of the judges concerned whether to sit in a case for other just and valid reasons, with only their conscience as guide. Indeed, the best person to determine the propriety of sitting in a case rests with the magistrate sought to be disqualified. Moreover, to compel the remaining members to decide on the challenged member's fitness to resolve the case is to give them authority to review the propriety of acts of their colleagues, a scenario which can undermine the independence of each of the members of the High Court.

9. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; CONCURRENT JURISDICTION AMONG THE SUPREME COURT, COURT OF APPEALS AND THE REGIONAL TRIAL COURTS TO ISSUE THE EXTRAORDINARY WRITS, INCLUDING *QUO WARRANTO*; DIRECT RESORT TO THE SUPREME COURT IS JUSTIFIED CONSIDERING THAT THE ACTION FOR *QUO WARRANTO* QUESTIONS THE QUALIFICATION OF NO LESS THAN A MEMBER OF THE COURT; CASE AT BAR.— Section 5, Article VIII of

Supreme Court E-Library

the Constitution, in part, provides that the Supreme Court shall exercise original jurisdiction over petitions for *certiorari, prohibition, mandamus, quo warranto,* and *habeas corpus.* This Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue the extraordinary writs, including *quo warranto*. Relatedly, Section 7, Rule 66 of the Rules of Court provides that the venue of an action for *quo warranto*, when commenced by the Solicitor General, is either the Regional Trial Court in the City of Manila, in the Court of Appeals, or in the Supreme Court. While the hierarchy of courts serves as a general determinant of the appropriate forum for petitions for the extraordinary writs, a direct invocation of the Supreme Court's original jurisdiction to issue such writs is allowed when there are special and important reasons therefor, clearly and specifically set out in the petition. In the instant case, direct resort to the Court is justified considering that the action for *quo warranto* questions the qualification of no less than a Member of the Court. The issue of whether a person usurps, intrudes into, or unlawfully holds or exercises a public office is a matter of public concern over which the government takes special interest as it obviously cannot allow an intruder or impostor to occupy a public position.

10. ID.; ID.; ID.; *QUO WARRANTO* AND IMPEACHMENT CAN PROCEED INDEPENDENTLY AND SIMULTANEOUSLY; FORUM SHOPPING AND *LITIS PENDENCIA* NOT PRESENT IN *QUO WARRANTO* CASE DESPITE PENDENCY OF IMPEACHMENT PROCEEDINGS BEFORE THE HOUSE OF REPRESENTATIVES; CASE AT BAR.— [T]here can be no forum shopping in this case despite the pendency of the impeachment proceedings before the House of Representatives, contrary to respondent's position. The causes of action in the two proceedings are unequivocally different. In *quo warranto*, the cause of action lies on the usurping, intruding, or unlawfully holding or exercising of a public office, while in impeachment, it is the commission of an impeachable offense. Stated in a different manner, the crux of the controversy in this *quo warranto* proceedings is the determination of whether or not respondent legally holds the Chief Justice position to be considered as an impeachable officer in the first place. On the other hand, impeachment is for respondent's prosecution for certain impeachable offenses. x x x Simply put, while respondent's title to hold a public office is the issue in *quo*

warranto proceedings, impeachment necessarily presupposes that respondent legally holds the public office and thus, is an impeachable officer, the only issue being whether or not she committed impeachable offenses to warrant her removal from office.Likewise, the reliefs sought in the two proceedings are different. Under the Rules on *quo warranto*, "*when the respondent is found guilty of usurping, intruding into, or unlawfully holding or exercising a public office, xxx, judgment shall be rendered that such respondent be ousted and altogether excluded therefrom, x xx.*" In short, respondent in a *quo warranto* proceeding shall be adjudged to cease from holding a public office, which he/she is ineligible to hold. On the other hand, in impeachment, a conviction for the charges of impeachable offenses shall result to the *removal* of the respondent from the public office that he/she is legally holding. It is not legally possible to impeach or remove a person from an office that he/she, in the first place, does not and cannot legally hold or occupy. x xxThe difference between the "impeachment proceeding" and the "impeachment case" correctly cited by the respondent, bolsters the conclusion that there can be no forum shopping. Indeed, the "impeachment proceeding" before the House Committee on Justice is not the "impeachment case" proper. The impeachment case is yet to be initiated by the filing of the Articles of Impeachment before the Senate. Thus, at the moment, there is no pending impeachment case against the respondent. The House Committee on Justice's determination of probable cause on whether the impeachment against the respondent should go on trial before the Senate is akin to the prosecutor's determination of probable cause during the preliminary investigation in a criminal case.

11. **ID.; ID.; ID.; ID.; TO SUBSCRIBE TO THE VIEW THAT APPOINTMENTS OR ELECTION OF IMPEACHABLE OFFICERS ARE OUTSIDE JUDICIAL REVIEW IS TO CLEANSE THEIR APPOINTMENTS OR ELECTION OF ANY POSSIBLE DEFECT PERTAINING TO THE CONSTITUTIONALLY-PRESCRIBED QUALIFICATIONS WHICH CANNOT OTHERWISE BE RAISED IN AN IMPEACHMENT PROCEEDING.—**To subscribe to the view that appointments or election of impeachable officers are outside judicial review is to cleanse their appointments or election of any possible defect pertaining to the Constitutionally-prescribed

Supreme Court E-Library

qualifications which cannot otherwise be raised in an impeachment proceeding. The courts should be able to inquire into the validity of appointments even of impeachable officers. To hold otherwise is to allow an absurd situation where the appointment of an impeachable officer cannot be questioned even when, for instance, he or she has been determined to be of foreign nationality or, in offices where Bar membership is a qualification, when he or she fraudulently represented to be a member of the Bar. Unless such an officer commits any of the grounds for impeachment and is actually impeached, he can continue discharging the functions of his office even when he is clearly disqualified from holding it. Such would result in permitting unqualified and ineligible public officials to continue occupying key positions, exercising sensitive sovereign functions until they are successfully removed from office through impeachment. This could not have been the intent of the framers of the Constitution. We must always put in mind that public office is a public trust. Thus, the people have the right to have only qualified individuals appointed to public office.

12. ID.; ID.; ID.; AN ACT OR OMISSION COMMITTED PRIOR TO OR AT THE TIME OF APPOINTMENT OR ELECTION RELATING TO AN OFFICIAL'S QUALIFICATIONS TO HOLD OFFICE AS TO RENDER SUCH APPOINTMENT OR ELECTION INVALID IS PROPERLY THE SUBJECT OF A *QUO WARRANTO* PETITION.— Nevertheless, for the guidance of the bench and the bar, and to obliviate confusion in the future as to when *quo warranto* as a remedy to oust an ineligible public official may be availed of, and in keeping with the Court's function of harmonizing the laws and the rules with the Constitution, the Court herein demarcates that an act or omission committed prior to or at the time of appointment or election relating to an official's qualifications to hold office as to render such appointment or election invalid is properly the subject of a *quo warranto* petition, provided that the requisites for the commencement thereof are present. Contrariwise, acts or omissions, even if it relates to the qualification of integrity, being a continuing requirement but nonetheless committed during the incumbency of a validly appointed and/or validly elected official, cannot be the subject of a *quo warranto* proceeding, but of something else, which

may either be impeachment if the public official concerned is impeachable and the act or omission constitutes an impeachable offense, or disciplinary, administrative or criminal action, if otherwise.

13. ID.; ID.; ID.; ID.; COURT MAINTAINS ITS JURISDICTION OVER THE PRESENT *QUO WARRANTO* PETITION DESPITE RESPONDENT'S OCCUPATION OF AN IMPEACHABLE OFFICE, AS IT IS THE LEGALITY OR ILLEGALITY OF SUCH OCCUPATION THAT IS THE SUBJECT MATTER OF THE PETITION.— [T]he Court maintains jurisdiction over the present *quo warranto* proceedings despite respondent's occupation of an impeachable office, as it is the legality or illegality of such occupation that is the subject matter of the instant petition. Further, respondent cannot now be heard to deny the Court's jurisdiction over her person even as she claims to be an impeachable official because respondent in fact invoked and sought affirmative relief from the Court by praying for the inhibition of several Members of this Court and by moving that the case be heard on Oral Arguments, albeit *ad cautelam*. While mindful of Our ruling in *La Naval Drug Corporation v. Court of Appeals*,which pronounced that a party may file a Motion to Dismiss on the ground of lack of jurisdiction over its person, and at the same time raise affirmative defenses and pray for affirmative relief without waiving its objection to the acquisition of jurisdiction over its person, as well as Section 20, Rule 14, this Court, in several cases, ruled that seeking affirmative relief in a court is tantamount to voluntary appearance therein.

14. ID.; ID.; ID.; ID.; ID.; THE PETITION IS NOT DISMISSIBLE ON THE GROUND OF PRESCRIPTION; PRESCRIPTION DOES NOT LIE AGAINST THE STATE; CASE AT BAR.— Indeed, when the government is the real party in interest, and is proceeding mainly to assert its rights, there can be no defense on the ground of laches or prescription.Indubitably, the basic principle that "prescription does not lie against the State" which finds textual basis under Article 1108 (4)of the Civil Code, applies in this case. x x x That prescription does not lie in this case can also be deduced from the very purpose of an action for *quo warranto*. *People v. City Whittier*, explains that the remedy of *quo warranto* is intended to prevent a continuing exercise of an authority

Supreme Court E-Library

unlawfully asserted. Indeed, on point is *People v. Bailey*, when it ruled that because *quo warranto* serves to end a continuous usurpation, no statute of limitations applies to the action. Needless to say, no prudent and just court would allow an unqualified person to hold public office, much more the highest position in the Judiciary.

15. ID.; ID.; ID.; ID.; ID.; ID.; NO DELAY CAN BE ATTRIBUTED TO THE REPUBLIC IN COMMENCING THE ACTION FOR *QUO WARRANTO* SINCE RESPONDENT DELIBERATELY CONCEALED THE FACT OF HER DISQUALIFICATION FOR OFFICE; CASE AT BAR.— In this case, the Republic cannot be faulted for questioning respondent's qualification for office only upon discovery of the cause of ouster.As will be demonstrated hereunder, respondent was never forthright as to whether or not she filed her SALNs covering the period of her employment in U.P. x x x Even up to the present, respondent has not been candid on whether she filed the required SALNs or not. x x x Hence, until recently when respondent's qualification for office was questioned during the hearings conducted by the House Committee on Justice on the impeachment complaint against the respondent, there was no indication that would have prompted the Republic to assail respondent's appointment, much less question the wisdom or reason behind the said recommending and appointing authorities' actions. The defect on respondent's appointment was therefore not discernible, but was, on the contrary, deliberately rendered obscure.Given the foregoing, there can be no acquiescence or inaction, in this case, on the part of the Republic as would amount to an abandonment of its right to seek redress against a public wrong and vindicate public interest. Neither can delay be attributed to the Republic in commencing the action since respondent deliberately concealed the fact of her disqualification to the position. Prescription, therefore, cannot be pleaded against the Republic.

16. POLITICAL LAW; CONSTITUTION; JUDICIAL DEPARTMENT; JUDICIAL AND BAR COUNCIL (JBC); THE SUPREME COURT HAS SUPERVISORY AUTHORITY OVER THE JBC; THIS INCLUDES ENSURING THAT THE JBC COMPLIES WITH ITS OWN RULES AND PROCEDURES.— [I]n interpreting the power of the Court *vis-a-vis* the power of the JBC, it is consistently

held that the Court's supervisory power consists of seeing to it that the JBC complies with its own rules and procedures. As when the policies of the JBC are being attacked, the Court, through its supervisory authority over the JBC, has the duty to inquire about the matter and ensure that the JBC is compliant with its own rules. The JBC occupies a unique position in the body of government. While the JBC is created by the Constitution, the Constitution itself prescribes that it exists as an office subordinate to the Supreme Court. x xxThe Constitution also vests upon the JBC the principal function of recommending appointees to the Judiciary and *such other functions and duties as the Supreme Court may assign to it*. x x x Obviously, the exercise of the JBC's discretion in the nomination process is not full as it is limited by the requirements prescribed by the Constitution and the laws for every position. It does not involve a question of policy but simply a determination, based on facts, of whether a candidate possesses the requisite qualifications or not. The JBC neither assumes an existence separate from the Judiciary as it is not intended to be an independent Constitutional body but merely a Constitutional office created and expressly subjected to the Court's supervision. Judicial encroachment upon the exercise of wisdom of a co-equal branch of the government, which is the very basis of the political question doctrine, is therefore not attendant when the Court supervises and reviews the action of the JBC which is neither an executive nor a legislative branch enjoying independent political prerogatives.

17. ID.; ID.; ID.; ID.; ID.;ID.; COMPLIANCE WITH THE CONSTITUTIONAL AND STATUTORY REQUIREMENT OF FILING OF SALN INTIMATELY RELATES TO A PERSON'S INTEGRITY.— Compliance with the Constitutional and statutory requirement of filing of SALN intimately relates to a person's integrity. Respondent postulates that the filing of SALNs bears no relation to the Constitutional qualification of integrity. In so arguing, respondent loses sight of the fact that the SALN requirement is imposed no less than by the Constitution and made more emphatic by its accompanying laws and its implementing rules and regulations. In other words, one who fails to file his or her SALN violates the Constitution and the laws; and one who violates the Constitution and the laws cannot rightfully claim to be a person of integrity as such

Supreme Court E-Library

equation is theoretically and practically antithetical. x x x Section 7, Article VIII of the Constitution requires that a member of the Judiciary must be of proven integrity. To be of proven integrity means that the applicant must have established a steadfast adherence to moral and ethical principles.The necessity of having integrity among the members of the judiciary is clearly discussed in the *Commentary on the Bangalore Principles of Judicial Conduct:* Integrity is the attribute of rectitude and righteousness. The components of integrity are honesty and judicial morality. A judge should always, not only in the discharge of official duties, act honourably and in a manner befitting the judicial office; be free from fraud, deceit and falsehood; and be good and virtuous in behaviour and in character. There are no degrees of integrity as so defined.Integrity is absolute. In the judiciary, integrity is more than a virtue; it is a necessity.Failure to file the SALN is clearly a violation of the law. The offense is penal in character and is a clear breach of the ethical standards set for public officials and employees. It disregards the requirement of transparency as a deterrent to graft and corruption. For these reasons, a public official who has failed to comply with the requirement of filing the SALN cannot be said to be of proven integrity and the Court may consider him/her disqualified from holding public office.

LEONARDO-DE CASTRO, *J.*, *concurring opinion*:

1. LEGAL AND JUDICIAL ETHICS; JUSTICES/JUDGES; INHIBITION; BIAS AND PREJUDICE; MOTION FOR INHIBITION UTTERLY LACKS MERIT AND DESERVES DENIAL; CASE AT BAR.— It is not my personal interest or actual bias but the common interest of every incumbent Member of the Court to find the truth in whether or not respondent Maria Lourdes P. A. Sereno has the integrity to qualify her to hold the highest position in the Judiciary. Did she employ deceit regarding her Sworn Statement of Assets, Liabilities and Net Worth (SALN) in order to be included by the Judicial and Bar Council (JBC) in the shortlist of nominees for the Chief Justice position? Of this I had no personal knowledge and had to ask the question ("*angtanong*") during the hearing at the Committee on Justice of the House of Representatives, if indeed she did not submit her SALNs to the JBC and if the JBC unduly exempted her from this requirement. The question was never answered

because respondent refused to appear at the hearings before the House of Representatives Committee on Justice. It is only in the proceedings of the instant Petition for *Quo Warranto* where respondent voluntarily appeared that we can ferret out the truth regarding the grave integrity issue raised against her.I testified before the House of Representatives Committee on Justice, not as a complainant but as a resource person who must tell the truth, and I did so, based on authentic and official court records. I was merely invited by the said Committee, along with other incumbent and retired Supreme Court Associate Justices, as a resource person in theinvestigation. I had been duly authorized by the Court *en banc* during the *en banc* session on November 28, 2017 to testify on administrative matters and specific adjudication matters subject of the impeachment complaint. x x x For years now, respondent and I have had a generally professional relationship and I have been exerting my best as a Supreme Court Associate Justice, as the Working Chairperson of the Supreme Court First Division of which respondent is the Chairperson, and with utmost dedication, I continue to serve as the Chairperson of the Supreme Court committees assigned to me by respondent, namely, the Committee on Gender Responsiveness in the Judiciary and the Committee on Family Courts and Juvenile Concerns. x x x The disagreements between respondent and me are clearly not personal but work-related, arising from instances when I called the Court's attention that respondent **bypassed** the Court *en banc*, **falsified** a Court Resolution and Order, and **misled or lied** to us, her colleagues in the Supreme Court. My intention was to correct the wrong done, not to rebuke or shame respondent, and only to remind her that she should not repeat the same as it will not always escape the attention of the Justices.

2. **ID.; ID.; ID.; ID.; ID.; TESTIMONIES OBJECTIVELY GIVEN DURING THE CONGRESSIONAL HEARINGS BASED ON FACTS AND FULLY SUPPORTED BY OFFICIAL DOCUMENTS NOT MOTIVATED BY NOR INDICATIVE OF BIAS OR PERSONAL GRUDGE; CASE AT BAR.—** The legitimate subjects of concern to the Court, of which the Supreme Court *en banc* Resolution authorized me to testify on at the House of Representatives Committee on Justice were:**(a) Respondent's creation of the JDO in the 7th Judicial Region without knowledge and approval of the Court *en banc* and falsification of a Court resolution to make it appear that**

Supreme Court E-Library

the Court *en banc* ratified the operation of the JDO, under the pretext of reviving the RCAO in the 7th Judicial Region x x x **(b) Respondent's falsification and unlawful expansion of the coverage of the TRO issued in the *SENIOR CITIZENS cases*, to enjoin the proclamation of all winning party-list candidates, including those who were not parties to the pending petitions, without authority from the Court *en banc* and in contravention of my recommendation as the Member-in-Charge of the *SENIOR CITIZENS* cases** x x x **(c) Respondent's false claim that several Justices requested that voting no longer be conducted among them with respect to the candidate for Associate Justice (vice Roberto A. Abad), which deprived the Court en banc of the opportunity to vote on and submit recommendees for said vacancy in the Supreme Court.** x x x **(d) The JBC, during respondent's incumbency as Chairperson, clustered the nominees for simultaneous vacancies in collegiate courts into six separate shortlists in violation of the Constitution, laws, rules, and jurisprudence, and the qualified nominees' rights to due process and equal opportunity to be appointed.** x x x The incidents I have recounted in detail reveal respondent's propensity to make false statements in order to manipulate and deceive her colleagues in the Court and the public as well. Respondent's underhanded means to achieve her objectives, often in disregard or at the expense of collegial courtesy and established Court practices and procedures, caused problems and complications in Court processes and issuances, which eventually, the Court *en banc* had to remedy or rectify. x x x [M]y statement, "*Hanggang kailan pa kami magtitiis?*" is a plea for respondent to mend her ways and to put a stop to her habit of misleading and/or bypassing the Court *en banc*. It does not pertain to her removal from office. All I am interested in is to put a stop to respondent's repeated violation of the Constitution by arrogating unto herself matters that should be submitted to the Court *en banc* for deliberation and approval and to prevent further adverse consequences to public service. x xx [M]y testimony, objectively given based on facts and fully supported by official documents, could not be said to have been motivated by prejudice or personal grudge, or to be indicative of bias or partiality. Thus, any allegation of my prejudice or partiality against respondent, amounting to a denial of respondent's due process, utterly lacks basis.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; RESPONDENT'S APPOINTMENT TO THE POSITION OF SUPREME COURT CHIEF JUSTICE IS VOID *AB INITIO* BECAUSE SHE WAS UNABLE TO SUBMIT HER SALNs FOR 2002 TO 2006 TO THE JBC AS REQUIRED BY THE CONSTITUTION, THE LAW AND IMPLEMENTING RULES FOR APPLICANTS FOR THE SUPREME COURT CHIEF JUSTICE VACANCY IN 2012; CASE AT BAR.— The evidence on record shows that respondent was unable to submit her SALNs for 2002 to 2006 to the JBC as required for applicants for the Supreme Court Chief Justice vacancy in 2012 and she deliberately deceived and misled the JBC so as to secure her inclusion in the shortlist of candidates for the vacancy in the said position, despite her non-compliance with the SALN requirement mandated by the Constitution, the law, and implementing rules. x x x [R]espondent's appointment as Chief Justice of the Supreme Court, secured through her lies and deception in the entries in her sworn PDS and regarding her non-compliance with the abovementioned SALN requirement of the JBC, is **void *ab initio***, and for such reason, I vote to **GRANT** the Petition for *Quo Warranto*.

4. LEGAL AND JUDICIAL ETHICS; JUSTICES/JUDGES; EVERY EMPLOYEE OF THE JUDICIARY SHOULD BE AN EXAMPLE OF INTEGRITY, UPRIGHTNESS AND HONESTY; REQUIRED QUALIFICATIONS NOT COMPLIED WITH; CASE AT BAR.—The Court has repeatedly held in numerous administrative cases that court employees, from the highest magistrate to the lowliest clerk, are held to a higher standard than most other civil servants, and that every employee of the Judiciary should be an example of integrity, uprightness, and honesty. From her applications for the vacant post of Supreme Court Associate Justice in 2010 and her subsequent application for the vacant post of Supreme Court Chief Justice in 2012, to her almost six-year stint as Supreme Court Chief Justice, respondent continuously demonstrated her proclivity to lie, mislead, bend the rules, and exploit the exemptions, in disregard of constitutional, statutory, and regulatory parameters; ethical conduct; and collegial courtesy.

Supreme Court E-Library

PERALTA, *J.*, *separate concurring opinion*:

1. **LEGAL AND JUDICIAL ETHICS; JUDGES; INHIBITION; BIAS AND PREJUDICE; MOVANT MUST PROVE GROUNDS OF BIAS AND PREJUDICE BY CLEAR AND CONVINCING EVIDENCE TO DISQUALIFY A JUDGE FROM PARTICIPATING IN A PARTICULAR TRIAL.—** It is well settled that bias and prejudice, to be considered valid reasons for the voluntary inhibition of judges, must be proved with clear and convincing evidence.Bare allegations of their partiality will not suffice. It cannot be presumed, especially if weighed against the sacred oaths of office of magistrates, requiring them to administer justice fairly and equitably —both the poor and the rich, the weak and the strong, the lonely and well-connected. There has to be a showing of acts or conduct clearly indicative of arbitrariness or prejudice before the Court can brand them with the stigma of bias or partiality.Mere suspicion is not enough.Extrinsic evidence must further be presented to establish bias, bad faith, malice or corrupt purpose.

2. **ID.; ID.; ID.; ID.; ID.; THE CHIEF JUSTICE FAILED TO PROVE BY CLEAR AND CONVINCING EVIDENCE JUSTICE PERALTA'S SUPPOSED ACTUAL BIAS AGAINST HER CONCERNING HER QUALIFICATION TO BE APPOINTED AS A CHIEF JUSTICE.—** Applying the foregoing principles, I maintain that respondent failed to establish that I have actual bias concerning her qualification to be appointed as Chief Justice. Respondent's allegation of actual bias and impartiality has been thoroughly addressed in my testimony during the January 15, 2018 Congressional Hearing to the effect that I have been very supportive of the Judiciary reforms introduced by the Chief Justice even if she suspects that I am one of those behind her impeachment. x x x As to the supposed axe to grind against respondent for my wife's exclusion from the shortlist for the post of CA Presiding Justice, I also clarified during the February 12, 2018 Congressional Hearing that I have already moved on from the issue, and that I was testifying because I want to protect the prospective applicants to the Judiciary, and to maintain the constitutional mandate that only the best and qualified candidates should be recommended by the JBC. In saying that "*had I been informed of this letter dated July 23, 2012, and a certificate of clearance,*

I could have immediately objected to the selection of the Chief Justice for voting because this is a very clear deviation from existing rules that if a member of the Judiciary would like ... or ... a candidate would like to apply for Chief Justice, then she or he is mandated to submit the SALNs," I merely made a hypothetical statement of fact, which will not necessarily result in the disqualification of respondent from nomination, if it would be proven that she had indeed filed all her SALNs even before she became an Associate Justice in 2010. There is nothing in the statement that manifests bias against respondent *per se* as the same was expressed in view of my function as then Acting *Ex-Officio* Chairperson of the JBC, which is tasked with determining the constitutional and statutory eligibility of applicants for the position of Chief Justice. x x x Be it stressed that when the hypothetical statement was made, there was no petition for *quo warranto* yet, so I cannot be faulted for pre-judging something that is not pending before the Court. Besides, in my honest view, what is being assailed in this petition for *quo warranto* is respondent's failure to prove her integrity on the ground that she deliberately concealed from the JBC the material fact that she failed to file her SALNs for the years 2000, 2001, 2003, 2004, 2005 and 2006, among others, even before she became an Associate Justice of the Supreme Court in 2010. Thus, whether hypothetical or not, my statement that she should have been disqualified to be nominated as Chief Justice, is not relevant or material to this petition for *quo warranto.*

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *QUO WARRANTO*; AN IMPEACHABLE PUBLIC OFFICER MAY BE REMOVED THROUGH A PETITION FOR *QUO WARRANTO* IF THE INVALIDITY OF HIS OR HER APPOINTMENT STEMS FROM THE QUALIFICATIONS REQUIRED BY THE CONSTITUTION.—The pivotal question of law is whether an official who may be removed through impeachment, may also be removed through a petition for *quo warranto*. I agree with the *ponencia* in ruling for the affirmative of the issue.It is basic in constitutional construction that if the constitutional provision is clear and unambiguous, it is neither necessary nor permissible to resort to extrinsic aids for its interpretation, x x x The language of Section 2, Article XI of the 1987

Supreme Court E-Library

Constitution is plain and clear:Section 2. The President, Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman **may be removed from office** on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment. **There is nothing in the provision that states that said public officers may be removed from office only through impeachment.**As aptly pointed out by the *ponencia,* the Court has consistently held that the term "may" is indicative of a mere possibility, an opportunity or an option, and denotes discretion and cannot be construed as having a mandatory effect. The said constitutional provision being clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. x x x in *Funa v. Chairman Villar*,the Court, in a petition for *certiorari* and prohibition assailing the appointment of then Commissioner Renaldo A. Villar to the position of Chairman of the Commission on Audit (*COA)* to replace Guillermo N. Carague, whose term of office as such Chairman has expired, declared Villar's appointment unconstitutional for violation of Sec. 1(2), Article IX(D) of the Constitution. x xxTo my mind, if an impeachable public officer like the Chairperson of the COA was removed through a petition for *certiorari* and prohibition, how much more in a direct proceeding assailing the constitutional eligibility of such pubic officer to hold public office, such as the position of Chief Justice of the Supreme Court, which requires one to be of proven integrity to become its member. As held in *Frivaldo v. Commission on Elections*, qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. "Once any of the required qualifications is lost, his title may be seasonably challenged." If officials like the President and the Vice-President, who were elected by the people at large, can be removed through *quo warranto* proceedings, I cannot see any substantial distinction why members of the Supreme Court and other constitutional bodies, who are merely appointed by the President, cannot be removed through a proceeding directly assailing their constitutional qualification to be appointed to public office.

4. ID.; ID.; ID.; ID.; RESPONDENT'S DELIBERATE CONCEALMENT FROM THE JBC OF THE MATERIAL FACT THAT SHE FAILED TO FILE HABITUALLY HER *SALNs* DURING HER STINT AS A U.P. LAW PROFESSOR MEANS THAT HER APPOINTMENT AS AN ASSOCIATE JUSTICE OF THE SUPREME COURT IN AUGUST 16, 2010 IS *VOID AB INITIO*, FOR SHE LACKS THE CONSTITUTIONAL QUALIFICATION OF "PROVEN INTEGRITY" IN ORDER TO BECOME A MEMBER OF THE COURT.— Contrary to respondent's claim that the burden of proof to show unlawful holding or exercise of public office rests on the petitioner in a *quo warranto* proceeding, the general rule under American jurisprudence is that the burden of proof is on respondent when the action is brought by the attorney general, to test the right to public office, x x x Therefore, it is the respondent, not the petitioner, who bears the burden to prove that she possessed the constitutional qualification of proven integrity when she applied for the position of Associate Justice of Supreme Court in 2010, despite her failure to comply with the statutory and constitutional requisite of SALNs for the years of 2000, 2001, 2003, 2004, 2005 and 2006 while she was in government service, albeit on official leave intermittently. x x x At this point, it is not amiss to stress that even if respondent was on official leave for intermittent periods from June 1, 2000 until she resigned on June 1, 2006, she is not exempt, but still required to file SALNs during those periods, pursuant to Civil Service Commission (*CSC*) Resolution No. 060231 dated February 1, 2006. x x x Certificationsof the Ombudsman and the U.P. HRDO show that despite the fact that respondent was a public employee, albeit on extended leave as a U.P. Law Professor, she failed to file her annual SALNs for 2000, 2001, 2003, 2004, 2005, 2006, as well as her separation SALN for 2006, in violation of CSC Resolution No. 060231, R.A. Nos. 6713 and 3019, and the Constitution. These violations were only discovered during the Congressional Hearings of the Committee on Justice to determine probable cause to impeach the respondent Chief Justice. When she accepted on July 2, 2012 the nomination for the position of Chief Justice as a candidate coming from government service, which required all her SALNs, respondent filed only SALNs for 2009, 2010 and 2011. In an attempt to be considered as candidate coming from the private sector, respondent concealed that she failed to file

Supreme Court E-Library

SALNs for the years stated above, and misrepresented in a letter dated July 23, 2012 that it is infeasible to produce her more than 15-year academe records, in order to be considered as a candidate coming from the private sector. Because of that letter, the ORSN reported to the JBC *En Banc* that she had complete documentary requirements, but the latter never really had the opportunity to determine her substantial compliance with the SALN requirements because the letter was never deliberated upon in time for the public interview on July 24, 2012. x x x There is no merit in respondent's invocation of *Concerned Taxpayer v. Doblada* which is not on all fours with her case. In *Doblada*, the Court found no sufficient evidence to prove that the court sheriff failed to file his SAL [Statement of Assets and Liabilities] for the years 1975, 1977 to 1988, 1990, 1992, 1994, 1997, 1999 and 2000. It held that one cannot readily conclude that the court sheriff failed to file his sworn SAL for said years x x x In this case, as correctly noted by the OSG, respondent failed to support her bare allegation of habitual filing of SALNs with clear and convincing evidence to dispute the Certifications issued by the U.P. HRDO and the Central Records Division of the Office of the Ombudsman, categorically stating that there is no record on file of her 2000, 2001, 2003, 2005 and 2006 SALNs. Note also that there is no missing SALNs involved here, but only missing file copies thereof of respondent.Weighed against the documentary evidence proffered by the OSG, respondent's unsubstantiated assertion of filing all her SALNs to the best of her recollection and reliance on the *Doblada* case fail to persuade. I, therefore, find that respondent failed to discharge the burden of proving that she filed her SALNs for the calendar years of 2000, 2001, 2003, 2004, 2005 and 2006 in violation of the laws and the Constitution. For deliberately concealing from the JBC *En Banc* her failure to file her SALNs, especially in the wake of the impeachment of a former Chief Justice on the ground of failure to properly declare assets in his SALNs, I posit that respondent did not possess the qualification of proven integrity at the time she was appointed as Associate Justice of the Supreme Court in 2010.

BERSAMIN, *J.*, *concurring opinion*:

1. LEGAL AND JUDICIAL ETHICS; JUSTICES/JUDGES; INHIBITION; BIAS AND PREJUDICE; IMPUTATIONS

THEREOF CANNOT BE BASED ON TWISTED SPECULATIONS OR ON DELIBERATE DISTORTIONS OF THE LANGUAGE CONTEXT AND MEANING OF TESTIMONY GIVEN DURING THE CONGRESSIONAL INQUIRY; CASE AT BAR.— The respondent cited the testimony I gave on January 15, 2018 during the inquiry to determine probable cause against her conducted by the Committee on Justice of the House of Representatives alluding to her as a dictator, and expressing a personal resentment over her manner of leadership that violated the collegial nature of the Supreme Court. She recalled that I also testified therein that I had resented the withdrawal of the "privilege" previously enjoyed by the Members of the Supreme Court to recommend nominees to vacant positions in the judiciary; and that I was also among the Members of the Supreme Court who "wore a touch of red as the so-called "Red Monday" protest on 12 March 2018 was ongoing." She insisted that my remarks were not mere innocuous ones but were expressions of my personal animosity towards her. x x x My appearance at the inquiry conducted by the Committee on Justice was upon the invitation of the House of Representatives. I appeared thereat only out of deference to the House of Representatives whose constitutional duty to investigate the impeachment complaint filed against the respondent could not be doubted. I harbored no ill will or malice towards her in appearing at the inquiry because my doing so had been priorly approved by the Court *En Banc*. x x x I deny alluding to the respondent as a "**dictator**." My answers in this regard were grossly taken out of context by her. In answering the question of Cong. Rodante Marcoleta on the loss of collegiality in the Supreme Court under the respondent as the Chief Justice, I forthrightly stated: "**Ang Supreme Court ay hindi po maaring mag-function kung isa ay diktador.**" My statement was clearly **hypothetical** about what the Court *would become* if any of its Members, including her as the Chief Justice, *was to act dictatorially*. x x x The true and actual context of my answer was actually easily apparent from what I said immediately thereafter, to wit: "**Kaila[ng]an po lahat ng 15 members, maliit na samahan niyan, kaniya-kaniyang boses, kaniya-kaniyang boto. Kaya nagkaroon diyan ng possibility of a majority and a minority**." x x x The respondent ought to know that my taking offense did not deter me from actually defending her actuations before the Committee on Justice by

Supreme Court E-Library

characterizing her withdrawal of the "privilege" to recommend nominees to fill vacancies in the Supreme Court as not necessarily amounting to "a misrepresentation of the will of the Supreme Court en banc." I also clarified then that she had "her own mind about this." Nonetheless, I need to insist that my comment that "**I resented [this] personally because this was contrary to the collegiality of the Court**" reflected a very natural and legitimate sentiment. x x x In my humble view, the respondent's call for my inhibition has been based on nothing but twisted speculations, or on deliberate distortions of the language, context and meaning of the answers I gave as a sworn witness in the proceedings of the Committee on Justice of the House of Representatives. But speculations and distortions cannot justify my inhibition from taking part on a judicial matter.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; THE RESPONDENT'S PETITION FOR *QUO WARRANTO* IS NOT TIME BARRED BECAUSE THE SOLICITOR GENERAL AND THE PUBLIC WERE NOT INFORMED OF THE RESPONDENT'S INELIGIBILITY AND LACK OF QUALIFICATIONS AT THE TIME OF HER APPLICATION OR ASSUMPTION INTO OFFICE; CASE AT BAR.— The next issue that I want to weigh in on concerns the insistence of the respondent that even if the petition for *quo warranto* is the proper remedy to test her eligibility to the position of Chief Justice, the petition is already time-barred for not being brought within one year after the cause for the ouster arose. She cites in support of her insistence Section 11, Rule 66 of the *Rules of Court*. x x x In contrast, the Republic fends off the respondent's insistence by asserting that the time-bar of one year does not apply against the State conformably with the principle that acts of limitation do not bind the State x x x In my view, the Republic timely brought its petition for *quo warranto*. There is no need to liberalize the application of the time-bar under Section 11, which should be reckoned from the discovery of the cause when it was revealed for the first time in the course of the recent hearings of the Committee on Justice that the respondent had not submitted the SALNs required of her by the JBC. The Solicitor General and the public in general could not be subjected to the time-bar counted from her assumption to the office because they were not informed of her ineligibility and lack of qualifications at the time of her

application or assumption into office. Her letter dated July 23, 2012 to the JBC objectively misrepresented her eligibility by asking the JBC to accept her three SALNs as substantial compliance by claiming that for her to still secure copies of her 15-year old SALNs was already "infeasible." She thereby implied that she had filed the SALNs, but she had not filed the non-produced SALNs in reality. To bar the State's *quo warranto* suit despite her resorting to strategy and stealth to cover up her ineligibility would surely defeat the public policy of not rewarding deceptions prejudicial to the public interest.

3. ID; ID.; ID.; THE RESPONDENT IS INELIGIBLE TO HOLD THE POSITION OF CHIEF JUSTICE DUE TO HER LACK OF PROVEN INTEGRITY AS REQUIRED BY THE CONSTITUTION.— The Republic reiterates that the respondent lacked the required integrity for appointment to the Judiciary [under Section 7, Article VIII of the 1987 Constitution] by virtue of her deliberate and constant failure to file her SALNs. The records do not show her SALNs corresponding to 1986, 1987, 1988, 1989, 1992, 1999, 2000, 2001, 2003, 2004, 2005 and 2006. x x x Integrity as a qualification in the context of the vetting of candidates to judicial positions by the JBC, according to *Jardeleza v. Sereno,* is closely related to, or, if not, approximately equated to an applicant's *good reputation for honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards*. This understanding of the qualification accounts for why every candidate's reputation may be shown through certifications and testimonials given by reputable government officials, non-governmental organizations, and clearances issued by the courts, the National Bureau of Investigation, and the police, among others. In fact, the JBC may even conduct a discreet background check and receive feedback from the public on the integrity, reputation and character of the judicial applicants, the merits of which are to be verified and checked. While a general averment of integrity normally suffices as qualification for court employees, the same is not true for the officials of the Judiciary. For the latter, the 1987 Constitution expressly requires integrity to be proven. This means, simply, that applicants or nominees for judicial positions must themselves present proof of their integrity, among others. In that regard, presumptions and assumptions have no place. The records disclose that the respondent did

Supreme Court E-Library

not present sufficient proof of her integrity because she did not dutifully file the constitutionally-mandated SALNs, as required of her by the JBC. She presented her SALNs only for the years ending in 1985, 1989, 1990, 1991, 1993, 1994, 1995, 1996, 1997, 1998, and 2002 despite having worked at the U.P College of Law in the period from 1985 to 2006.

JARDELEZA, *J.*, *resolution*:

1. LEGAL AND JUDICIAL ETHICS; JUSTICES/JUDGES; INHIBITION, MANDATORY AND VOLUNTARY; IF THE GROUNDS RAISED CALL FOR MANDATORY DISQUALIFICATION, THE COURT INVOLVES ITSELF AND ENSURES THE DISQUALIFICATION OF THE CHALLENGED JUDGE; IF HOWEVER, THE GROUNDS RAISED ARE NOT OBJECTIVELY VERIFIABLE, SUCH AS BIAS OR PREJUDICE, THE COURT LEAVES THE DECISION OF INHIBITION TO THE BEST JUDGMENT OF THE JUDGE CONCERNED, SAVE FOR INSTANCES WHERE GRAVE ABUSE OF DISCRETION IS SHOWN.— This Court has consistently pronounced that the first paragraphs of Section 1, Rule 137 of the Rules of Court and Section 1, Rule 8 of the Internal Rules of the Supreme Court, by virtue of their objective verifiability, warrant prompt compulsory disqualification, regardless of the will of the judge. However, when the prayer for inhibition is triggered by grounds that are not objectively verifiable, such as bias or prejudice, the Court generally leaves the inhibition discretionary, and submits it to the sole discernment of the judge sought to be inhibited. Furthermore, I find from my review of Philippine jurisprudence that cases involving the recusal of judges and justices below the level of this Court have generally been approached following this methodology: *First*, the Court decides whether the facts trigger the application of mandatory disqualification or discretionary inhibition; *Second*, if the grounds raised on the motion call for mandatory disqualification, the Court involves itself and ensures disqualification of the challenged judge; *If*, however, it finds that the grounds raised are discretionary, the Court leaves the decision of inhibition to the best judgment and careful self-examination of the judge concerned, save for instances where grave abuse of discretion is shown.

Supreme Court E-Library

2. ID.; ID.; ID.; EIGHT (8) IDENTIFIABLE, BUT NOT INTERNALLY CONSISTENT, PRINCIPLES ON DISCRETIONARY RECUSSAL, CITED.— [T]he Court has not laid down a clear litmus test by which a case of voluntary recusal by lower court judges and justices should be decided. As it stands, it seems to me that the body of law on discretionary recusal turns on eight (8) identifiable, but not internally consistent, principles: (1) partiality of a judge or justice, is not presumed; (2) bare allegations of partiality are not sufficient; (3) clear and convincing extrinsic evidence is required to prove partiality; (4) voluntary inhibition applies only to conduct or statements made from extrajudicial sources, i.e., not in the court proceedings in question; (5) the judge must do a careful self-examination before deciding; (6) the judge or justice has a duty to decide and to sit; (7) judges and justices must act "like Caesar's wife — above suspicion"; and (8) the judge's or justice's decision must affirm the public's faith in the judiciary, for "any act which would give the appearance of impropriety becomes, of itself, reprehensible." Demonstrably, court decisions or recusal use one or more of these principles to arrive at conclusions that are wildly varied and which decidedly turn on the peculiar facts of each case.

3. ID.; ID.; ID.; ID.; PONENTE'S REASON FOR DENYING RESPONDENT'S MOTION FOR INHIBITION GIVES FULL WEIGHT TO THE VALUE OF A JUDGE'S DUTY TO SIT AND DECIDE A CASE.— First, I resolved to sit in this case by tilting the balance in favour of giving full weight to the value of a judge's duty to sit and decide a case. I am convinced that the grave importance of this case, its far-reaching doctrinal value and its permanent implications to the Court as an institution and an equal branch of Government call for no less than a decision made by a full court. Consistent with Veterans Federation Party, a decision handed down by any less than that would, in my view, only fall short of affirming the public's faith in our country's administration of justice.

4. ID.; ID.; ID.; ID.; ID.; QUESTIONS OF INHIBITION SHOULD AS A PRINCIPLE, BE SOLELY ADDRESSED TO, AND ANSWERED BY THE GOOD JUDGMENT AND CONSCIENCE OF THE INDIVIDUAL JUSTICE/S CONCERNED.— Second, and after careful reflection, I have come to the view that questions of inhibition should, as a

Supreme Court E-Library

principle, be solely addressed to, and answered by, the good judgment and conscience of the individual Justice/s concerned. To permit otherwise would only contribute to the arguably attractive temptation of "strategizing recusals." As in this case, respondent should not be allowed to affect (or worse, impair) the ability of the Court to decide significant legal issues with its full membership through the simple expedient of fashioning a colorable ground for inhibition on the part of one (or some) of its members.

5. ID.; ID.; ID.; ID.; ID.; ID.; ACTS AND UTTERANCES COMPLAINED OF, UNDER ALL CIRCUMSTANCES, DO NOT NEGATE THE DEGREE OF OBJECTIVITY REQUIRED OF THE PONENTE BY THE DUE PROCESS CLAUSE OF THE CONSTITUTION AS TO DISQUALIFY THE RESPONDENT.— Third, on analysis, my acts complained of, under all the circumstances, do not negate the degree of objectivity required of me by the due process clause of the Constitution as to disqualify me. Far from it, I am convinced that respondent's factual bases, when measured against the three tests in *Liteky*, all fail to prove my alleged bias and prejudice against her. My conduct and utterances of which she complains were not undeserved, as they were not done or said by me to merely vex her reputation. They were all founded on fact. They were also only done and said in self-defense, as measures to restore whatever I could salvage or restore of my name, in the face of respondent's unprovoked assaults on my integrity. This is the reason why I have endeavoured to include in this Resolution a full narration of the facts that led to her attacks on me, and my acts and words done subsequent to the issuance by the Arbitral Tribunal in the Hague of its ruling, which release allowed me to air my full side. Specifically, my act of calling here "treasonous" was merely in reference to the lexical equivalent of the label she herself used to pertain to me and my actions. In fact, I find that the use of said term was not undeserved as it was merely semantically descriptive, and was merited, even necessary, in the instance that I employed it. As I earlier recounted, respondent recklessly placed into the public domain sensitive issues of legal strategy and characterized Itu Aba in her public filings as an island, contrary to national interest, in general, and the Republic's official submission before the UNCLO's arbitral tribunal, in particular. My use of the word

"inhumane" to depict her manner and means of objecting to my nomination was also not undeserved, as it was, in fact, how I personally perceived such an affront. Such perception is personal, the effect of which is not measured by the doer of the act, but by its receiver. Furthermore, the suggestion that my characterizations of respondent persists to this day cannot be conceived as undeserved, for it is wholly an opinion, based on facts, one which she and maybe those sympathetic to her are completely free to disagree with. My conduct and utterances were also not based on evidence or information illegally received, as all the facts upon which I anchored my actions were culled from my personal experience and knowledge. All the bases for my actions, whether it be the "treasonous' description attributed to her, or the "inhumane" depiction of her actions, or the negative characterization of herself, are borne of my personal knowledge, and not obtained through other means. Finally, I do not believe my conduct or utterances were excessive, as they were not made with blind fury, but only with righteous indignation and merely as a means to the vindication of a right.

6. ID.; ID.; ID.; ID.; ID.; ID.; THE PONENTE'S UNPLEASANT "HISTORY" WITH THE RESPONDENT IS WHOLLY EXTRANEOUS AND IMMATERIAL TO THE FACTS AND ISSUES RAISED IN THIS *QUO WARRANTO* PETITION WHICH RELATES TO THE RESPONDENT'S ALLEGED DEFICIENT SUBMISSIONS OF HER STATEMENT OF ASSETS AND LIABILITIES AND NET WORTH.— Finally, and maybe most importantly, my actions and words complained of are wholly extraneous and immaterial to the facts and issues raised in this *Quo Warranto* petition which specifically relates to respondent's alleged deficient submissions of her Statement of Assets, Liabilities and Net Worth (SALN). That I cannot be impartial and decide this case on the merits based on the facts and evidence on record cannot be presumed simply on account of my unpleasant "history" with respondent. This Resolution is intended to serve as a record upon which all well-informed and reasonable observers who care to know the facts can make their own judgment on whether my acts and words rise to the level of a disqualifying bias or prejudice. To borrow from Chief Justice Rehnquist, I imagine that other reasonable observers may arrive at a legal conclusion contrary to mine, and that there may be sound arguments that plausibly lean towards my recusal.

Supreme Court E-Library

Perhaps if I were preoccupied with avoiding controversy and would like to act in favour of simple convenience, I may as well recuse. My conscience, aided by my self-examination and analysis of the pertinent laws and the facts of the present case, nevertheless impels me otherwise.

MARTIRES, *J.*, *separate opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *QUO WARRANTO*; PROPER REMEDY TO OUST RESPONDENT FROM OFFICE, IMPEACHMENT NOT THE SOLE MEANS OF REMOVING A PURPORTED IMPEACHABLE OFFICER.— It has been abundantly established that the Constitution does not preclude other modes of removing an "impeachable officer" from office. At the risk of being repetitive, an impeachment is not the sole means of ousting a purported impeachable officer, particularly when it is alleged that the said officer failed to satisfy the requirements of her office, thereby making her appointment void, or has not committed or alleged to have committed the impeachable offenses mentioned in the Constitution.A petition for *quo warranto* is concededly vastly different from impeachment proceedings. Unlike impeachment, *quo warranto* does not pertain to acts committed by the impeachable officer during his term. It involves, instead, ineligibility of the person to hold public office. That ineligibility triggers the removal of one who had already assumed an office. It is, therefore, an effective mechanism even as against a person occupying a position reserved for impeachable officer. A *quo warranto* action is the sole and exclusive method to try title or right to public office, and is addressed to preventing a continued exercise of authority unlawfully asserted, rather than to correct what has already been done under the authority.

2. ID.; ID.; ID.; ID.; JBC WAS NOT AWARE OF RESPONDENT'S NON-SUBMISSION OF ALL THE REQUIRED SALNS WHEN IT INCLUDED THE RESPONDENT AS A NOMINEE FOR CHIEF JUSTICE.— The Judicial and Bar Council is a constitutional body. It therefore draws its organic functions and duties from the fundamental law. x x x As previously stated, the discretion or authority of the JBC to nominate members to the Judiciary is not unbridled. In the exercise of its recommending function, the JBC must

ascertain that the nominee it seeks to include in the shortlist of nominees has satisfied all the qualifications for membership in the Judiciary as stated in the fundamental law.In this regard, Section 7, Article VIII of the 1987 Constitution provides for the qualifications required of a member of this Court, x xx After the 20 July 2012 En Banc meeting, the records are silent as to how the candidates, including respondent, were considered to have complied, whether completely or substantially, with the documentary requirements particularly on the SALNs. Based on the testimonies of the members of the JBC during the hearing before the House of Representatives —– Committee on Justice, however, it appears that the JBC was prevented from making a judicious and intelligent decision with respect to respondent's compliance with the SALN requirements due to incomplete information relative thereto.During the hearing on 12 February 2018, Atty. Annaliza S. Ty-Capacite of the JBC acknowledged that the respondent, instead of complying with the SALN requirements, sent the subject 23 July 2012 letter explaining the reason for her failure to submit her missing SALNs, x x x Furthermore, it would appear that at least one regular member of the JBC was unaware of the existence of respondent's 23 July 2012 letter. When asked regarding respondent's compliance with the SALN requirements, Atty. Maria Milagros N. Fernan-Cayosa, a regular member of the JBC, repeatedly denied reading the subject letter. x x x Later during the hearing, Atty. Ty-Capacite also denied reading the subject letter, thus: x x x MS. TY-CAPACITE. Your Honors, truth to tell, even up to this time, **I cannot recall having read that letter. I just… I just relied on the report of the ORSN** wherein there is… there is a …The report referred to by Atty. Ty-Capacite is the report from the Office of Recruitment, Selection, and Nomination (*ORSN*) on 24 July 2012 which indicated that the respondent substantially complied with the requirements of the JBC. The said report, however, was not signed by any officer of the ORSN and, thus, the truth and veracity of the contents thereof are highly dubious. x x x From the foregoing, it is clear that the JBC was prevented from scrutinizing and making a proper determination of respondent's qualification as the members thereof were not made aware and were misinformed about respondent's compliance with the JBC requirements.

3. ID.; ID.; ID.; ID.; ONE-YEAR PRESCRIPTIVE PERIOD UNDER SECTION 7, RULE 66 OF THE RULES OF COURT

Supreme Court E-Library

FOR BRINGING AN ACTION FOR *QUO WARRANTO* CANNOT APPLY TO THE SOLICITOR GENERAL; CASE AT BAR.— Frankly, the debate on when to reckon the one-year period of prescription in this case is an exercise in futility. There could not be a proper determination of such reckoning point when the period of prescription, as discussed above, is not even applicable in the first place. To reiterate, there are two reasons why the one-year period in Section 11 of Rule 66 cannot apply to the Solicitor General (or the public prosecutor): *first,* the conditions that qualify the commencement of the running of the period, i.e., deprivation of the petitioner's right to the public office and taking over such position which is usurped by another, do not appropriately apply to the Solicitor General or the State which he represents; and *second,* prescription does not lie against the State.In any case, assuming for the sake of argument that prescription applies, the reckoning point of counting such period should be the discovery by the OSG of the defect in the respondent's right to the office. Such interpretation is with jurisprudential precedent.

4. **ID.; ID.; ID.; ID.; ID.; EVEN IF IT WERE TO BE ASSUMED THAT THE ACTION HAD PRESCRIBED, THE COURT IS VESTED WITH THE PREROGATIVE TO SUSPEND ITS OWN RULES WHEN THE PETITION RAISES AN ISSUE OF TRANSCENDENTAL IMPORTANCE OR WHEN PARAMOUNT PUBLIC INTEREST IS INVOLVED; CASE AT BAR.—** Even if it were to be assumed that the action had prescribed, the rule on prescription of action for *quo warranto*, or any rule of procedure for that matter, may, at the discretion of the Court, be suspended when the petition is able to fashion out an issue of transcendental importance or when paramount public interest is involved. There can be little quibble that the eligibility of one who was appointed to the highest office in the judiciary involves a matter of transcendental importance to the public.Not only is the issue one of first impression, it also involves a highly sensitive office so much so that the fundamental law even adopted a policy of least resistance so as not to hamper the discharge of the important functions of the office. It cannot be denied that the task of the Chief Justice, as the head of the judiciary who assumes the lead role in dispensing justice in the country, is as much important as its effect to the public in general. A decision on the petition,

therefore, whether in favor or against it, would have far-reaching implications to the general public and may necessitate the promulgation of rules for the proper guidance of the bench, the bar, and the public in future analogous cases.

5. LEGAL AND JUDICIAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; JUSTICES/ JUDGES; DUTY TO OBSERVE AND MAINTAIN THE ESTEEM DUE TO COURTS AND TO JUDICIAL OFFICERS; RESPONDENT'S HOSTILE STANCE TOWARDS THIS COURT THROUGHOUT THE ORAL ARGUMENT HELD LAST 10 APRIL 2018 AND HER ATTEMPT TO MISLEAD THE PUBLIC BY MAKING IT APPEAR IT WAS THIS COURT WHICH COMPELLED HER TO APPEAR THEREIN, MANIFEST HER CHARACTER WHICH INDICATE A PROPENSITY TO DISREGARD SOUND ETHICAL STANDARDS THAT COMPROMISE INTEGRITY; CASE AT BAR.— ***More disconcerting is the way respondent attempted to mislead the public by making it appear it was this Court which compelled her to appear in the oral arguments, when it was respondent herself who filed an ad cautelam motion requesting the conduct of oral arguments, as expressly admitted by her counsel:*** x x x It behooves me to remind respondent of her duty to observe and maintain the esteem due to courts and to judicial officers, as embodied in the Code of Professional Responsibility (*CPR*);otherwise, she risks diminishing the public's respect for the law and the legal processes, as well as the public's confidence in the courts as bastions of justice. The CPR ensures, among others, that only those whose integrity are intact may be allowed to facilitate the attainment of justice. Integrity, while evading precise definition, has been linked to an applicant's good reputation for honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards.Put simply, it is the quality of a person's character.Being related to morality and the internal processes of the human mind, it can only be assessed and determined through one's outward acts. Sadly, respondent's demeanor and conduct fell short of the ethics expected from the highest magistrate of the land and exposed the courts to diminution of public respect when she failed to extend courtesy, fairness, and candor toward her fellow justices during the oral arguments.This, to me, calls into question her

Supreme Court E-Library

integrity, past and present. The foregoing also validates the finding that, even at present, she lacked this constitutionally mandated quality when she assumed office as Associate Justice of the Supreme Court and thereafter as Chief Justice. I apply by analogy here the *res inter aliosacta* evidentiary rule in our Rules of Court – that while evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or similar thing at another time, it may be received to prove an identity, a scheme, a habit, or the like.Similarly, the above manifestations of respondent's character indicate a propensity to disregard sound ethical standards that compromise integrity, which may be inherent and likely to have existed at the time of her appointment, when respondent made questionable decisions relating to the non-submission and non-filing of her SALNs.

VELASCO, JR., *J.*, *concurring and dissenting opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; REMEDY AVAILABLE EVEN AGAINST IMPEACHABLE OFFICERS.— Section 2, Article XI of the 1987 Constitution provides that a member of the Supreme Court, among other officials, may be removed from office by way of impeachment proceedings "for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust," x x x Nothing in the adverted provision, however, precludes a resort to *quo warranto* as a means to unseat a member of this Court or any impeachable officer. After all, a *quo warranto* and impeachment proceedings are anchored on different grounds and governed by different procedural mechanisms. On one hand, a removal by impeachment presupposes that the officer subject of the proceeding had *legally assumed his office*, which in turn means he had all the qualifications and none of the qualifications therefor. His assumption to office was legal but a *subsequent act (i.e.,* culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust) rendered him unworthy to remain in office and so he must be removed by impeachment proceedings. On the other hand, Section 1, Rule 66 of the Rules of Court, provides that a *quo warranto* proceeding, is brought against a person who is

alleged to have usurped, intruded into, or unlawfully held or exercised a public office. x xx*Quo warranto* is thus available against a person who had *no legal right to hold the office from the outset*, his appointment thereto being void *ab initio*, considering that he does not have all or some of the qualifications prescribed by the Constitution or the law for the position. As to him, no impeachment proceeding is required for his removal as he is deemed never to have assumed and occupied the office in the first place.

2. POLITICAL LAW; CONSTITUTION; JUDICIAL AND BAR COUNCIL (JBC); PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF ITS CONSTITUTIONAL DUTY IN SCREENING AND SELECTING APPLICANTS TO THE JUDICIARY; NULLIFICATION OF THE JBC'S NOMINATION IS A CONDITION *SINE QUA NON* TO THE FILING OF A PETITION FOR *QUO WARRANTO* AGAINST A MEMBER OF THE SUPREME COURT.— As a constitutional body vested with the power and wide latitude in screening and selecting applicants to the Judiciary, the JBC is more than entitled to the presumption of regularity in the performance of its constitutional duty. Its determination as to respondent's possession of all the qualifications and eligibilities for appointment to this Court must accordingly be accorded with respect; it cannot be capriciously set aside without even impleading the council and allowing it to justify its action.To my mind then, **the nullification of the JBC's nomination** of respondent to a position in this Court **is a precondition before the Court could grant a *quo warranto* petition** and declare her without right or claim to post she holds on the ground of ineligibility. As there was no attempt to assail and contest, much less, nullify the JBC's findings that respondent possessed all the qualifications to be appointed to this Court, **the independent constitutional body's determination of the respondent's eligibility to her judicial post must stand.** The **prematurity** of this recourse becomes all the more plain considering the fact that the JBC was not given the opportunity to review its own decision. x x x This is a prerequisite to afford due process to the JBC to defend its decision to nominate the official based on its findings and decision that the latter possesses all the qualifications and none of the disqualifications prescribed by the Constitution and pertinent laws. Otherwise, the constitutional duty and the

Supreme Court E-Library

importance of the JBC as a constitutional body will be denigrated and downplayed as its actions or decisions can easily be circumvented though a petition for *quo warranto* without giving it its day in court. The bottomline is the nullification of the nomination of the challenged official by the JBC should be first obtained to pave the way for the ouster of an unfit or unqualified official. A becoming regard of the respondent's position as the Chief Justice of this Court and the head of the government's Judicial Department, requires, at the very least, the strictest compliance with all the requisites before *quo warranto* proceedings should be initiated.

CARPIO, *J.*, *dissenting opinion*:

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; REMOVAL OF IMPEACHABLE OFFICIALS; NON-FILING OF A SALN WITHIN THE PERIOD PRESCRIBED BY LAW CLEARLY CONSTITUTES A VIOLATION OF AN EXPRESS CONSTITUTIONAL MANDATE; THE REPEATED NON-FILING OF A SALN THEREFOR CONSTITUTES CULPABLE VIOLATION OF THE CONSTITUTION AND BETRAYAL OF PUBLIC TRUST, WHICH ARE GROUNDS FOR IMPEACHMENT.— Considering that the requirement of filing a SALN within the period prescribed by law is enshrined in the Constitution, the non-filing of SALN within the prescribed period clearly constitutes a violation of an express constitutional mandate. **The repeated non-filing of SALN therefore constitutes culpable violation of the Constitution and betrayal of public trust, which are grounds for impeachment under the Constitution**. Culpable violation of the Constitution must be understood to mean "willful and intentional violation of the Constitution and not violations committed unintentionally or involuntarily or in good faith or through an honest mistake of judgment."The framers of the Constitution, particularly the Committee on Accountability of Public Officers, "accepted the view that [culpable violation of the Constitution] implied 'deliberate intent, perhaps even a certain degree of perversity for it is not easy to imagine that individuals in the category of these officials would go so far as to defy knowingly what the Constitution commands.'"Betrayal of public trust, on the other hand, refers to acts "less than criminal but must be attended by

bad faith and of such gravity and seriousness as the other grounds for impeachment," as the Court held in *Gonzales III v. Office of the President of the Philippines.*

2. **ID.; ID.; ID.; ID.; IT IS UP TO CONGRESS, WHICH IS THE CONSTITUTIONAL BODY VESTED WITH THE EXCLUSIVE AUTHORITY TO REMOVE IMPEACHABLE OFFICERS, TO DETERMINE IF THE CULPABLE VIOLATION OF THE CONSTITUTION OR BETRAYAL OF PUBLIC TRUST, COMMITTED BEFORE APPOINTMENT AS AN IMPEACHABLE OFFICER, WARRANTS REMOVAL FROM OFFICE, CONSIDERING THE NEED TO MAINTAIN PUBLIC TRUST IN PUBLIC OFFICE.—** Since the repeated failure to file the SALN constitutes culpable violation of the Constitution and betrayal of public trust, it is immaterial if the failure to file the SALN is committed before appointment to an impeachable office. However, it is up to Congress, which is the constitutional body vested with the exclusive authority to remove impeachable officers, to determine if the culpable violation of the Constitution or betrayal of public trust, committed before appointment as an impeachable officer, warrants removal from office considering the need to maintain public trust in public office. For instance, if an impeachable officer is discovered to have committed treason before his appointment, it is up to the impeachment court to determine if the continuance in office of the impeachable officer is detrimental to national security warranting removal from office.

3. **ID.; ID.; ID.; ID.; ID.; RESPONDENT CAN BE HELD LIABLE FOR HER REPEATED NON-FILING OF SALNs WHILE SHE WAS EMPLOYED AS A UP COLLEGE OF LAW PROFESSOR; CASE AT BAR.—** Based on this letter [23 July 2012 letter to JBC], respondent made it appear that she had filed her SALNs with the UP HRDO during her employment as a UP College of Law Professor but she could no longer find her personal copies of her SALNs. Respondent manifested to this Court in her Memorandum that she "religiously filed her SALNs." If indeed she had religiously filed her SALNs but her personal copies were lost, she could easily have secured a Certification from the UP HRDO that she had filed her SALNs. The requirement to submit SALNs was announced through advertisement in a newspaper by the JBC. Respondent never secured a certification from the UP HRDO as to her SALNs on

Supreme Court E-Library

file in that office. Her failure to secure such certification exposes as a misrepresentation her claim that she could not find her SALNs. For how could she find her personal copies of her SALNs when there is no record that she filed her SALNs for the years 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005, and 2006 with the UP HRDO? Clearly, respondent failed to adduce satisfactory evidence to rebut and overthrow the OSG's *prima facie* evidence of her failure to file her SALNs for several years while she was teaching in the UP College of Law. Respondent conveniently alleges that she ***religiously filed*** her SALNs without presenting any evidence to prove such allegation. Suffice to state, mere allegation is not proof. This means that the OSG's *prima facie* evidence establishing respondent's repeated failure to file her SALNs remains uncontradicted, and thus, respondent can be held liable for her repeated non-filing of SALNs while she was employed as a UP College of Law Professor.

4. ID.; ID.; ID.; ID.; ID.; ID.; IN LIGHT OF RESPONDENT'S PREVIOUS FAILURE TO FILE HER SALNS FOR SEVERAL YEARS WHILE SHE WAS A UP COLLEGE OF LAW PROFESSOR, HER FAILURE TO FILE HER SALN UPON ASSUMING OFFICE IN 2010 AS ASSOCIATE JUSTICE OF THE SUPREME COURT CONSTITUTES CULPABLE VIOLATION OF THE CONSTITUTION, A VIOLATION COMMITTED WHILE SHE WAS ALREADY SERVING AS AN IMPEACHABLE OFFICER; CASE AT BAR.— The Constitution, law, and rules clearly require that the sworn entry SALN "must be reckoned as of his/her first day of service" and must be filed "within thirty (30) days after assumption of office." x x x Since respondent took her oath and assumed her position as Associate Justice of the Supreme Court on 16 August 2010, she was required to file under oath her SALN within thirty (30) days after assumption of office, or until 15 September 2010, and the **statements must be reckoned as of her first day of service, pursuant to the relevant provisions on SALN filing.** However, respondent failed to file a SALN containing sworn statements reckoned as of her first day of service within thirty (30) days after assuming office. **While she allegedly submitted an "entry SALN" on 16 September 2010,it was unsubscribed and the statements of her assets, liabilities and net worth were reckoned as of 31 December 2009, and**

not as of her first day of service, or as of 16 August 2010. x x x In other words, respondent failed to file the required SALN upon her assumption to office, which is a clear violation of Section 17, Article XI of the Constitution. In light of her previous failure to file her SALNs for several years while she was a UP College of Law Professor, her failure to file her SALN upon assuming office in 2010 as Associate Justice of this Court constitutes culpable violation of the Constitution, **a violation committed while she was already serving as an impeachable officer.**

5. ID.; ID.; ID.; A SITTING IMPEACHABLE OFFICER CAN BE REMOVED FROM OFFICE ONLY THROUGH IMPEACHMENT BY CONGRESS; THE CONSTITUTIONAL PROVISION MANDATING REMOVAL ONLY BY IMPEACHMENT IS THE STRONGEST GUARANTEE OF SECURITY OF TENURE.— Section 2, Article XI of the Constitution expressly provides the mode of removal from office of "the President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman." Removal from office of these public officers shall only be by impeachment, and not through any other mode. x x x The provision mandating removal only by impeachment is "**the Constitution's strongest guarantee of security of tenure. x x x** A sitting impeachable officer can be removed from office ***only*** through impeachment by Congress. As I have stated in a Dissenting Opinion, the sole disciplining authority of all impeachable officers, including members of this Court, is Congress. x x x The House impeaches, and the Senate convicts. This is the ***only*** method allowed under the Constitution to remove a member of this Court. To allow any other method is to re-write the Constitution. To permit this *quo warranto* petition to remove an incumbent member of this Court is to violate the Constitution.The grounds for impeachment are: culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, and betrayal of public trust.The catch-all phrase "betrayal of public trust" covers every conceivable misconduct by an impeachable officer, whether committed while in government service before the appointment, at the time of application for the office, or after appointment to office. **Any misrepresentation on material matters at the time of application for office is an integrity issue subsumed**

Supreme Court E-Library

under the phrase "betrayal of public trust." As I pointed out earlier, the repeated failure to file SALNs constitutes culpable violation of the Constitution and betrayal of public trust, grounds for removing an impeachable officer. While the failure to file SALNs may also raise questions on the integrity, and thus the qualification, of an applicant for Justice of the Supreme Court, the relevant applicable violation, for purposes of removing such impeachable officer once already in office, is culpable violation of the Constitution and betrayal of public trust. Only Congress, through the impeachment process, can remove an impeachable officer on these grounds. If a court finds that an impeachable officer has committed an impeachable act, the court should refer the matter to Congress, for Congress to exercise its exclusive mandate to remove from office impeachable officers. No court, not even this Court, can assume the exclusive mandate of Congress to remove impeachable officers from office.

DEL CASTILLO, *J.*, *dissenting opinion*:

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; REMOVAL OF IMPEACHABLE OFFICIALS; THE CONSTITUTION HAS PUT IN PLACE MECHANISMS FOR THE REVIEW OF THE ELIGIBILITY OF APPOINTEES TO IMPEACHABLE OFFICES OF THE INVALIDITY OF THEIR APPOINTMENTS.— In arguing that impeachment is not the only mode for the removal of impeachable officers, the SolGen cites the *2010 Rules of the Presidential Electoral Tribunal,* which authorizes the filing of election contests against the President or the Vice-President. As an election contest (filed either as an election protest or a *quo warranto* petition) before the PET could result in the ouster of an impeachable official, the SolGen contends that the PET Rules essentially recognize the availability of a writ of *quo warranto* against an impeachable officer. The *ponencia* agrees with the SolGen's reasoning. I agree with the *ponencia* but only to the extent **that, under the 1987 Constitution, electoral contests under the PET Rules prove that impeachment is not the sole mode of removing from office impeachable officers**. This is one of the other modes of removal that I referred to in Part A of this Dissent. That a particular class of impeachable officers, *i.e.*, the *elective* ones, may be ousted from office through *quo warranto* proceedings,

however, does not warrant extending the same rule to the *appointive* impeachable officers. The Court's *quo warranto* jurisdiction over *elective* impeachable officials obtains, not on the basis of the general grant of jurisdiction under Section 5(1), Article VIII of the Constitution, but on the specific grant under the last paragraph of Section 4, Article VII of the Constitution, which reads: Section 4. x x x **The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President**, and may promulgate rules for the purpose.Given this *specific constitutional mandate,* there is practically no discretion left for the Court but to assume jurisdiction over *quo warranto* petitions against (and only against) this particular class of impeachable officials. Conversely, when jurisdiction is asserted on the basis of the general grant under Section 5(1), Article VIII of the Constitution, the Court ought to tread more carefully as there may be equally, if not more, compelling constitutional principles at play. Parenthetically, there can be no equal protection issues that may arise in this regard as it is the Constitution itself that provides for a different treatment as far as *elective* impeachable officers are concerned by giving this Court exclusive jurisdiction over presidential electoral contests. It is also for this reason that I defend my position from any insinuation that it carves out a special rule for appointive impeachable officers by effectively clothing them with immunity against *quo warranto* petitions. In plain and simple terms, **it is the Constitution itself which vests this Court (sitting as the PET) jurisdiction over *quo warranto* proceedings against *elective* impeachable officers**. Given the specific constitutional grant of *quo warranto* jurisdiction over *elective* impeachable officers, the 2010 PET Rules should not be used as authority to claim a similar jurisdiction over *appointive* impeachable officers.

2. ID.; ID.; ID.; ID.; *QUO WARRANTO* IS A RECOGNIZED MODE FOR REMOVAL OF THE PRESIDENT OR THE VICE-PRESIDENT ONLY WITHIN THE CONTEXT OF ELECTORAL CONTESTS.— *The cited quo warranto cases against the President, an impeachable officer, are jurisprudentially irrelevant to this case.* It is for this reason that I find the SolGen's reliance on *Lawyers League for a Better Philippines v. Aquino* and *Estrada v. Arroyo* misplaced. The SolGen claims these cases prove that this proceeding is not the

Supreme Court E-Library

first time the Court entertained a *quo warranto* petition against an impeachable officer. ***Quo warranto* is a recognized mode for removal of the President or the Vice-President *only within the context of electoral contests*.** Significantly, neither *Lawyers League* nor *Estrada* involved presidential elections. These cases were filed in the aftermath of turbulent times in our country's history, the 1986 EDSA People Power and the 2001 EDSA People Power, respectively, both of which resulted in the removal of incumbent presidents. Indeed, it is this special circumstance – the uncommon way of removing a sitting President from office and installing a new one by a mode other than election– that renders these cases jurisprudentially irrelevant as far as the present proceeding is concerned.

3. ID.; ID.; ID.; ID.; ID.; ABSURD CONSEQUENCES WHEN *QUO WARRANTO* JURISDICTION AGAINST APPOINTIVE IMPEACHABLE OFFICERS IS ALLOWED.— The *ponencia* also fails to explain the inconsistent and absurd consequences of a ruling allowing *quo warranto* petitions against appointive impeachable officers. There is nothing to indicate that the Constitution allowed two types of *quo warranto* proceedings that may be commenced against the President or Vice-President: one within the context of an electoral contest under Section 4, Article VII of the Constitution, and another outside of it pursuant to Section 5(1), Article VIII of the Constitution. Assuming this is what the *ponencia* contemplated in declaring that the general *quo warranto* jurisdiction may be asserted against impeachable officers, how then do we reconcile the conflict between the express general grant of jurisdiction over *quo warranto* petitions to this Court and the implied immunity recognized in favor of the President who is made respondent thereto? May the President even assert his/her immunity against claims that he/she is ineligible for office in the first place? From this standpoint, it can be seen that the *ponencia's* position opens up a possibility of a constitutional crisis. Another complication is the concurrent jurisdiction that this Court, the Court of Appeals (CA), and the Regional Trial Courts (RTC) have over *quo warranto* petitions. By allowing *quo warranto* proceedings against impeachable officers, the *ponencia* grants an RTC judge or CA justices the power to order the removal of a Member of this Court. This could render ineffective the Court's constitutional power to discipline judges of lower courts and result in the

perversion of the doctrine of hierarchy of courts. The *ponencia* distinguishes impeachment from *quo warranto* to justify a ruling that the pendency of one proceeding did not preclude the commencement of the other. It reasons that "[i]t is not legally possible to impeach or remove a person from an office that he/she, in the first place, does not and cannot legally occupy."In contract law terms, the *ponencia* likens an appointment nullified through a *quo warranto* writ to a contract that is void *ab initio*. Nevertheless, the *ponencia* also acknowledges that "[t]he remedies available in **a *quo warranto* judgment do not include a correction or reversal of acts taken under the ostensible authority of an office** or franchise. **Judgment is limited to the ouster or forfeiture** and may not be imposed retroactively upon prior exercise of official or corporate duties." The result of a *quo warranto* judgment is therefore no different from a judgment of conviction in an impeachment: the removal of the public officer. In both cases, the acts of the ousted officer remain valid on account of his/her ostensible authority. Thus, there is no significance in making a distinction between the two proceedings when the result and practical effect of both is the same.

4. **ID.; ID.; ID.; ID.; THE REVIEW OF THE QUALIFICATIONS OF IMPEACHABLE OFFICIALS IS PRECISELY THE FUNCTION OF THE PET, THE COMAPPT AND THE JBC.—** Under Section 4, Article VII of the Constitution, the PET is the sole judge of all contests relating to the election, returns, and *qualifications* of the President or Vice-President. The creation of the PET is necessitated by the fact that there is no body that conclusively passes upon the qualifications of presidential and vice-presidential candidates. The Comelec initially reviews the candidates's qualifications when it receives their certificates of candidacy (*CoCs*) for these positions, but this review is not binding particularly since the Comelec only has a ministerial duty of receiving the CoCs. Along the same lines, the Constitution has tasked the Judicial and Bar Council (*JBC*) and the ComAppt to perform a similar function with respect to appointees to the other constitutional offices, specifically, the JBC for the Members of the Supreme Court and the Ombudsman,and the ComAppt for the Chairmen and Commissioners of the CSC, the Comelec, and the COA.Indeed, the JBC's nominations and the ComAppt's confirmations are

Supreme Court E-Library

critical for the exercise of the President's appointment power that their absence or disregard renders the appointment invalid. Corollary, the JBC and the ComAppt's functions serve as a check on the exercise of the President's appointing power. The JBC, in particular, is an innovation of the 1987 Constitution to remove, if not diminish, the highly political nature of presidential appointments. x x x The determination of an elected candidate or an appointee's eligibility and qualification is therefore primarily a function that the Constitution decreed is to be discharged by the PET, the JBC, and the ComAppt.

5. ID.; ID.; ID.; ID.; ID.; REMEDIES AVAILABLE AGAINST AN APPOINTIVE IMPEACHABLE OFFICER WHO HAS SERIOUS ELIGIBILITY ISSUES UNCOVERED AFTER HIS/HER NOMINATION OR CONFIRMATION AND ASSUMPTION TO OFFICE.— If, for example, the nomination or confirmation was made notwithstanding the JBC or the ComAppt's knowledge of the ineligibility or ground for disqualification, a *certiorari* petition may be resorted to invoking, not the *certiorari* jurisdiction under Section 5(1), Article VIII of the Constitution, but the expanded power of judicial review under the second paragraph of Section 1, Article VIII of the Constitution. The petition should implead the JBC or the ComAppt, as the case may be, since the central issue is whether or not the agency committed grave abuse of discretion amounting to lack or excess of jurisdiction for nominating or confirming an ineligible appointee. A *certiorari* petition against the vetting agency or the appointing authority does not violate the rule that title to public office may not be contested, except directly, by *quo warranto* proceedings. The Court has already explained the distinction between the two proceedings in *Aguinaldo v. Aquino*.This Court may also review the JBC's acts pursuant to its supervisory authority over the Council to determine whether or not JBC complied with the laws and rules. Relatedly, the *ponencia* claims that the Court, while "*[w]earing its hat of supervision*," is "empowered to inquire into the processes leading to [the] respondent's nomination for the position of Chief Justice x x x and to determine whether, along the line, the JBC committed a violation x x x." To me, it seems rather odd for the Court to exercise its supervisory power over the JBC *in a quo warranto proceeding*, all the more so when *the JBC itself*

was not impleaded in the case. Assuming that the ground for disqualification is discovered only after the applicant has been nominated or confirmed and has already assumed office, then resort may be had through that ultimate process of exacting accountability from the highest officials of our land: *impeachment*.

6. ID.; ID.; ID.; ID.; ID.; IMPEACHMENT IS THE REMEDY TO UNSEAT INELIGIBLE APPOINTEES TO THE CONSTITUTIONAL OFFICES.— Impeachment isessentially a measure to exact accountability from a public officer. As the *ponencia* puts it, impeachment is "a political process meant to vindicate the violation of a public's trust."The impeachable offenses are limited to six: culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, and betrayal of public trust.Treason, bribery, graft and corruption are easily understandable concepts particularly when we refer to relevant statutory provisions, but culpable violation of the Constitution, other high crimes, and betrayal of public trust all elude precise definition. In fact, the last ground – betrayal of public trust – was deemed to be a catch-all phrase to cover any misconduct involving breach of public trust. Thus, the determination of what acts (or omissions) may constitute an impeachable offense is one of the few purely political questions that is left to Congress' determination and is beyond the pale of judicial review. Nevertheless, it is neither improbable nor illogical to suppose that a public officer's ineligibility for office (whether for lack of qualification or possession of grounds for disqualification) can be considered an act which constitutes an impeachable offense. The *ponencia* itself recognizes this. Although "culpable violation of the Constitution," "other high crimes," and "betrayal of public trust" escape precise definitions, their common denominator is that they "obviously pertain to 'fitness for public office.'" Thus, it can be said that a public officer who does not possess the minimum constitutional qualifications for the office commits a violation of the Constitution that he/she has sworn to uphold or, at the very least, betrays the public trust when he/she assumes the position without the requisite eligibility. **Impeachment then becomes the mode by which we exact accountability from the public officer who assumes a constitutional office notwithstanding**

Supreme Court E-Library

his/her ineligibility. When an appointive impeachable officer is alleged to be ineligible, it makes no sense to distinguish between an impeachment proceeding and a *quo warranto* proceeding because the latter proceeding is subsumed in the former. After all, "**qualifications for public office are *continuing requirements*** and must be possessed not only at the time of appointment or assumption of office but during the officer's entire tenure." If a public officer was ineligible upon assumption of office (either upon appointment or upon election), then he/she carries this ineligibility throughout his/her tenure and is unfit to continue in office. **Thus, an appointive impeachable officer who fails to meet the constitutional qualifications in the first place also commits an act that may amount to an impeachable offense.**

7. ID.; ID.; ID.; ID.; ID.; ID.; THE COURT IS PRECLUDED FROM ASSUMING JURISDICTION OVER *QUO WARRANTO* PROCEEDINGS BECAUSE CONGRESS HAS PRIMARY JURISDICTION OVER THE IMPEACHMENT PROCEEDINGS; CASE AT BAR.— Even supposing that I am not averse to this Court having *quo warranto* jurisdiction over impeachable officers, I believe **this Court is still precluded from assuming jurisdiction based on the doctrine of primary jurisdiction.** Although the doctrine is primarily within the realm of administrative law, it may be applied by analogy in this case. The matter of the respondent's ineligibility is already before the Congress as one of the charges in the Articles of Impeachment. The House Committee on Justice overwhelmingly ruled, by a vote of 33-1, in favor of finding probable cause to impeach the respondent. The Articles of Impeachment have been transmitted to the Committee on Rules so that the matter may be calendared and submitted to the plenary for its vote. That it is speculative whether the respondent may be held accountable because no impeachment has yet taken place is beside the point. The impeachment proceeding has commenced, and Congress has taken cognizance thereof with its finding of probable cause. Thus, it behooves this Court to exercise judicial restraint and accord respect to the processes that the Constitution has lodged within the powers ofa co-equal department.

8. ID.; ID.; ID.; ID.; ID.; ID.; IMPEACHMENT IS THE DELICATE MECHANISM PROVIDED BY THE

CONSTITUTION TO BALANCE COMPELLING INTERESTS.— In our scheme of constitutional values, the separation of powers, the independence of constitutional bodies, and the system of checks and balance are placed on a higher plane. Precisely in order to uphold these principles, the framers have provided a strict, difficult, and cumbersome process in the Constitution for their removal from office. The *ponencia* turns constitutional logic in its head by justifying resort to *quo warranto* because impeachment is a long and arduous process that may not warrant Congress' time and resources particularly when the respondent public officer "*may clearly* be unqualified under existing laws and case law." A *quo warranto* proceeding against an impeachable officer thus becomes nothing more than an impermissible short cut. Impeachment is the delicate balancing act the Constitution has put in place to ensure two compelling interests are promoted: the need to guarantee the independence of constitutional bodies in the discharge of their mandate on one hand, and the need to enforce accountability from public officers who have failed to remain faithful to their oath to uphold and defend the Constitution on the other. Throwing *quo warranto* into the milieu unsettles the constitutional design and may ultimately end up throwing off the system that the Constitution has put in place.

PERLAS-BERNABE, *J., separate opinion*:

1. POLITICAL LAW; CONSTITUTION; JUDICIAL DEPARTMENT; JUDICIAL AND BAR COUNCIL (JBC); DETERMINATION OF A CANDIDATE'S "INTEGRITY" AS A SUBJECTIVE QUALIFICATION FOR APPOINTMENT IN THE JUDICIARY LIES WITHIN THE DISCRETION OF THE JBC.— [T]he Solicitor General disputes the eligibility of respondent through this petition for *quo warranto*,claiming that she is not a person of "proven integrity" because she had not only failed to submit all her SALNs as required by the JBC, but more so, failed to file her SALNs in accordance with law.The OSG even paints a picture of misrepresentation as it further argues that respondent had the legal obligation to disclose her failure to file her SALNs at least eleven (11) times, and that had she informed the Council of such fact then she should not have been included in the shortlist in the first place. x x x While the OSG conveys valuable insights,

Supreme Court E-Library

it is my view that the determination of a candidate's "integrity" as a subjective qualification for appointment lies within the discretion of the JBC. As thoroughly discussed above, the JBC was created precisely to screen the qualifications of Judiciary candidates, and in line therewith, promulgates its own guidelines and criteria to ascertain the same. It should therefore be given the sole prerogative to determine the import of a requirement bearing on an applicant's subjective qualification (such as the submission of all SALNs for those in the government service) as it is after all, the authority who had imposed this requirement based on its own criteria for the said qualification. Likewise, it is within the JBC's sphere of authority to determine if non-compliance with the legal requirements on the filing of SALNs – assuming that respondent had indeed failed to file her SALNs as prescribed by law – is *per se* determinative of one's lack of "proven integrity." While it is true that the 1987 Constitution states that "[a] public officer or employee shall, upon assumption of office and as often thereafter as may be requiredby law, submit a declaration under oath of his assets, liabilities, and net worth," it is not sufficiently clear that the solitary breach of this requirement would virtually negate one's integrity as a qualification for appointment to the Judiciary.

2. **ID.; ID.; ID.; ID.; ID.; WHEN THE JBC IMPOSES A REQUIREMENT THAT BEARS ON AN APPLICANT'S SUBJECTIVE QUALIFICATION, SUCH AS INTEGRITY, THE TREATMENT AND APPLICATION OF SAID REQUIREMENT BEING A CONCRETE EMBODIMENT OF THE JBC'S INTERPRETATION SHOULD BE DEEMED AS "POLITICAL QUESTIONS," WHICH ARE GENERALLY NON-JUSTICIABLE, UNLESS TAINTED WITH GRAVE ABUSE OF DISCRETION.—** At this juncture, it is apt to point out that "integrity," as well as the other subjective qualifications of "competence," "probity," and "independence," are personal qualities that are hardly determinable from the facts on record. Unless they are first concretized into operable guidelines and criteria, the determination of the same would be clearly subject to varied interpretation. **The nature of these subjective qualifications starkly contrasts with the qualifications of age, natural-born citizenship, and years of legal practice,which are inherently objective in nature**. Logically speaking, the presence or absence of any of these

objective qualifications may be readily established based on the evidence submitted by the parties. Thus, while it is true that the JBC may prescribe the type of document needed to prove the presence of an objective qualification (*i.e.*, a birth certificate, personal data sheet [PDS], or the like), the determination thereof may still be made without any prior need of interpretation. On the other hand, **there is an unavoidable and imperative need to set definable criteria before one may be able to establish the presence or absence of a subjective qualification**; in fact, **the enterprise of interpretation is intrinsically linked to the nature of a subjective qualification**. This is because one cannot ascertain if a candidate is of proven integrity, competence, probity or independence, unless these personal qualities are first interpreted into demonstrable standards therefor. Based on these premises, it is therefore my view that when the JBC imposes a requirement that bears on an applicant's subjective qualification, such as integrity, it ineluctably engages in the enterprise of interpretation. **In so doing, the JBC exercises an inherent policy function and perforce, the treatment and application of said requirement – being a concrete embodiment of the JBC's interpretation – should be deemed as "political questions," which, as earlier stated, are generally non-justiciable, unless tainted with grave abuse of discretion**.

3. **ID.; ID.; ID.; ID.; ID.; ID.; IF THE COURT WERE TO RULE THAT NON-COMPLIANCE WITH A PARTICULAR REQUIREMENT SUCH AS THE FILING OF SALNs WOULD NEGATE THE "INTEGRITY" OF AN APPLICANT, THEN IT WOULD EFFECTIVELY BE MAKING ITS OWN INTERPRETATION OF "INTEGRITY" AS AN ELIGIBILITY QUALIFICATION, AND ARROGATE UNTO ITSELF A POLICY FUNCTION CONSTITUTIONALLY COMMITTED TO THE JBC.—** In this case, if this Court were to rule that non-compliance with a particular requirement – such as the filing of SALNs – would negate the "integrity" of an applicant, then it would effectively be making its own interpretation of "integrity" as an eligibility qualification, and in so doing, arrogate unto itself a policy function constitutionally committed to the JBC. As earlier discussed, a subjective qualification must be first interpreted into definable criteria before a certain candidate may be said to possess or not possess the same. As typified by this case,

Supreme Court E-Library

should this Court assess the import of a particular requirement which bears on one's subjective qualification, it would then be – practically speaking – performing an "initial policy determination" and hence, traversing a "political" (or policy) question that can only be scrutinized under the lens of grave abuse of discretion duly raised in a petition for *certiorari*.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; PROPER REMEDY TO ASSAIL ANY ACT OF GRAVE ABUSE OF DISCRETION ON THE PART OF ANY BRANCH OR INSTRUMENTALITY OF GOVERNMENT; AS IN ALL OFFICIAL ACTS OF GOVERNMENT, A CANDIDATE'S FULL QUALIFICATION FOR APPOINTMENT – WHICH IS MANIFESTED BY HIS OR HER JBC NOMINATION – SHOULD BE ACCORDED WITH THE PRESUMPTION OF VALIDITY, HENCE, SHOULD PREVAIL UNTIL NULLIFIED ON THE GROUND OF GRAVE ABUSE OF DISCRETION DULY RAISED IN A PETITION FOR *CERTIORARI*.— All things considered, it is my opinion that a petition for *certiorari* is the proper remedy to assail the subjective qualifications of a Judiciary appointee. This is because a Judiciary appointee's subjective qualification should always be determined relative to the interpretation, treatment, and application of the standards employed by the JBC. Being the body specifically tasked by the Constitution to recommend appointees to the Judiciary, due deference should be given to the JBC's nomination of a particular candidate. It is understood that when the JBC submits its shortlist of candidates, it has screened those included therein and have so resolved that they have presumably met all the minimum constitutional requirements, including the subjective qualification of "proven integrity." The screening and shortlisting of candidates for appointment are all official acts of the JBC. **Thus, as in all official acts of government, a candidate's full qualification for appointment – which is manifested by his or her JBC nomination – should be accorded with the presumption of validity** and hence, should prevail until nullified on the ground of grave abuse of discretion duly raised in a petition for *certiorari*. Simply put, until that act is set aside in the proper proceeding therefor, the same should be regarded as valid.Besides, a petition for *certiorari* is not only the proper mode of invoking grave

abuse of discretion against the act of any instrumentality of government. Based on recently decided cases, it is also the proper vehicle for invoking the Court's supervisory power over the JBC.

LEONEN, *J.*, *dissenting opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *QUO WARRANTO* PETITION; GRANTING THE PETITION AS A PROCESS TO OUST AN IMPEACHABLE OFFICER AND AS A SITTING MEMBER OF THE COURT, IS A LEGAL ABOMINATION; OUTRIGHT DISMISSAL OF PETITION, PROPER.— The majority attempts to make a distinction between the determination of the qualifications of an applicant to a judicial position and his or her acts after his or her appointment. For acts in relation to the presentation of qualifications, the majority argues that *quo warranto* may be a remedy. For acts after his or her appointment, it is proposed that impeachment and conviction may be the vehicle for an impeachable officer's removal.*Quo warranto* is, therefore, presented as not exclusive of impeachment. This is a distinction which cannot be found in the Constitution. It is likewise contrary to its principles in *Tecson v. Commission on Election* which defined *quo warranto* proceedings as "an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office." x x x *Quo warranto*, as used in this case, will amount to a "removal" of an impeachable public officer. x x x A better reading of the Constitution requires us to read words and phrases in the context of the entire legal document. Thus, the general grant of original jurisdiction for *quo warranto* actions to this Court in Article VIII, Section 5(1) should be read in the context of the provisions of Article XI, Sections 2 and 3, as well as the principles of judicial independence and integrity inherent in a constitutional order implied in Article VIII, Sections 1, 3, 4, 7, 8, 9, 10, 11, 12, and 13 of the Constitution. x x x Granting a Petition for *Quo Warranto* against the Chief Justice—an impeachable officer x x x is tantamount to empowering the Solicitor General, a repeat litigant representing the current political administration, far more than any other constitutional

Supreme Court E-Library

officer. The Solicitor General will be granted the competence to what amounts to a reconsideration of the determination of the Judicial and Bar Council and the President as to the qualifications of any appointed judge or justice.

2. **POLITICAL LAW; CONSTITUTION; JUDICIAL DEPARTMENT; TERMINATION OF THE CHIEF JUSTICE, AN IMPEACHABLE OFFICER; SOLUTIONS TO ADDRESS PROBLEMS RELATING TO THE CHIEF JUSTICE IS FOR THE COURT TO CALL HER OUT OR FOR HER TO BE IMPEACHED.—** Granting the Petition for Quo Warranto against the Chief Justice – an impeachable officer – is not the right way to address her inability to gain the respect of the branch of government that she was entrusted to lead. The solution to address the problems relating to a Chief Justice is for this Court to call her out to her to be tried using the impeachment process if any of her actions amounts to the grave offenses enumerated in the Constitution. x x x The removal of an impeachable officer was meant to be difficult and cumbersome since it will only be on the basis of impeachable offenses committed while in office, not any disqualification prior to appointment x xx She also has the alternative to have the grace and humility to resign from her office to protect the institution from a leadership which may not have succeeded to address the divisiveness and the weaknesses within.

3. **ID.; ID.; ID.; ID.; ID.; THE IMPEACHMENT PROCESS IS DESIGNEDTO BALANCE THE ACCOUNTABILITY OF AN IMPEACHABLE PUBLIC OFFICER WITH THE NECESSITY OF GIVING HIM/HER SOME LEVEL OF IMMUNITY WHILE IN SERVICE; OUR JUDICIAL INDEPENDENCE DEMANDS THAT THE MEMBERS OF THIS COURT BE REMOVED FROM OFFICE ONLY THROUGH THE PROCESS OF IMPEACHMENT.—** Due to its complex nature, "impeachment is the most difficult and cumbersome mode of removing a public officer from office." Factors that must be examined and considered include "the process required to initiate the proceeding; the one-year limitation or bar for its initiation; the limited grounds for impeachment; the defined instrumentality given the power to try impeachment cases; and the number of votes required for a finding of guilt."

Proceedings stall legislative work, are costly to prosecute, and result in the divisiveness of the nation. Thus, impeachment is limited "only to the officials occupying the highest echelons of responsibility in our government." In recognition of the immense responsibility reposed upon the highest officers of the land, the Constitution has decreed that they may only be removed via impeachment providing them with a level of immunity while in office but accountable after retirement, resignation, or removal. x x x The independence of the Supreme Court and of the Judiciary in general demands that the Members of this Court be removed from office only through the process of impeachment and no other. Irving R. Kaufman (Kaufman), Chief Judge of the United States Court of Appeals, makes out a compelling case in arguing that a judicial mechanism for the removal of judges weakens rather than promotes judicial independence. He cautions that a "simpler process for judicial removal, even one under the control of judges themselves, would eviscerate the independence of the individuals on the bench."

4. **ID.; ID.; ID.; ID.; AN ACTION FOR *QUO WARRANTO* CAN ONLY BE FILED WITHIN ONE-YEAR AFTER THE CAUSE OF ACTION ARISES.—** Even assuming that this Court can take cognizance of the petition, an action for *quo warranto* is limited in time regardless of who institutes the action. It can only be instituted within one (1) year after the cause of action arises. Rule 66, Section 11 of the Rules of Court is clear and leaves no room for interpretation. x x x It is in the public's best interest that questions regarding title to public office be resolved and laid to rest as soon as possible. This is the rationale behind the one (1)-year prescriptive period. Public service demands stability and consistency.

5. **ID.; ID.; ID.; ID.; ID.; THE PHRASE "PRESCRIPTION DOES NOT LIE AGAINST THE STATE" UNDER ARTICLE 1108 (4) OF THE CIVIL CODE REFERS TO ACQUISITIVE AND EXTINCTIVE PRESCRIPTION AS REGARDS THE OWNERSHIP OF REAL PROPERTY, PERSONAL PROPERTY AND INTELLECTUAL CREATIONS; POSITION OF CHIEF JUSTICE, A PUBLIC OFFICE, IS NOT A PROPERTY RIGHT.—** The majority refers to Article 1108(4) of the Civil Code to support their stand

Supreme Court E-Library

that the prescriptive period for filing the *quo warranto* petition has not yet prescribed and will never prescribe because prescription does not lie against the State. I cannot agree. x x x Article 1108(4) refers to acquisitive and extinctive prescription as regards the acquisition or ownership of real rights, and not prescription in general. Article 1108 can be found in Book III of the Civil Code which relates to the *different modes of acquiring ownership*.The ownership referred to in Book III of the Civil Code is ownership of real property, personal property, and intellectual creations. It is preposterous to include the position of Chief Justice within the coverage of Book III of the Civil Code, since a public office is not a property right, hence, no proprietary title can attach to it. Furthermore, a quick review of jurisprudenceshows that the phrase "Prescription does not lie against the State" was limited to actions of reversion to the public domain of lands which were fraudulently granted to private individuals and not in all actions instituted by the State, as the majority has mistakenly concluded.

6. POLITICAL LAW; CONSTITUTION; JUDICIAL DEPARTMENT; THE SUPREME COURT EXERCISES THE POWERS OF SUPERVISION ONLY THROUGH JUDICIAL REVIEW OVER THE JUDICIAL AND BAR COUNCIL AND ONLY WHEN THERE IS GRAVE ABUSE OF DISCRETION.— The responsibility of ensuring that Members of the Supreme Court, as well as members of all the other courts exercising judicial functions, meet the qualifications required under the law falls upon the Judicial and Bar Council. The Judicial and Bar Council was created under the 1987 Constitution, and it was intended to be a fully independent constitutional body functioning as a check on the President's power of appointment. x x x In carrying out its main function, the Judicial and Bar Council is given the authority to set standards or criteria in choosing its nominees for every vacancy in the Judiciary,as well as the discretion to determine how to best perform its constitutional mandate.The Constitution provides the qualifications of the members of the Judiciary, but it also gives the Judicial and Bar Council the latitude to promulgate its own set of rules and procedures to effectively ensure its mandate to recommend only applicants of "proven competence,

integrity, probity and independence."The internal rules of the Judicial and Bar Council are necessary and incidental to the function conferred to it by the Constitution. x xx Nonetheless, the independent character of the Judicial and Bar Council as a constitutional body does not remove it from the Court's jurisdiction when its assailed acts involve grave abuse of discretion. x x x In order to come within the scope of judicial review, the Constitution requires not merely abuse of discretion but *grave* abuse of discretion. The constitutional transgression must be nothing less than "arbitrary, capricious and whimsical."The extent of this Court's review of the nomination and appointment process must not be given such an expansive interpretation that it not only undermines the independence of the Judicial and Bar Council, but even undermines the President's constitutional power of appointment.

7. **ID.; ID.; ID.; ID.; CASE AT BAR.—** It is within the discretion of the Judicial and Bar Council to decide that the mere failure to file a Statement of Assets and Liabilities or misdeclaration or omission of assets in a Statement of Assets and Liabilities, without any evidence of disproportionate or unexplained wealth, cannot be said to be reflective of one's lack of integrity. I find no transgression of the Constitution when the Judicial and Bar Council does so. IX. The Judicial and Bar Council, in the proper exercise of its constitutional mandate, considered respondent's application and after finding that she substantially complied with the requirements and possessed all of the qualifications and none of the disqualifications for the position of Chief Justice, included her in the shortlist for the consideration of the President. That process is not being assailed in this *quo warranto* proceeding. The validity of respondent's appointment was likewise recognized by the House of Representatives when it went through the process of considering the Complaint filed against her and announced the Articles of Impeachment.Under the guise of this Court's power of supervision over the Judicial and Bar Council, the majority wants to supplant their own finding of respondent's lack of integrity over that of the Judicial and Bar Council's determination of respondent as a person of proven integrity. x x x The Court goes beyond its constitutional role when its actions amount to control and not merely supervision. x x x This Court's power of supervision

Supreme Court E-Library

over the Judicial and Bar Council cannot be read as authority to interfere with the Judicial and Bar Council's discretion in performing its constitutional mandate. At most, this Court's supervision is administrative in nature.

8. ID.; ID.; ID.; ID.; ID.; THERE MUST BE A TIME PERIOD WITHIN WHICH TO QUESTION ANY PERCEIVED GRAVE ABUSE OF THE JUDICIAL AND BAR COUNCIL'S DISCRETION; CASE AT BAR.— There must also be a time period within which to question any perceived grave abuse of the Judicial and Bar Council's discretion. In this particular instance, the act complained of was allegedly committed by the Council *six (6) years ago*. The appointee whose qualifications are now being questioned was appointed by the President of the previous administration *six (6) years ago*.Allowing an agent of the current administration to now question the previous administration's appointee would set a dangerous precedent. The current administration can just as easily undo all judicial appointments made by a previous administration. This will not inspire public trust and confidence in our institutions. The security of tenure of magistrates insulate them from the changing political winds. Removing that security renders members of the Judiciary vulnerable to currying favor with whichever political entity is in power, if only to guarantee that they remain in office until retirement.The immeasurable repercussions of this will corrode the foundations of our institution, to the ultimate detriment of the people.

CAGUIOA, *J.*, *dissenting opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; CANNOT PROCEED AGAINST A MEMBER OF THE SUPREME COURT.— [T]he grant of *quo warranto* against an incumbent member of the Supreme Court does not find any basis in the laws and jurisprudence cited by the *ponencia*. According to the *ponencia,* the language employed by Article XI, particularly, Section 2 thereof, permits alternative modes of removing impeachable officers from office, claiming that the use of the phrase "*may* be removed", in contrast with the phrase "*shall* be removed" in its counterpart provisions found

the 1935 and 1973 Constitutions, indicate such intent.This interpretation is fundamentally flawed as it puts unwarranted primacy on "legal hermeneutics" at the expense of Constitutional intent. As the deliberations indicate, the spirit, intent and purpose behind the impeachment provisions remain the same, despite the structural changes implemented since their initial adoption.The fact that the word "may" *generally* denotes discretion is well taken; this interpretation proceeds from the word's ordinary usage and meaning. Indeed, the Court has, in several cases, construed "may" as permissive in nature, consistent with the basic principle of statutory interpretation which requires, as a general rule, that words used in law be given their ordinary meaning. Nevertheless, such general principle admits of exceptions, as when "a contrary intent is manifest from the law itself" or, more notably, when the act to which it refers constitutes a public duty or **concerns public interest**. x x x [T]he *ponencia* maintains that "*quo warranto* is the proper legal remedy to determine the right or title to [a] contested public office or to *oust* the holder [of public office] from its enjoyment," and that this remedy is available even against incumbent members of the Supreme Court. The *ponencia* justifies this Court's assumption of jurisdiction by invoking the Court's power of judicial review under Article VIII, Section 1 of the Constitution. Further, the *ponencia* points to the cases of *Nacionalista Party v. De Vera* (*Nacionalista*)and the consolidated cases of *Estrada v. Desierto* and *Estrada v. Macapagal-Arroyo,* (*Estrada cases*)as basis to support its assertions. As stated earlier, I completely disagree.The *ponencia* itself recognizes that the Court can only assume jurisdiction over a case, and thereby exercise its power of judicial review, "in the presence of all the requisites." Not all the requisites are present in this case as the Court is precisely prohibited by the Constitution from assuming jurisdiction, for the intent was to allow the removal of impeachable officers only through impeachment. Further, the *ponencia* is mistaken in invoking the Court's power of judicial review as there was absolutely no allegation by the petitioner of grave abuse of discretion on any part of the government as regards the respondent's appointment.As regards the cases cited as basis, while *Lecaroz, Cuenco, In re: Gonzalez, Jarque* and *Marcoleta* involve criminal and administrative actions where the appointment of respondents therein had not been assailed, **the reasons which impelled the Court to dismiss said actions**

Supreme Court E-Library

hold true for *all* proceedings which seek to remove those officers who, under the Constitution, may be removed from office *only* by impeachment. Verily, the dismissal of the complaints in the afore-cited disbarment cases had been ordered in furtherance of a single fundamental purpose — to protect the impeachable officers involved therein from immediate removal, pursuant to the explicit mandate enshrined in Article XI of the 1987 Constitution. The protection afforded by Article XI of the 1987 Constitution applies with equal force and extends to such officers not only in cases of disbarment, but, also, to all other actions which seek their ouster through means *other than* impeachment. Thus, any ruling which sanctions the removal of a sitting member of the Supreme Court through alternative modes, be it through an administrative proceeding (*i.e.,* disbarment) or a judicial proceeding (*i.e.,* criminal action or *quo warranto),* would, in effect, be unconstitutional.

2. **ID.; ID.; ID.; ID.; EVEN ASSUMING THAT *QUO WARRANTO* IS AVAILABLE, IT IS TIME BARRED.—** [W]hile the doctrine of *nullum tempus occurritregi* ("time does not run against the King") exempts the State from the effects of time limitations placed on private litigants, such exemption is far from absolute. As observed by the United States Supreme Court, limitations (on the applicability of *nullum tempus*) derive their authority from statutes. This is so because the contemporary notion of *nullum tempus* is grounded not on notions of royal privilege, but on considerations of public policy. Consequently, statutes of limitation do not operate against the State **only in the absence of** an express provision on a period within which the State may, or should, bring an action. x x x For *quo warranto*, its earliest iteration in the law itself limited the period within which it can be filed under Section 216 earlier cited. This one-year statute of limitation was retained under Section 11 of Rule 66: x x x Therefore, even on the basis of the foreign jurisprudence cited in the *ponencia*, there is a recognition of prescription running against the State in informations in *quo warranto*. With more reason in this case, when Article 1115 of the Civil Code and Section 11, Rule 66 of the Rules of Court recognize a specific case of prescription for actions of *quo warranto*, and when Article XI, Section 2 of the Constitution signals the non-availability of the remedy.The one-year period

within which *quo warranto* may be filed commences from "the cause of such ouster, or the right of the petitioner to hold such office or position, arose;" the relevant reckoning period is from the cause of the ouster. Following the theory of the petitioner as rationalized by the *ponencia*, the cause(s) of the ouster of the respondent CJ elevated to the level of lack of the constitutional requirement of integrity consist of (1) her alleged failure to file her SALNs during her employment with the UP College of Law, and (2) her failure to submit all SALNs to the JBC when she applied for the position of Chief Justice in 2012. Still following the "upon discovery" theory, however, it should be emphasized that the JBC, the Office of the Ombudsman, and the University of the Philippines under the Executive department would have already been aware, or at the very least, put on notice, of the said failure to file and the subsequent failure to submit to the JBC at the time she submitted her application for the position of Chief Justice. Even to generously apply Section 11 of Rule 66 to consider the reckoning point of the one-year period to be from the time the respondent"usurp[ed], intrude[d] into, or unlawfully h[eld] or execise[d]" the office of the Chief Justice, it would still lead to the same conclusion that the one-year period to file the *quo warranto* commenced from the time the Chief Justice was appointed and took her oath.Both causes cannot be said to have only been discovered during the hearings before the Committee on Justice of the House of Representatives in order to justify the belated filing of the *quo warranto* action. Regrettably, the Decision agrees with the petitioner's position, relying upon the use of the word "must" in Section 2 of Rule 66. I disagree. The exercise of the Solicitor General's discretion to file an action for *quo warranto* when he "must" under Section 2 is available only as long as the right of action still exists. Section 11 of Rule 66 is clear that there is no authority to file an action beyond one (1) year after the cause of such ouster, or the right of the petitioner to hold such office, arose. Thus, even if *quo warranto* is available, the Solicitor General's right of action prescribed one year after the appointment of the Chief Justice in 2012.

3. POLITICAL LAW; CONSTITUTION; JUDICIAL DEPARTMENT; QUALIFICATIONS OF A JUSTICE OF THE SUPREME COURT; REQUIREMENTS SET BY THE CONSTITUTION ARE ABSOLUTELY EXCLUSIVE AND

Supreme Court E-Library

NO ONE CAN ADD TO OR LESSEN THESE REQUIREMENTS; SUBMISSION OF THE SALN TO THE JBC IS NOT A CONSTITUTIONAL REQUIREMENT FOR THE POSITION OF THE CHIEF JUSTICE.— Article VIII, Section 7 of the 1987 Constitution provides for the qualifications for members of the Judiciary, particularly of the Supreme Court. x x x These qualifications are absolutely exclusive, and no one can add to or lessen these qualifications. In *Social Justice Society v. Dangerous Drugs Board,* where the constitutionality of a law requiring all candidates for public office, both in the national or local government, to undergo a mandatory drug test was assailed, the Court held that the law and the subsequent issuances implementing the same were invalid for adding another layer of qualification to what the 1987 Constitution requires for membership in the Senate. x x x The case held that the requirements set by the Constitution are absolute, and that no one, not even the Legislature which possesses plenary powers, can add to the same. **By necessary implication, therefore, not even this Court, through the decisions it promulgates, can add to these qualifications**. Thus, the submission of SALNs to the JBC cannot be declared by this Court as a *pre-requisite* to a valid appointment of a Supreme Court Justice.

4. ID.; ID.; ID.; JUDICIAL AND BAR COUNCIL (JBC); TASKED TO ENSURE THAT APPOINTEES TO THE JUDICIARY POSSESS THE QUALIFICATIONS PRESCRIBED BY THE CONSTITUTION.— For a valid appointment as a Justice of the Supreme Court, the Constitution only requires the applicant to possess the following qualifications: (1) natural-born citizenship; (2) at least forty years old; (3) at least fifteen (15) years of experience in the practice of law; and (4) proven competence, integrity, probity, and independence. Of these four requirements, the first three are easily verifiable for they can be proved without difficulty through documentary evidence, such as a certificate of live birth, and the certificate of admission to the Bar. On the other hand, the requirement of having "proven competence, integrity, probity, and independence" is not easily quantifiable or measurable. Recognizing this, the Constitution precisely created a separate body to determine what possession of these characteristics entails, and who among several aspirants to a judicial post possesses the same. This Constitutional body tasked to define and ascertain

the possession of these characteristics is the JBC. x x x Apart from its role in protecting judicial independence and ensuring that the appointments to the Judiciary are insulated from politics, it is likewise the JBC's task to ensure that the appointees possess the qualifications prescribed by the Constitution.

5. ID.; ID.; ID.; ID.; ID.; JBC WAS INTENDED TO BE A BODY THAT IS INDEPENDENT FROM THE EXECUTIVE, LEGISLATIVE AND EVEN JUDICIAL INDEPENDENCE; THE SUPREME COURT DOES NOT HAVE JURISDICTION TO REVISE THE RULES PROMULGATED BY THE JBC, MUCH LESS SUPPLANT THE LATTER'S EXERCISE OF DISCRETION WITH ITS OWN.— [C]ontrary to the *ponencia*'s pronouncement, **the Constitution did not intend the JBC to be an office "subordinate" to the Supreme Court**. Instead, the JBC was intended to be a body that is independent from executive, legislative, and even judicial influence. x x x In particular reference to the Supreme Court's supervisory authority over the JBC, the Supreme Court can only inquire and thereafter order that the JBC follow its own rules, **but it does not have the jurisdiction to revise the rules promulgated by JBC, much less supplant the latter's exercise of discretion with its own**, as what the *ponencia* now does.There should be an allegation of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the JBC.

6. ID.; ID.; ID.; ID.; ID.; ID.; FOR THE SUPREME COURT TO REVIEW THE JBC'S DETERMINATION OF AN APPLICANT'S FITNESS TO A JUDICIAL POST, THERE SHOULD BE AN ALLEGATION THAT THE JBC HAD GRAVELY ABUSED ITS DISCRETION.— When what is at issue is the JBC's determination of an applicant's fitness, which requires the JBC to do an act exclusively vested in it by the Constitution — as opposed to other matters such as the validity of its rules or its compliance with its own rules — then it is required that an allegation be made to the effect that the JBC had committed grave abuse of discretion amounting to lack or excess of jurisdiction. Without such allegation, the Court cannot review the JBC's exercise of discretion as it is not covered by the Court's supervisory authority over the said body. As well, the review of the JBC's exercise of discretion must be assailed prior to the appointment. The reason is obvious:

Supreme Court E-Library

the subsequent appointment of an applicant to the position vests upon the appointee the status of an impeachable officer who can be removed only by impeachment under Article XI, Section 2. Apparently cognizant of this fact, the Republic, through the OSG, never claimed that the JBC committed grave abuse of discretion amounting to lack or excess of jurisdiction. Thus, the *ponencia* is utterly confused when it invoked both (1) the Court's supervisory authority over the JBC and (2) its Constitutional power of judicial review based on allegations of grave abuse of discretion amounting to lack or excess of jurisdiction, to justify the Court's assumption of jurisdiction over this case. To repeat, the assailed actions of the JBC cannot be reviewed by this Court wearing its hat of supervision, and neither can it review the same by virtue of its Constitutional power of judicial review as there was absolutely no claim or allegation that the JBC had gravely abused its discretion. More important, following the fundamental precepts of due process and fair play, the Court cannot make a pronouncement on JBC's discretion without making the said body a party in this case.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner Republic of the Philippines.

Alexander J. Poblador, Dino Vivencio A.A. Tamayo, Anzen P. Dy and *Justine Christopher C. Mendoza* for respondent Maria Lourdes P.A. Sereno.

D E C I S I O N

TIJAM, *J.*:

Whoever walks in integrity and with moral character walks securely, but he who takes a crooked way will be discovered and punished.

-The Holy Bible, Proverbs 10:9 (AMP)

Integrity has, at all times, been stressed to be one of the required qualifications of a judge. It is not a new concept in

the vocation of administering and dispensing justice. In the early 1600's, Francis Bacon, a philosopher, statesman, and jurist, in his "*Essay LVI: Of Judicature*" said — "[a]bove all things, integrity is the Judge's portion and proper virtue." Neither is integrity a complex concept necessitating esoteric philosophical disquisitions to be understood. Simply, it is a qualification of being honest, truthful, and having steadfast adherence to moral and ethical principles.[1] Integrity connotes being consistent — doing the right thing in accordance with the law and ethical standards everytime. Hence, every judicial officer in any society is required to comply, not only with the laws and legislations, but with codes and canons of conduct and ethical standards as well, without derogation. As Thomas Jefferson remarked, "it is of great importance to set a resolution, never not to be shaken, never to tell an untruth. There is no vice so mean, so pitiful, so contemptible and he who permits himself to tell a lie once, finds it much easier to do it a second and third time, till at length it becomes habitual, he tells lies without attending to it, and truths without the world's believing him. This falsehood of the tongue leads to that of the heart and in time depraves all its good dispositions." Mental dishonesty and moral mischief breed all that integrity is not.

In our jurisdiction, one cannot be qualified to be a member of the Judiciary, lacking such mandatory requirement of "proven integrity". Inevitably, an appointee to the position of Chief Justice of the Supreme Court must be the exemplar of honesty, probity and integrity. The purpose of this requirement is self-evident as the Chief Justice heads the Judiciary and adjudicates cases as a member of the Court that "has the last word on what the law is."[2] Together with other Justices, the Chief Justice also disciplines members of the Bar for misconduct. The significance of probity and integrity as a requirement for appointment to

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[1] <http://www.dictionary.com/browse/integrity> (visited on March 19, 2018); <https://www.thefreedictionary.com/integrity> (visited on March 19, 2018).

[2] *Conde v. Intermediate Appellate Court*, 228 Phil. 145, 151 (1986).

Supreme Court E-Library

the Judiciary is underscored by the fact that such qualifications are not explicitly required of the President, the Vice-President or the Members of Congress under the Constitution. The Constitution, thus, demands in no uncertain terms that the Chief Justice be the embodiment of moral and ethical principles. He or she must be of unquestionable character, possessed of moral authority to demand obedience to the law and to impose a rule of conduct. Indeed, one who exacts compliance with the law and ethical standards should be their foremost adherent.

No one is above the law and the Constitution, not even a Chief Justice who took an oath to protect and defend the Constitution and obey the laws of the land. The Court in *Francisco, Jr. v. The House of Representatives*,[3] says it tritely — "the Chief Justice is not above the law and neither is any other member of this Court."[4] All public officers whether in the Executive, Legislative or Judicial departments are bound to follow the law. If a public officer violates the law, he or she shall suffer punishment, sanctions and adverse consequences. The obligatory force of the law is necessary because once we allow exceptions, concessions, waiver, suspension or non-application to those who do not want to follow the law, nobody else will obey the law.

In this unprecedented case for *quo warranto* against the incumbent Chief Justice, the Republic entreats this Court to declare Maria Lourdes P. A. Sereno (respondent) ineligible to hold the highest post in the Judiciary for failing to regularly disclose her assets, liabilities and net worth as a member of the career service prior to her appointment as an Associate Justice, and later as Chief Justice, of the Supreme Court, in violation of the Constitution, the Anti-Graft Law, and the Code of Conduct and Ethical Standards for Public Officials and Employees. The Republic accordingly seeks the nullification of respondent's appointment, asserting that her failure to file the required

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[3] 460 Phil. 830 (2003).

[4] *Id*. at 943.

disclosures and her failure to submit the same to the Judicial and Bar Council show that she is not possessed of "proven integrity" demanded of every aspirant to the Judiciary.

The Case

Invoking the Court's original jurisdiction under Section 5(1), Article VIII of the Constitution in relation to the special civil action under Rule 66 of the Rules of Court, the Republic of the Philippines (Republic), through the Office of the Solicitor General (OSG) filed the present Petition[5] for the issuance of the extraordinary writ of *quo warranto* to declare as void respondent's appointment as Chief Justice of the Supreme Court and to oust and altogether exclude respondent therefrom.

The Antecedents

From November 1986 to June 1, 2006, or spanning a period of 20 years, respondent served as a member of the faculty of the University of the Philippines-College of Law (U.P. or U.P. College of Law), initially as a temporary faculty member (from November 1986 to December 31, 1991) and thereafter, as a permanent faculty member until her resignation therefrom on June 1, 2006.[6] As a regular faculty member, respondent was paid by the month by U.P.[7]

Based on the records of the U.P. Human Resources Development Office (U.P. HRDO),[8] respondent was on official leave from the U.P. College of Law for the following periods:

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[5] *Rollo*, pp. 3-44.

[6] *Id*. at 172.

[7] TSN, Oral Arguments on April 10, 2018.

[8] Annex "D" of the Petition.

Supreme Court E-Library

June 1, 2000	-	May 31, 2001
June 1, 2001	-	May 31, 2002
November 1, 2003	-	May 31, 2004
June 1, 2004	-	October 31, 2004
November 1, 2004	-	February 10, 2005
February 11, 2005	-	October 31, 2005
November 15, 2005	-	May 31, 2006

While being employed at the U.P. College of Law, or from October 2003 to 2006, respondent was concurrently employed as legal counsel of the Republic in two international arbitrations: (a) *PIATCO v. Republic of the Philippines and MIAA*; and (b) *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines* (PIATCO cases).[9]

The Personal Data Sheet (PDS) accomplished under oath by respondent further details, among others, the following engagements/ services rendered by her for various government agencies:[10]

Position	From	To	No. of Years	Department /Agency	Nature of work	Supervisor
Legal Counsel	1994	2008	14 yrs.	Various agencies of government – Office of the President, Office of the Solicitor General, Manila International Airport Authority, Department of Agriculture, Department of Trade and Industry, WTO-AFTA Commission, Philippine Coconut Authority	Legal – various international trade and investment law in WTO (Geneva), ICSID (Washington, DC). ICC-ICA (Singapore, Paris) and in bilateral dispute resolution mechanisms	Executive Secretaries Alberto Romulo, Eduardo Ermita and Leandro Mendoza, Chief Presidential Legal Counsel Avelino Cruz and Merceditas Gutierrez; Solicitor Generals Alfredo Benipayo, Antonio Nachura and Agnes Devanadera, MIAA General Manager Alfonso Cusi, Sen. Edgardo Angara, Sec. Salvador Escudero, Undersecretary Thomas Aquino, Amb. Lilia Bautista

[9] *Id*. at 173.

[10] *Id*. at 850-851.

Supreme Court E-Library

Deputy Commissioner				Commission on Human Rights (UP Diliman, Commonwealth Ave., QC, TEL:928-7098)	Legal and Administrative	Acting Chairman & Comm. Abelardo Aportadera (TEL: 687-7571)

Incidentally, the U.P. HRDO certified that there was no record on respondent's 201 file of any permission to engage in limited practice of profession.[11] Her engagement as legal counsel for the Republic continued until 2009.[12]

Despite having been employed at the U.P. College of Law from November 1986 to June 1, 2006, the record of the U.P. HRDO only contains the Statement of Assets, Liabilities and Net Worth (SALN) for 1985,[13] 1990,[14] 1991,[15] 1993,[16] 1994,[17] 1995,[18] 1996,[19] 1997,[20] and 2002,[21] filed by respondent. On the other hand, the records of the Central Records Division of the Office of the Ombudsman yields that there is no SALN filed by respondent for calendar years 1999 to 2009 except for the SALN ending December 1998 which was subscribed only in August 2003 and transmitted by the U.P. HRDO to the Ombudsman only on December 16, 2003.[22] Belatedly, in respondent's *Ad Cautelam Manifestation/Submission,* she

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[11] *Id*. at 65.

[12] *Id*. at 173.

[13] *Id*. at 597-597A.

[14] *Id*. at 598-598A.

[15] *Id*. at 599-599A.

[16] *Id*. at 600-600A.

[17] *Id*. at 601-601A.

[18] *Id*. at 602-602A.

[19] *Id*. at 603-603A.

[20] *Id*. at 604-604A.

[21] *Id*. at 54-55.

[22] *Id*. at 60-62.

Supreme Court E-Library

attached a copy of her SALN for 1989[23] which she supposedly sourced from the "filing cabinets"[24] or "drawers of U.P."[25] Similarly, despite having been employed as legal counsel of various government agencies from 2003 to 2009, there is likewise no showing that she filed her SALNs for these years, except for the SALN ending December 31, 2009 which was unsubscribed and filed before the Office of the Clerk of Court only on June 22, 2012.

After having served as a professor at the U.P. College of Law until 2006, and thereafter as practitioner in various outfits including as legal counsel for the Republic until 2009, the respondent submitted her application for the position of Associate Justice of the Supreme Court in July 2010.

In support of her application as Associate Justice, respondent submitted to the Office of Recruitment Selection and Nomination (ORSN) of the Judicial and Bar Council (JBC) her SALN for the year 2006.[26] This SALN for 2006 bears no stamp received by the U.P. HRDO and was signed on July 27, 2010.[27] According to respondent, the JBC considered her nomination for the position of Associate Justice as that of a private practitioner and not as a government employee.[28] Only recently, in a letter[29] to the ORSN dated February 2, 2018, likewise attached to her *Ad Cautelam* Manifestation/Submission, respondent would explain that such SALN was really intended to be her SALN as of July 27, 2010.[30] Respondent further explained during the Oral Arguments that she merely downloaded the SALN form and

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[23] *Id*. at 1727-1728.

[24] TSN, Oral Arguments on April 10, 2018, p. 105.

[25] TSN, Oral Arguments on April 10, 2018, p. 120.

[26] *Id*. at 67-70.

[27] *Id*.

[28] *Id*. at 174.

[29] *Id*. at 1729-1730.

[30] TSN, Committee on Justice of the House of Representatives.

forgot to erase the year "2006" printed thereon and that she was not required by the ORSN to submit a subscribed SALN.[31]

Thus, as the certifications executed by the U.P. HRDO, the Ombudsman and the ORSN of the JBC stand, the only SALNs available on record and filed by respondent were those for the calendar years 1985, 1989, 1990, 1991, 1993, 1994, 1995, 1996, 1997, 1998, and 2002 or eleven (11) SALNs filed in her 20-year government service in U.P. No SALNs were filed from 2003 to 2006 when she was employed as legal counsel for the Republic. Neither was there a SALN filed when she resigned from U.P. College of Law as of June 1, 2006 and when she supposedly re-entered government service as of August 16, 2010.

In tabular form, respondent's inclusive years in government employment *vis-á-vis* the SALNs filed by her and available on record are as follows:

As faculty member of the U.P. College of Law:		
Year	**SALN ought to be filed**	**SALN actually filed by respondent**
November 1986	SALN as of November 1986 (entry SALN)	SALN ending December 31, 1985
		-no record of SALN as of November 1986 (entry SALN)-
1987	SALN ending December 31, 1986	-no record-
1988	SALN ending December 31, 1987	-no record-
1989	SALN ending December 31, 1988	-no record-
1990	SALN ending December 31, 1989	SALN ending December 31, 1989 SALN ending December 31, 1989 (sourced by respondent from one of the "filing cabinets" or "drawers" of U.P.)

[31] TSN, Oral Arguments dated April 10, 2018.

Supreme Court E-Library

1991	SALN ending December 31, 1990	SALN ending December 31, 1990
1992	SALN ending December 31, 1991	SALN ending December 31, 1991
1993	SALN ending December 31, 1992	-no record-
1994	SALN ending December 31, 1993	SALN ending December 31, 1993
1995	SALN ending December 31, 1994	SALN ending December 31, 1994
1996	SALN ending December 31, 1995	SALN ending December 31, 1995
1997	SALN ending December 31, 1996	SALN ending December 31, 1996
1998	SALN ending December 31, 1997	SALN ending December 31, 1997
1999	SALN ending December 31, 1998	SALN ending December 31, 1998 (filed with the Ombudsman on December 16, 2003)
2000	SALN ending December 31, 1999	-no record-
2001	SALN ending December 31, 2000	-no record-
2002	SALN ending December 31, 2001	-no record-
2003	SALN ending December 31, 2002	SALN ending December 31, 2002
2004	SALN ending December 31, 2003	-no record-
2005	SALN ending December 31, 2004	-no record-
2006	SALN ending December 31, 2005	-no record-
June 1, 2006	SALN as of June 1, 2006 (exit SALN)	-no record of SALN as of June 1, 2006 (exit SALN)-
Alleged break in government service from June 2, 2006 until August 15, 2009 but was engaged as legal counsel for the Republic from June 2, 2006 to 2009.		

As Associate Justice of the Supreme Court		
August 16, 2010	SALN as of August 16, 2010 (re-entry SALN)	SALN ending December 31, 2009 but filed with the Office of the Clerk of Court *En Banc* only on June 22, 2012 and unsubscribed -no record of SALN as of August 16, 2010 (re-entry SALN)-
2011	SALN ending December 31, 2010	SALN ending December 31, 2010 but unsubscribed
2012	SALN ending December 31, 2011	SALN ending December 31, 2011

A month after, or on August 13, 2010, respondent was appointed by then President Benigno C. Aquino III (President Aquino III) as Associate Justice, and on August 16, 2010, respondent took her oath of office as such.

When the position of the Chief Justice was declared vacant in 2012, the JBC announced[32] the opening for application and recommendation of the position of Chief Justice. During the 2012 deliberations for the position of the Chief Justice, the members of the JBC *En Banc* were Associate Justice Diosdado M. Peralta (Justice Peralta) as Acting *ex officio* Chairman; Undersecretary Michael Frederick L. Musngi as *ex officio* member *vice* Leila M. De Lima; Senator Francis Joseph G. Escudero and Representative Niel Tupas as *ex officio* members representing the Congress; Justice Regino C. Hermosisima Jr. as regular member representing the retired Supreme Court Justices; Justice Aurora Santiago Lagman as regular member representing the Private Sector; Atty. Maria Milagros N. Fernan-Cayosa as regular member representing the Integrated Bar of the Philippines; and Atty. Jose V. Mejia as regular member representing the academe. The JBC Executive Committee (Execom) was composed of the JBC Regular Members and assisted by the Office of the Executive Officer (OEO) headed by Atty. Annaliza S. Ty-Capacite (Atty. Capacite).

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[32] *Id*. at 83.

Supreme Court E-Library

The JBC announcement was preceded by an *En Banc* meeting held on June 4, 2012 wherein the JBC agreed to require the applicants for the Chief Justice position to submit, instead of the usual submission of the SALNs for the last two years of public service, all previous SALNs up to December 31, 2011 for those in government service.[33] However, for the other judicial vacancies, the JBC required the submission of only two SALNs.[34] Accordingly, in the Announcement[35] published on June 5, 2012, the JBC specifically directed the candidates for the Chief Justice post to submit, in addition to the usual documentary requirements, the following:

> (1) Sworn Statement of Assets, Liabilities, and Networth (SALN):
>
> a. for those in the government: **all previous SALNs (up to 31 December 2011)**
>
> b. for those from the private sector: SALN as of 31 December 2011
>
> (2) Waiver in favor of the JBC of the confidentiality of local and foreign bank accounts under the Bank Secrecy Law and Foreign Currency Deposits Act.[36] (Emphasis ours)

The JBC announcement further provided that "applicants with incomplete or out-of-date documentary requirements will not be interviewed or considered for nomination."[37]

Nevertheless, the JBC *En Banc* subsequently agreed to extend the deadline for the filing of applications or recommendations

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[33] TSN dated February 12, 2018, X-3, Committee on Justice of the House of Representatives; see also Joint Comment of JBC Regular Members Atty. Jose V. Mejia and Atty. Maria Milagros Fernan-Cayosa (Re: Resolution dated 20 February 2018) in A.M. No. 17-11-12-SC and A.M. No. 17-11-17-SC.

[34] JBC Announcement dated June 19, 2012; *id*. at 2190.

[35] *Id*. at 84-86.

[36] *Id*. at 83.

[37] *Id*. at 86.

to July 2, 2012 and the submission of the other documentary requirements to July 17, 2012.[38]

On June 25, 2012, the JBC *En Banc* resolved not to require the incumbent Supreme Court Justices who are candidates for the Chief Justice position to submit other documentary requirements, particularly the required clearances. Instead, the JBC *En Banc* required the incumbent Justices to submit only the SALNs, bank waiver, medical certificate, laboratory results and the PDS.

On July 2, 2012, respondent accepted several nominations from the legal and the evangelical community for the position of Chief Justice and in support of her nomination, respondent submitted to the ORSN her SALNs for the years 2009,[39] 2010,[40] and 2011.[41] Respondent also executed a waiver of confidentiality[42] of her local and foreign bank accounts.[43]

On July 6, 2012, or even before the deadline of the submission of the documentary requirements on July 17, 2012, the JBC *En Banc* came up with a long list of the candidates totaling twenty-two (22), respondent included, and scheduled the public interview of said candidates on July 24-27, 2012.[44]

On July 20, 2012, the JBC in its Special *En Banc* Meeting,[45] deliberated on the candidates for the position of Chief Justice with incomplete documentary requirements. In particular, the JBC examined the list of candidates and their compliance with

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[38] JBC Announcement dated June 19, 2012; *id*. at 2190.

[39] *Id*. at 71-72.

[40] *Id*. at 73-74.

[41] *Id*. at 75-77.

[42] *Id*. at 269.

[43] *Id*. at 174-175.

[44] Minutes of JBC Meeting dated July 6, 2012.

[45] Annex "17" of the Comment.

Supreme Court E-Library

the required submission of SALNs. The minutes of the JBC deliberation reveal as follows:

x x x x x x x x x

The Executive Officer asked for clarification, particularly with respect to SALNs, whether five (5) SALNs would constitute a substantial compliance if the candidate has been in the government service for twenty (20) years.

The Council examined the list with regard to the SALNs, particularly the candidates coming from the government, and identified who among them would be considered to have substantially complied:

1. Justice Arturo D. Brion – has substantially complied
2. Justice Antonio T. Carpio – has substantially complied
3. Secretary Leila M. De Lima – has substantially complied
4. Chairperson Teresita J. Herbosa – has complied
5. Solicitor General Francis H. Jardeleza – has complied
6. Justice Teresita J. Leonardo-De Castro – has substantially complied
7. Dean Raul C. Pangalangan

   The Executive Officer informed the Council that Dean Pangalangan lacks five (5) SALNs. She was informed that he could not obtain them from the U.P., but he is trying to get from the Civil Service Commission.

   Justice Lagman moved that the SALNs of Dean Pangalangan be considered as substantial compliance.

8. Congressman Rufus B. Rodriguez

   Justice Peralta said that as per the report, Congressman Rodriguez did not submit even one SALN. He commented that he may not be interested although he accepted his nomination.

   The Executive Officer informed the Council that he is abroad. He was notified through email, as his secretary would not give his contact number.

Supreme Court E-Library

9. Commissioner Rene V. Sarmiento – has lacking SALNs

10. Justice Maria Lourdes P. A. Sereno

The Executive Officer informed the Council that she had not submitted her SALNs for a period of ten (10) years, that is, from 1986 to 2006.

Senator Escudero mentioned that Justice Sereno was his professor at U.P. and that they were required to submit SALNs during those years.

11. Judge Manuel DJ Siayngco – has complied

Atty. Cayosa mentioned that Judge Siayngco has to submit a certificate of exemption because judges are also required to comply with that requirement.

12. Dean Amado D. Valdez – has lacking requirements

13. Justice Presbitero J. Velasco, Jr. – has complied

14. Atty. Vicente R. Velasquez – has lacking requirements

15. Dean Cesar L. Villanueva – has lacking requirements

16. Atty. Ronaldo B. Zamora – has lacking SALNs and MCLE cert.

x x x x x x x x x.[46] (Emphasis ours)

Because there were several candidates with incomplete documentary requirements, the JBC *En Banc* agreed to again extend the deadline for the submission of the lacking requirements to July 23, 2012 and that the determination of whether a candidate has substantially complied with the requirements be delegated to the Execom. It also appears that the JBC *En Banc* further agreed that the candidates who fail to complete the requirements on said date are to be excluded from the list of candidates to be interviewed and considered for nomination, unless they would be included if in the determination of the Execom he or she has substantially complied.[47]

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[46] *Id*. at 288-289.

[47] *Id*. at 289-290.

Supreme Court E-Library

Thus, on July 20, 2012, the ORSN, through its then Chief Atty. Richard Pascual (Atty. Pascual), inquired as to respondent's SALNs for the years 1995, 1996, 1997 and 1999.[48] During the Congressional hearings on impeachment, Atty. Pascual would later on testify that he asked respondent to submit her SALNs from 1996 to 2006, or spanning a period of 10 years.[49] During the Oral Arguments, respondent would maintain that Atty. Pascual only required her to submit her SALNs from 1995-1999 and did not ask for her more recent SALNs. Either way, the years requested from respondent are within the period (1986 to 2006) covered by her employment with the U.P. College of Law.

In response, the respondent, in the afternoon of July 23, 2012, transmitted a letter[50] of even date to the JBC, which stated:

x x x x x x x x x

As I had noted in my Personal Data Sheet, after my resignation from government service in 2006, as a professor at the University of the Philippines, I became a full-time private practitioner. Hence, when I was nominated for the position of Associate Justice of the Supreme Court in 2010, my nomination was considered as that of a private practitioner, and not as a government employee. Thus, the requirements imposed on me in connection with the consideration of my name, were those imposed on nominees from the private sector, and my earlier-terminated government service, did not control nor dominate the kind of requirements imposed on me.

Considering that most of my government records in the academe are more than fifteen years old, it is reasonable to consider it infeasible to retrieve all of those files.

In any case, the University of the Philippines has already cleared me of all academic/administrative responsibilities, money and property accountabilities and from administrative charges as of 01 June 2006. Since it is the ministerial duty of the Head of the Office to ensure

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[48] *Id*. at 270-271.

[49] House Committee Hearing on February 27, 2018.

[50] *Id*. at 78-79 and 270-271.

Supreme Court E-Library

that the SALNs of its personnel are properly filed and accomplished (CSC Resolution No. 060231 dated 01 February 2006 and CSC Memorandum Circular No. 10-2006 dated 17 April 2006), this clearance can be taken as an assurance that my previous government employer considered the SALN requirements to have been met. A copy of the Clearance dated 19 September 2011 issued by the University of the Philippines is hereby attached.

In the 05 June 2012 Announcement, the Judicial and Bar Council imposed the requirement of submitting all previous SALNs for those in the government. As I pointed out earlier, my service in government is not continuous. The period of my private practice between my service in the University of the Philippines ending in 2006 and my appointment to the Supreme Court in 2010 presents a break in government service. Hence, in compliance with the documentary requirements for my candidacy as Chief Justice, I submitted only the SALNs from end of 2009 up to 31 December 2011, since I am considered to have been returned to public office and rendered government service anew from the time of my appointment as Associate Justice on 16 August 2010.

Considering that I have been previously cleared from all administrative responsibilities and accountabilities from my entire earlier truncated government service, may I kindly request that the requirements that I need to comply with, be similarly viewed as that from a private sector, before my appointment to the Government again in 2010 as Associate Justice of the Supreme Court.

x x x x x x x x x[51]

The letter dated July 23, 2012 was received by the Office of the Administrative and Financial Services (OAFS) and copies thereof were received by the offices of the JBC regular members, the ORSN and the OEO.[52] The letter, however, was neither examined by the JBC regular members nor was it deliberated upon either by the JBC *En Banc* or the Execom.[53] Although

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[51] *Id*. at 78-79.

[52] *See* Comment of Executive Officer Atty. Capacite in A.M. No. 17-11-12-SC and A.M. No. 17-11-17-SC, p. 5.

[53] *See* Joint Comment of Atty. Mejia and Atty. Cayosa in A.M. No. 17-11-12-SC and A.M. No. 17-11-17-SC, p. 6.

Supreme Court E-Library

the determination of whether a candidate has substantially complied with the documentary requirements was delegated to the Execom, the latter could not produce any minutes of the meeting or record that the members thereof deliberated on the July 23, 2012 letter of respondent.[54]

On the scheduled date of the interview on July 24, 2012, despite respondent's submission of only 3 SALNs, Atty. Pascual prepared a Report – Re: Documentary Requirements and SALN of candidates for the Position of Chief Justice of the Philippines[55] wherein respondent was listed as applicant No. 14 with an opposite annotation that she had "COMPLETE REQUIREMENTS" and a note stating "Letter 7/23/12 – considering that her government records in the academe are more than 15 years old, it is reasonable to consider it infeasible to retrieve all those files."

The JBC then proceeded to interview the candidates, including respondent who was interviewed on July 27, 2012. On August 6, 2012, the ORSN prepared a list of the 20 candidates, respondent included, *vis-à-vis* their SALN submissions. Opposite respondent's name was an enumeration of the SALNs she submitted, *i.e.*, 2009, 2010 and 2011 and an excerpt from her July 23, 2012 letter that "considering that [respondent's]

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[54] Letter dated April 6, 2018 of Atty. Capacite to the Office of Justice Tijam, certifying that there was no such minutes of meeting. The letter states:

x x x x x x x x x

This pertains to your request (through a telephone call) this afternoon for a copy of the minutes of a meeting wherein the Executive Committee of the Judicial and Bar Council (JBC) supposedly made a determination after the 20 July 2012 JBC *En Banc* meeting of who among the candidates for the *Chief Justice* position had or had not substantially complied with the documentary requirements for the said post.

As I have earlier informed you, no such minutes is extant in our records.

x x x x x x x x x.

[55] *See* Annex "C" of the Joint Comment of Atty. Mejia and Atty. Cayosa in A.M. No. 17-11-12-SC and A.M. No. 17-11-17-SC.

government records in the academe are more than 15 years old, it is reasonable to consider it infeasible to retrieve all those files." On August 13, 2012, the JBC voted on who would be included in the short list and on the same day, transmitted to the President its nominations[56] for the position of Chief Justice, as follows:

1. Carpio, Antonio T.
2. Abad, Roberto A.
3. Brion, Arturo D.
4. Jardeleza, Francis H.
5. Sereno, Maria Lourdes P.A.
6. Zamora, Ronaldo B.
7. Leonardo-De Castro, Teresita J.
8. Villanueva, Cesar L.

A month after respondent's acceptance of her nomination, or on August 24, 2012, respondent was appointed by then President Aquino III as Chief Justice of the Supreme Court.

On August 30, 2017, or five years after respondent's appointment as Chief Justice, an impeachment complaint was filed by Atty. Larry Gadon (Atty. Gadon) against respondent with the Committee on Justice of the House of Representatives (House Committee on Justice) for culpable violation of the Constitution, corruption, high crimes, and betrayal of public trust. The complaint also alleged that respondent failed to make truthful declarations in her SALNs.

The impeachment complaint was endorsed by several members of the House and, thereafter, was found to be sufficient in form and substance. The respondent filed her answer to the impeachment complaint. After the filing of the reply and the rejoinder, the House Committee on Justice conducted several hearings on the determination of probable cause, the last of which was held on February 27, 2018.[57]

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[56] *Id*. at 278-279.

[57] *Id*. at 176-177.

Supreme Court E-Library

During these hearings, it was revealed that respondent purportedly failed to file her SALNs while she was a member of the faculty of the U.P. College of Law and that she filed her SALN only for the years 1998, 2002 and 2006. During the hearing on February 7, 2018 of the House Committee on Justice, Justice Peralta, as a resource person being then the acting *ex-officio* Chairman of the JBC, further claimed that during the JBC deliberations in 2012, he was not made aware that respondent submitted incomplete SALNs nor that respondent's letter dated July 23, 2012 to the JBC was ever deliberated upon.[58] This was confirmed by Atty. Fernan-Cayosa;[59] by Atty. Capacite, who emphasized that based on the rubber stamp received, only the offices of the JBC regular members, the ORSN and the OEO were furnished copies of the letter;[60] and by Atty. Pascual on the basis of the transmittal letter.[61]

The foregoing sworn declarations made during the hearings before the House Committee on Justice spawned two relevant incidents: *one*, the proposal of the House Committee for this Court to investigate on the proceedings of the JBC relative to the nomination of respondent as Chief Justice which is now presently docketed as A.M. No. 17-11-12 and A.M. No. 17-11-17-SC; and *two*, the Letter[62] dated February 21, 2018 of Atty. Eligio Mallari to the OSG requesting that the latter, in representation of the Republic, initiate a *quo warranto* proceeding against respondent.

Thus, the present petition.

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[58] TSN dated February 7, 2018, VI-3, Committee on Justice of the House of Representatives.

[59] TSN dated February 12, 2018, LCLV, XIII-2, Committee on Justice of the House of Representatives.

[60] TSN dated February 12, 2018, HLEF, XXII-3, Committee on Justice of the House of Representatives.

[61] TSN dated February 12, 2018, LCLV, XXVIII-4, Committee on Justice of the House of Representatives.

[62] *Id*. at 93-94.

The Case for the Republic

The Republic, through the OSG, claims that an action for *quo warranto* is the proper remedy to question the validity of respondent's appointment. It alleges that the instant petition is seasonably filed within the one-year reglementary period under Section 11, Rule 66,[63] of the Rules of Court since respondent's transgressions only came to light during the proceedings of the House Committee on Justice on the allegations of the impeachment complaint filed against her. Alternatively, the Republic claims that it has an imprescriptible right to bring a *quo warranto* petition under the maxim *nullum tempus occurit regi*.

In justifying resort to a petition for *quo warranto*, the Republic argues that *quo warranto* is available as a remedy even as against impeachable officers, like respondent. The Republic argues that a petition for *quo warranto* is different from the impeachment proceedings because the writ of *quo warranto* is being sought to question the validity of her appointment, while the impeachment complaint accuses her of committing culpable violation of the Constitution and betrayal of public trust while in office.[64] Citing the 2010 Rules of the Presidential Electoral Tribunal (PET) and the cases of *Funa v. Chairman Villar*[65] and *Nacionalista Party v. De Vera,*[66] the Republic argues that *quo warranto* may be resorted to even against impeachable officers and that the respondent's assumption of the position as Chief

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[63] Sec. 11. *Limitations.* — Nothing contained in this Rule shall be construed to authorize an action against a public officer or employee for his ouster from office unless the same be commenced within one (1) year after the cause of such ouster, or the right of the petitioner to hold such office or position, arose, nor to authorize an action for damages in accordance with the provisions of the next preceding section unless the same be commenced within one (1) year after the entry of the judgment establishing the petitioner's right to the office in question.

[64] *Rollo*, p. 13.

[65] 686 Phil. 571 (2012).

[66] 85 Phil. 126 (1949).

Supreme Court E-Library

Justice under the color of an executive appointment is a public wrong correctible by *quo warranto*.

The Republic seeks to oust respondent from her position as Chief Justice on the ground that the latter failed to show that she is a person of proven integrity which is an indispensable qualification for membership in the Judiciary under Section 7(3),[67] Article VIII of the Constitution. According to the Republic, because respondent failed to fulfill the JBC requirement of filing the complete SALNs, her integrity remains unproven. The Republic posits that the JBC's ostensible nomination of respondent does not extinguish the fact that the latter failed to comply with the SALN requirement as the filing thereof remains to be a constitutional and statutory requirement.[68]

In sum, the Republic contends that respondent's failure to submit her SALNs as required by the JBC disqualifies her, at the outset, from being a candidate for the position of Chief Justice. Lacking her SALNs, respondent has not proven her integrity which is a requirement under the Constitution. The Republic thus concludes that since respondent is ineligible for the position of Chief Justice for lack of proven integrity, she has no right to hold office and may therefore be ousted *via quo warranto*.

The Case for the Respondent

Being circumspect in the examination of every pleading and document on record, this Court observes that, initially, the Comment *Ad Cautelam* dated March 16, 2018 filed before Us was neither signed by the respondent herself nor verified to have been read by her and attested by her that the allegations therein are true and correct of her personal knowledge or based on authentic records. This Court is not unaware that under the Rules of Court, specifically Section 4, Rule 7, not all pleadings need to be under oath, verified, or accompanied by an affidavit.

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[67] Sec. 7. (3) A Member of the Judiciary must be a person of **proven** competence, **integrity**, probity, and independence. (Emphasis ours)

[68] *Rollo*, p. 28.

In fact, the rules on *quo warranto* do not require the filing of such comment, but pursuant to the dictates of the fundamental right of due process and also the desire of this Court to dispose of this case judiciously, impartially, and objectively, this Court gave the respondent the opportunity to be heard and oppose the allegations in the petition by requiring her to file a comment thereto. Thus, this Court anticipated a response from the respondent to take such opportunity to settle the uncertainty of her nomination and appointment through her comment to the petition. What was received by this Court, however, was an unverified Comment repudiating the Court's jurisdiction, merely signed by counsel, who appeared to be representing the respondent.

Wary of the legal implications of such unverified pleading, *i.e.* possible refutation of the allegations stated therein and repudiation of the signing counsel's authority to represent, this Court in its April 3, 2018 Resolution[69] set as a condition for the conduct of Oral Arguments prayed for by respondent, that the latter affirm and verify under oath the truth and veracity of the allegations in the Comment *Ad Cautelam* filed by counsel supposedly on her behalf.

In an *Ad Cautelam* Partial Compliance/Manifestation dated April 5, 2018, respondent affirmed and verified under oath the truth and veracity of the allegations in the said Comment *Ad Cautelam* through a Verification dated April 6, 2018 attached therein.

In the said Comment *Ad Cautelam*, respondent argues that, on the strength of Section 2,[70] Article XI of the 1987 Constitution

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[69] *Id*. at 501-505.

[70] **Sec. 2.** The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

Supreme Court E-Library

and the cases of *Mayor Lecaroz v. Sandiganbayan*,[71] *Cuenco v. Hon. Fernan*,[72] *In Re: First Indorsement from Hon. Gonzales*,[73] and *Re: Complaint-Affidavit for Disbarment Against Senior Associate Justice Antonio T. Carpio*,[74] the Chief Justice may be ousted from office only by impeachment. Respondent contends that the use of the phrase "may be removed from office" in Section 2, Article XI of the Constitution does not signify that Members of the Supreme Court may be removed through modes other than impeachment. According to respondent, the clear intention of the framers of the Constitution was to create an exclusive category of public officers who can be removed only by impeachment and not otherwise.

It is likewise the argument of respondent that since a petition for *quo warranto* may be filed before the RTC, such would result to a conundrum because a judge of lower court would have effectively exercised disciplinary power and administrative supervision over an official of the Judiciary much higher in rank and is contrary to Sections 6 and 11, Article VIII of the Constitution which vests upon the Supreme Court disciplinary and administrative power over all courts and the personnel thereof. She theorizes that if a Member of the Supreme Court can be ousted through *quo warranto* initiated by the OSG, the Congress' "check" on the Supreme Court through impeachment would be rendered inutile.

Respondent argues that the present petition is time-barred as Section 11, Rule 66 provides that a petition for *quo warranto* must be filed within one (1) year from the "cause of ouster" and not from the "discovery" of the disqualification. Respondent contends that the supposed "failure" to file the required SALNs allegedly took place for several years from 1986 to 2006, thus, the "cause of ouster" existed even before the respondent was

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[71] 213 Phil. 288 (1984).

[72] 241 Phil. 162 (1988).

[73] 243 Phil. 167 (1988).

[74] *En Banc* Resolution dated August 10, 2012 in A.M. No. 12-8-4-SC.

appointed as Chief Justice on August 24, 2012. Therefore, as early as her appointment, the Republic, through the OSG, already had a cause of action to seek her ouster. Even assuming that the one-year prescriptive period may be counted from the Republic's "discovery" of the disqualification, the petition would still be time-barred since the Republic would have made such a "discovery" through U.P., considering that the U.P. HRDO is required to submit a list of employees who failed to file their SALNs.

Respondent avers that the Court cannot presume that she failed to file her SALNs because as a public officer, she enjoys the presumption that her appointment to office was regular. According to respondent, the Republic failed to overcome this presumption as the documents relied upon by it, *i.e.*, certifications from the U.P. HRDO and the Ombudsman, do not categorically state that respondent failed to file her SALNs. On the contrary, respondent points out that the U.P. HRDO had certified that she had been cleared of all administrative responsibilities and charges as of June 1, 2006 and that there was no pending administrative charge against her.

It is likewise the contention of respondent that public officers without pay or those who do not receive compensation are not required to file a SALN. Thus, respondent argues that for the periods that she was on official leave without pay, she was actually not required to file any SALN for the inclusive years. She adds that to require the submission of SALNs as an absolute requirement is to expand the qualifications provided for under the Constitution.

Nonetheless, respondent represents that she continues to recover and retrieve her missing SALNs and will present them before the Senate sitting as the Impeachment Tribunal and not to this Court considering her objections to the latter's exercise of jurisdiction.

Respondent also stresses that the failure to file SALNs or to submit the same to the JBC has no bearing on one's integrity. The submission of SALNs was simply among the additional

Supreme Court E-Library

documents which the JBC had required of the applicants for the position of Chief Justice. It is respondent's position that the non-filing of SALN is not a ground for disqualification unless the same was already the subject of a pending criminal or administrative case or if the applicant had already been finally convicted for a criminal offense involving said failure to file SALNs. In this case, respondent points out that the JBC was made aware as early as July 20, 2012 that respondent had not submitted to the JBC her SALNs as a U.P. professor and yet none of them invoked Section 2, Rule 10 of JBC-009 or the "integrity rule."

Respondent likewise contends that the issue of whether an applicant for the position of Chief Justice is a person of "proven integrity" is a question "constitutionally committed to the JBC" and is therefore a political question which only the JBC could answer, and it did so in the affirmative when it included respondent's name in the shortlist of nominees for the position of Chief Justice.

The Republic's Reply

In refuting respondent's arguments, the Republic justifies its resort to the unconventional method of *quo warranto*. The Republic cites the cases of *Estrada v. Desierto*[75] and *Lawyers League for a Better Philippines and/or Oliver Lozano v. President Corazon Aquino et al.*[76] where this Court took cognizance of a petition for *quo warranto* to oust an impeachable official. It reiterates its argument that it seeks respondent's ouster, not on account of commission of impeachable offenses, but because of her ineligibility to assume the position of Chief Justice.

The Republic maintains that the phrase "may be removed from office" in Section 2, Article XI of the Constitution means that Members of the Supreme Court may be removed through modes other than impeachment and disagrees with respondent's

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[75] 406 Phil. 1 (2001).

[76] *En Banc* Resolution dated May 22, 1986 in G.R. No. 73748.

interpretation that the word "may" qualifies only the penalty imposable after the impeachment trial, *i.e.*, removal from office. The Republic claims that respondent's interpretation would lead to an absurd situation in the event that the Senate imposes a lesser penalty, like suspension of the President, which would result in a vacancy in the position not intended by the Constitution. This is because vacancy in the Office of the President occurs only in case of death, permanent disability, removal from office, or resignation, in which event the Vice-President shall become the President to serve the unexpired term.

Invoking the *verba legis* principle in statutory construction, the Republic claims that Section 2, Article XI of the Constitution does not expressly prohibit resort to other means to remove impeachable officers in position.

Contrary to respondent's claim that this Court has no disciplinary authority over its incumbent members, the Republic cites Section 13 of A.M. No. 10-4-20-SC which created a permanent Committee on Ethics and Ethical Standards, tasked to investigate complaints involving graft and corruption and ethical violations against members of the Supreme Court. The Republic points out that such Ethics Committee conducted the investigation in A.M. No. 10-7-17-SC[77] and A.M. No. 09-2-19-SC.[78]

Meanwhile, in support of its claim that the petition is not time-barred, the Republic explains that the State has a continuous interest in ensuring that those who partake of its sovereign powers are qualified. It argues that the one-year period provided under Section 11 of Rule 66 merely applies to individuals who are claiming rights to a public office, and not to the State. To consider the instant petition as time-barred, the Republic argues, is to force the State to spend its resources in favor of an unqualified person.

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[77] 647 Phil. 122 (2010).

[78] 599 Phil. 258 (2009).

Supreme Court E-Library

Further, the Republic claims that even if it be assumed that the one-year period applies against the State, it cannot be deemed to have been notified of respondent's failure to file her SALNs. It argues that it has no statutory obligation to monitor compliance of government employees other than its own. It alleges that SALNs are not published, hence it has no feasible way of taking cognizance of respondent's failure to file SALN.

In any case, the Republic claims that the unique circumstances of the instant case behoove this Court to be liberal in interpreting the one-year reglementary period.

As to the question on jurisdiction, the Republic contends that the Supreme Court is clothed with the authority to determine respondent's qualifications and eligibility to hold the position of the Chief Justice. It argues that the determination of this issue is not a political question because such issue may be resolved through the interpretation of the pertinent provisions of the Constitution, laws, JBC rules, and Canons of Judicial Ethics.

Going to the fundamental issue of respondent's eligibility to hold the position of Chief Justice, the Republic reiterates that respondent failed to comply with the requirement of submitting SALNs and thus has failed to prove her integrity. Further, the Republic cites respondent's gross misrepresentation in stating that her reason for non-submission of SALNs was because she could no longer retrieve all of such SALNs. According to the Republic, respondent's allegation seems to imply that she did file her SALNs when the Certifications from the U.P. and the Ombudsman state otherwise.

The Republic posits that respondent's lack of integrity is further bolstered by her failure to disclose to the JBC that she failed to file her SALN 11 times during her tenure as U.P. Law Professor.

Integrity, the Republic claims, is simply faithful adherence to the law, and the filing of SALN is a qualification implied from the requirement of integrity. The filing of SALN is not an additional requirement unduly imposed on applicants to positions in the Judiciary. When respondent failed to file her

SALN, she did not comply with the Constitution, laws and appropriate codes of conduct. There is no need to allege or prove graft and corruption in order to prove an aspiring magistrate's lack of integrity.

Finally, the Republic contends that the presumption of regularity cannot be applied in respondent's favor. The Republic claims that such presumption attaches only to official acts and not to all acts of officials. The presumption, according to the Republic, applies only to official acts specified by law as an official duty or to a function attached to a public position. In this case, the filing of SALN is neither an official duty nor a function attached to a position of a U.P. College of Law Professor. In any case, the Republic claims that it has successfully disputed such presumption through the Certifications it presented from U.P. and the Ombudsman.

The Republic's Memorandum

In addition to the arguments put forth by the Republic in the Petition and the Reply, the Republic further justified its non-inclusion of the JBC in the instant petition. It contends that since the petition only disputes the respondent's eligibility to become the Chief Justice, the Solicitor General correctly instituted the *quo warranto* petition only against respondent.

Insisting on respondent's lack of integrity, the Republic argues that respondent had the legal obligation to disclose to the JBC that she failed to file her SALNs at least 11 times, citing the case of *OCA v. Judge Estacion Jr.*[79]

The Republic also argues that respondent's claim of good faith is not a defense. Republic Act (R.A.) No. 3019[80] and R.A. No. 6713[81] are special laws and are thus governed by the

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[79] 317 Phil. 600 (1995).

[80] ANTI-GRAFT AND CORRUPT PRACTICES ACT. Approved on August 17, 1960.

[81] AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD

Supreme Court E-Library

concept of *malum prohibitum*, wherein malice or criminal intent is completely immaterial. Thus, her act of blaming the Review and Compliance Committee of U.P. for its failure to inform her that she had no SALNs on file does not exonerate her. The Republic further notes that respondent resorted to the fallacy of *tu quoque* – a diversionary tactic by using the fault of others to justify one's own fault.

Believing in the strength of its case, the Republic underscores its contention that the respondent was not able to dispute the evidence put forth by the Republic that she failed to religiously file her SALNs throughout her entire stint in the government. The Republic claims that it is futile for respondent to merely allege during the Oral Arguments that she filed her SALNs and will produce them before the Senate. Respondent's admissions during the Oral Arguments, together with the U.P. HRDO's certification, prove that she did not religiously file her SALNs as required by law.

As to the applicability of this Court's ruling in *Concerned Taxpayer v. Doblada, Jr.*,[82] the Republic argues that the case is not on all fours with the instant petition. The *Doblada* ruling, according to the OSG, did not involve issues on qualifications to public office unlike the present petition. Second, unlike in *Doblada*, respondent in this case failed to offer any countervailing evidence to disprove the Certifications by the U.P. HRDO and the Ombudsman. Lastly, the statement in *Doblada* relied upon by the respondent is a mere *dictum*. The issue therein is centered on Doblada's unexplained wealth. Furthermore, *Doblada* was decided only in 2005 or after respondent violated the legal requirement on the filing of SALNs.

THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES. Approved on February 20, 1989.

[82] 498 Phil. 395 (2005).

The Respondent's Memorandum

Respondent insists that she can be removed from office only through impeachment. In addition to the arguments raised in her Comment *Ad Cautelam*, respondent asserts that impeachment was chosen as the method of removing certain high-ranking government officers to shield them from harassment suits that will prevent them from performing their functions which are vital to the continued operations of government. Such purpose, according to respondent, would be defeated if Section 2, Article XI of the Constitution would not be construed as providing an exclusive means for the removal of impeachable officers. Respondent argues that it would be absurd for the framers of the Constitution to provide a very cumbersome process for removing said officers only to allow a less difficult means to achieve the same purpose.

Respondent contends that the Republic, in citing the 2010 PET Rules and the cases of *Estrada v. Desierto*[83] and *Lawyers League for a Better Philippines and/or Oliver Lozano v. President Corazon Aquino et al.*,[84] erroneously lumps together the Chief Justice, the President and the Vice-President, simply because they are all impeachable officers. Respondent argues that there are substantial distinctions between the President and Vice-President on the one hand, and Members of the Supreme Court on the other: first, unlike Section 4, Article VII of the 1987 Constitution vesting in the Court the power to be the "sole judge" of all contests relating to the qualifications of the President and the Vice-President, there is no similar provision with respect to the other impeachable officials, *i.e.*, the Members of this Court, the Members of the Constitutional Commission or the Ombudsman; and second, the President and Vice-President are elected officials while the other impeachable officers are appointive officials.

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[83] *Supra* note 75.

[84] *Supra* note 76.

Supreme Court E-Library

Respondent also argues that there is not a single pronouncement in *Funa v. Chairman Villar*[85] and *Nacionalista Party v. De Vera*[86] (by way of a ruling or *obiter dictum*) to the effect that an impeachable officer may be ousted through a writ of *quo warranto,* and that both cases were not even for *quo warranto.*

Respondent maintains that whether respondent was a person of "proven integrity" when she applied for the position of Chief Justice is a political question outside the jurisdiction of this Honorable Court, which only the JBC and the President as the appointing authority could determine. She avers that the application of the political question doctrine is not confined to the President or Congress, as the Republic supposedly argues, but extends to other government departments or officers exercising discretionary powers, such as the JBC which uses its wisdom and discretion in determining whether an applicant to the Judiciary is a person of "proven" integrity.

Respondent also contends that absent any challenge to her nomination and appointment on the ground of grave abuse of discretion on the part of the JBC and the President, her appointment can no longer be questioned.

Respondent reiterates that the instant petition is time-barred. She argues that the Republic cannot rely on *Agcaoili v. Suguitan*[87] because it mentioned the principle *nullum temus occurit regi* or "no time runs against the king" only in passing, as the "general rule concerning limitation of action in *quo warranto* proceedings." She avers that *Agcaoili* is in fact authority for the principle that prescription will definitely run against the State if the rule or statute clearly so provides.

Respondent avers that she complied with the SALN laws as Professor of the U.P. College of Law and that the law presumes

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[85] *Supra* note 65.

[86] *Supra* note 66.

[87] 48 Phil. 676 (1929).

regularity in the filing of SALNs. According to respondent, that at least 11 of her SALNs have been found tends to prove a pattern of filing, rather than non-filing.

Respondent argues that the burden of proof in *quo warranto* proceedings falls on the party who brings the action and that based on *Doblada,* the Republic failed to discharge this burden. Respondent claims that the records of the U.P. HRDO are incomplete and unreliable and there was no categorical statement in its Certification that she failed to file her SALNs for the years 1986, 1987, 1988, 1989, 1992, 1999, 2000, 2001, 2003, 2004, 2005, and 2006. Further, she avers that the records of the Office of the Ombudsman are even more incomplete and unreliable, thus, any certification from said office would likewise be insufficient to prove that she failed to file 11 of her SALNs while she was a U.P. Professor.

Respondent contends that she has actually presented preponderant evidence that she filed her SALNs. She avers that she has recovered 11 of her U.P. SALNs and she has direct proof that she executed at least 12 SALNs as a U.P. Professor. She stresses that the U.P. HRDO has thrice "cleared" her of all administrative responsibilities and administrative charges.

Respondent also claims that she was not even required to file a SALN from 1986 to 1991 because her status and appointment then was merely temporary. According to her, the fact that she served as counsel for the Republic for the PIATCO cases in 2004, 2005 and 2006 does not negate her defense that under the law, she was not required to file her SALNs for the years when she was on leave and was not receiving compensation arising from public office (*i.e.*, 2001, 2004, 2005 and 2006).

Respondent's Memorandum also sought to address certain matters raised during the Oral Arguments.

As to where her SALNs are, respondent avers that some of her SALNs were in fact found in the records of the U.P. HRDO, and she was able to retrieve copies of some of her SALNs from the U.P. Law Center. Without prejudice to her jurisdictional

Supreme Court E-Library

objections, she attached them to the Memorandum. She argues that the fact that the SALNs for certain years are missing cannot give rise to the inference that they were not filed. She points out that U.P. was only required to keep the SALNs for a period of ten (10) years after receipt of the statement, after which the SALN may be destroyed.

In explaining her statement before the JBC that her SALNs were irretrievable, respondent avers that she honestly could not retrieve copies from U.P. over the course of a weekend given to her to complete her missing documentary requirements. She declares that she did not keep copies of her SALNs and she was not required to do so by law.

Respondent asserts that her 2009 SALN was not belatedly filed. She explains that her 2009 SALN is an entry SALN which she originally filed on September 16, 2010 within thirty (30) days after her assumption of office as an Associate Justice of the Supreme Court. According to her, the revised 2009 SALN which has the annotation "revised as of 22 June 2012," is a revised version executed in June 2012 to more accurately reflect the acquisition cost of certain assets declared in 2010.

With respect to the purported 2006 SALN, respondent avers that it was not the SALN required by RA 6713, but a mere statement of her assets which the JBC requested as a tool to determine her assets for comparison with her income tax returns. She explains that she merely happened to use a downloadable SALN form which she filled up and dated as of the time of its writing, *i.e.*, July 27, 2010. She claims that she never misrepresented the same to be her 2006 exit SALN from U.P. According to her, she in fact considers her 2006 SALN as one of the missing SALNs she is still trying to locate.

Respondent claims that she could not recall all the circumstances why her 1998 SALN was executed only in 2003 which, according to her, was reasonable since it happened 15 years ago. She claims that there is no law prohibiting her from submitting the same, and the fact that the SALN was filed serves the purpose of the law and negates any intention to hide unexplained wealth.

It is also respondent's position that the omission of her husband's signature on her 2011 SALN was inadvertent and was not an offense. According to her, it could not adversely impact on her integrity absent any allegation or finding that she acquired ill-gotten wealth. She argues that the Civil Service Commission's Guidelines which require the signature of the spouse who is not a public officer, was promulgated only in January 2013.

With regard to the jewelry she acquired from 1986 to 1991 which were supposedly declared in her 1991 SALN but were undeclared in her 1990 SALN, respondent avers that these assets were actually declared in her 1985 and 1989 SALNs, and they were consistently declared in all her subsequent SALNs beginning 1991. According to respondent, she should not be faulted for her inadvertent omission to declare such assets in her 1990 SALN as her declaration of the same thereafter is consistent with good faith and cured whatever error there may have been in her 1990 SALN. She argues that said assets were not manifestly disproportionate to her lawful income and even as a U.P. Professor, she could have afforded to purchase jewelry worth Php15,000.00 over a span of six (6) years.

Finally, respondent argues that it is an "unreasonable and oppressive" interpretation of the law to reckon her entry SALN as Associate Justice of the Court from the date of her appointment (August 16, 2010) and not from December 31, 2009 when it was actually filed. Respondent contends that R.A. No. 6713 only requires that the SALN be filed "within thirty days after assumption of office" – a directive she supposedly complied with. She argues that while the Implementing Rules and Regulations of R.A. No. 6713 state that the SALN should be reckoned from the first day of service, the law provides for a review and compliance procedure which requires that a reporting individual first be informed and provided an opportunity to take necessary corrective action should there be any error in her SALN. Respondent avers that she did not receive any notice or compliance order informing her that her entry SALN was erroneous, and she was not directed to take the necessary corrective action.

Supreme Court E-Library

The Respondent's Reply/Supplement to Memorandum

At the close of the Oral Argument, granted upon respondent's *Ad Cautelam* motion, the Court specifically required the parties to submit their respective memoranda within a non-extendible period of ten (10) days, after which, the petition shall be submitted for decision. Notwithstanding such clear directive from the Court, and even without being required to, respondent moves (again *Ad Cautelam*) for the inclusion of her Reply/Supplement to her memorandum filed beyond the period granted by the Court to the parties. The belated filing of said Reply/Supplement in disregard of the Court's directive merits its non-admission. Nevertheless, as the Court remains circumspect of the pleadings submitted by the parties and in accordance with the dictates of due process and fair play, respondent's Reply/Supplement to her Memorandum, albeit filed *Ad Cautelam*, is admitted.

Respondent raises two points in her Reply/Supplement: *first*, the new matter of tax fraud allegedly committed by her; and *second*, the forum-shopping allegedly committed by the Republic.

Respondent sought to address the inclusion of the charge of tax fraud allegedly committed by her relative to the fees she received in the PIATCO cases which respondent argues to have been raised by the Republic only in its memorandum. Respondent denies having concealed or under declared her income in the PIATCO cases. She further points out that the Summary and the Powerpoint presentation prepared by BIR Deputy Commissioner Guballa and which were attached to the Republic's memorandum were incomplete, inaccurate and merely preliminary. In any case, respondent avers that BIR Deputy Commissioner Guballa himself found that respondent had "substantially declared all income (legal fees) from the PIATCO case in her ITRs from years 2004 to 2009 BUT there were certain discrepancies."[88]

Respondent also accuses the Republic of having committed deliberate forum-shopping in filing the action for *quo warranto*

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[88] Respondent's Reply/Supplement to Memorandum *Ad Cautelam*.

even when the impeachment proceeding was already pending before the House of Representatives. Contending that all the elements of forum-shopping are present, respondent points to the (1) identity of parties between the *quo warranto* action and the impeachment case inasmuch as the House Committee on Justice is also part of the Government; (2) identity of causes of action considering that the *quo warranto* case is based on respondent's alleged lack of proven integrity for failure to file all her SALNs when she was teaching at the U.P. College of Law and for concealing her true income and evasion of taxes which were the same attacks on her eligibility and qualifications as enumerated in the Articles of Impeachment; and (3) identity in the relief sought as both the *quo warranto* and the impeachment sought her removal from the Office of the Chief Justice.

The Motions for Intervention

Through a Joint Motion for Leave to Intervene and Admit Attached Comment-In-Intervention, movant-intervenors composed of (1) former CEO of PAG-IBIG Fund, Zorayda Amelia Capistrano Alonzo, (2) peace & human rights advocate Remedios Mapa Suplido, (3) urban poor advocate Alicia Gentolia Murphy, (4) Chairperson of Pambansang Kilusan ng mga Samahang Magsasaka (PAKISAMA) Noland Merida Penas, (5) Fr. Roberto Reyes, and (6) poet, feminist & youth advocate Reyanne Joy P. Librado (Capistrano, *et al.,*) seek to intervene in the present petition as citizens and taxpayers.

The comment-in-intervention is a virtual echo of the arguments raised in respondent's comment that *quo warranto* is an improper remedy against impeachable officials who may be removed only by impeachment and that the application of the PET rules are limited only to the President and Vice-President who are elective, and not appointive, officials. Movant-intervenors similarly argue that the petition is already time-barred as the cause of action arose upon respondent's appointment as Chief Justice on August 24, 2012 or almost six (6) years ago.

Capistrano *et al.* argue that it is not incumbent upon respondent to prove to the JBC that she possessed the integrity required

Supreme Court E-Library

by the Constitution for members of the Judiciary; rather, the *onus* of determining whether or not she qualified for the post fell upon the JBC. They also posit that nowhere in the Constitution is the submission of all prior SALNs required; instead, what is required is that all aspiring justices of the Court must have the imprimatur of the JBC, the best proof of which is a person's inclusion in the shortlist.

Capistrano *et al.* persuade that respondent's explanation that her government records in the academe for 15 years are irretrievable is reasonable and that respondent did not mislead the JBC. On the contrary, they claim that the JBC accepted her explanation when it deemed respondent as qualified. In doing so, they conclude, that the JBC determined that she possessed the integrity as required by the Constitution.

A few hours after the filing of the Capistrano *et. al.,'s* Comment-in-Intervention, another set of intervenors composed of: (1) BAYAN MUNA Representative (Rep.) Carlos Isagani Zarate; (2) ACT Teachers Partylist Rep. Antonio Tinio & Francisca Castro; (3) GABRIELA Women's Party Rep. Emerenciana De Jesus & Arlene Brosas; (3) ANAKPAWIS Partylist Rep. Ariel Casilao; (5) KABATAAN Partylist Rep. Sarah Jane Elago; (6) Convenors and members of Movement Against Tyranny (MAT), namely: Francisco A. Alcuaz, Bonifacio P. Ilagan, & Col. George A. Rabusa (Ret.); (7) Former Senator Rene A.V. Saguisag; (8) Bishop Broderick S. Pabillo, D.D.; (9) Secretary Gen. of Bagong Alyansang Makabayan (BAYAN) Renato M. Reyes, Jr.; (10) Member of MDD Youth (an Affiliate of Aksyon Demokratiko) Kaye Ann Legaspi; and (11) Secretary General of National Union of People's Lawyers Atty. Ephraim B. Cortez (Zarate, *et al.,*) filed a Motion for Leave to File Motion to Intervene and Opposition-in-Intervention, pursuant to Rule 19 of the Rules of Court. They claim that as citizens and taxpayers, they have a legal interest in the matter of respondent's ouster or removal.

Zarate *et al.* raise the similar argument that the Chief Justice of the Supreme Court may only be removed from office on impeachment for, and conviction of, culpable violation of the

constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust and that it is only the Congress who has the power to remove the Chief Justice through the exclusive mode of impeachment.

They further argue that the issue of respondent's non-submission of complete SALNs, without more, does not have the effect of putting to question her integrity as she did not conceal her SALNs. They argue that the qualification of having a "proven integrity" is a standard subject to the discretion of, *first*, the JBC who submits the list of qualified candidates; and *second*, of the President, who will select among the shortlist whom to appoint as Chief Justice.

Movant-Intervenor Rene A.V. Saguisag subsequently filed a Supplement to Motion for Leave to File Motion to Intervene and Opposition-in-Intervention *Cum* Petition to Recuse seeking the inhibition of unnamed Members of this Court who "may have prematurely thrown their weight on the other side, actually or perceptually" on the ground that respondent is entitled to an impartial arbiter.

As well, the Integrated Bar of the Philippines (IBP) filed its Motion for Leave to File and to Admit Attached Opposition-in-Intervention as an organization of all Philippine lawyers, having the fundamental duty to uphold the Constitution and an interest in ensuring the validity of the appointments to the Judiciary. The IBP's arguments reflect the arguments of the respondent and the other movant-intervenors that the *quo warranto* petition is time-barred and is unavailable against an impeachable officer. The IBP further argues that the determination of whether respondent is of "proven integrity" belongs to the JBC and which question the Court cannot inquire into without violating the separation of powers. It is likewise the contention of the IBP that the petition is fatally flawed since the JBC never required the submission of respondent's SALNs from 2001 to 2006.

Also seeking to intervene in the instant petition, Senators Leila M. De Lima (Senator De Lima) and Antonio F. Trillanes

Supreme Court E-Library

IV (Senator Trillanes) as citizens, taxpayers, and senators of the Republic, filed a Motion to Intervene and Admit Attached Opposition-In-Intervention (*Ad Cautelam*) on April 4, 2018.

In the said Motion, Senators De Lima and Trillanes assert that they possess a clear legal interest, both personal and official, in the subject matter of the Republic's petition to oust the Chief justice on the ground that she does not possess the constitutional requirement of integrity. According to Senators De Lima and Trillanes, they have the right and duty to uphold the Constitution and to oppose government actions that are clearly and patently unconstitutional. It is also Senators De Lima and Trillanes' theory that the instant *quo warranto* case is aimed to deprive the Senate of its jurisdiction as the impeachment tribunal. They argue that their mandated duty as judges in the possible impeachment trial of the Chief Justice will be pre-empted and negated if the *quo warranto* petition will be granted. Their claimed legal interest in their intervention in and opposition to the petition for *quo warranto* is mainly anchored upon their duty and prerogatives as Senators-judges in an impeachment trial and to protect the institution of impeachment as a mode of enforcing accountability.

Senators De Lima and Trillanes' Opposition-In-Intervention is a mere reiteration of the respondent's argument that this Court has no jurisdiction over a petition for *quo warranto* against an impeachable officer. They argue that the Chief Justice of the Supreme Court is, by express provision of the Consitution, removable from office exclusively by impeachment. They also aver that the ground raised in the petition for *quo warranto* – lack of integrity for failing to submit one's SALN – is part of the allegations in the impeachment case being heard in the House of Representatives. Thus, they argue that the use of an identical ground in a *quo warranto* proceeding directly undermines the jurisdiction of the Senate to hear and decide impeachment cases and the prerogative of the senators to try the same.

Senators De Lima and Trillanes also advance the argument that the Constitution identifies and enumerates only three qualifications for appointment to the Supreme Court: (1) natural

born citizenship; (2) age, *i.e.*, at least forty years; and (3) an experience of at least 15 years either as judge of a lower court or in the practice of law in the Philippines. They assert that the filing of a SALN, taking of psychological or physical examination, and similar requirements, are merely discretionary administrative requirements for consideration of the JBC, not Constitutional requirements, hence, can be waived, removed entirely, or adjusted by the JBC in the exercise of its discretion. According to the said movant-intervenors, Section 7(3), Article VIII of the 1987 Constitution, which states that,"[a] Member of the Judiciary must be a person of proven competence, integrity, probity, and independence," does not speak of objective constitutional qualifications, but only of subjective characteristics of a judge. They, therefore, contend that "qualifications" such as citizenship, age, and experience are enforceable while "characteristics" such as competence, integrity, probity, and independence are mere subjective considerations.

Corollarily, Senators De Lima and Trillanes argue that the subjective considerations are not susceptible to analysis with tools of legal doctrine. Hence, questions on this matter are for the consideration of political institutions under the Constitution, *i.e.,* the JBC and the President (prior to appointment) and the House of Representatives and the Senate (after appointment).

The Motions for Inhibition

By way of separately filed motions, respondent seeks affirmative relief, in the form of the inhibition of five (5) Justices of the Court, the jurisdiction of which she questions and assails. Respondent prays for the inhibition of Associate Justices Lucas P. Bersamin, Diosdado M. Peralta, Francis H. Jardeleza, Noel Gimenez Tijam, and Teresita J. Leonardo-De Castro from hearing and deciding the present petition.

In common, respondent imputes actual bias on said Justices for having testified before the House Committee on Justice on the impeachment complaint. In particular, respondent considered Justice Bersamin's allusion to respondent as a "dictator" and his personal resentment about the supposed withdrawal of the

Supreme Court E-Library

privilege previously enjoyed by the members of the Court to recommend nominees to vacant positions in the Judiciary, as evidence of actual bias.

Justice Peralta's inhibition, on the other hand, is being sought because as then Acting *ex officio* Chairperson of the JBC when respondent was nominated for appointment as Chief Justice, he would have personal knowledge of disputed evidentiary facts concerning the proceedings and for having served as a material witness in the matter in controversy.

Justice Jardeleza's inhibition is sought on the ground that his testimony before the House Committee on Justice reveals that he harbors ill feelings towards respondent on account of the latter's challenge to his integrity during the nomination process for the Associate Justice position *vice* Justice Roberto A. Abad which he characterized as "inhumane."

Respondent seeks the inhibition of Justice Tijam based on the latter's statement as quoted in a Manila Times article to the effect that if respondent continues to ignore and to refuse to participate in the impeachment process, she is clearly liable for culpable violation of the Constitution.

Respondent likewise made mention that Justice Tijam and Justice Bersamin wore a touch of red during the "Red Monday" protest on March 12, 2018 wherein judges and court employees reportedly called on respondent to make the supreme sacrifice and resign.

Respondent also calls for the inhibition of Justice De Castro for having allegedly prejudged the issue as regards the validity of respondent's nomination and appointment in 2012 when Justice De Castro testified under oath during the House Committee on Justice hearings that respondent should have been disqualified from the shortlist on account of the SALNs she allegedly failed to submit.

At the last minute, respondent also seeks to disqualify Justice Samuel R. Martires for his purported insinuations during the Oral Arguments questioning her "mental" or "psychological"

fitness on the basis of her belief that God is "the source of everything in (her) life."[89]

Respondent also prays that the *Ad Cautelam* Respectful Motions for Inhibitions of Associate Justices Peralta, Leonardo-De Castro, Jardeleza, Tijam, Bersamin and Martires be resolved by the Court *En Banc*, without the participation of the Justices she seeks to disqualify.

The Issues

From the arguments raised by the parties and the issues as delineated in the Advisory governing the special Oral Arguments by way of accommodation to respondent, the paramount issues to be resolved by the Court are:

1. Whether the Court can assume jurisdiction and give due course to the instant petition for *quo warranto* against respondent who is an impeachable officer and against whom an impeachment complaint has already been filed with the House of Representatives;

2. Whether the petition is outrightly dismissible on the ground of prescription;

3. Whether respondent is eligible for the position of Chief Justice:

a. Whether the determination of a candidate's eligibility for nomination is the sole and exclusive function of the JBC and whether such determination partakes of the character of a political question outside the Court's supervisory and review powers;

b. Whether respondent failed to file her SALNs as mandated by the Constitution and required by the law and its implementing rules and regulations; and if so, whether the failure to file SALNs voids the nomination and appointment of respondent as Chief Justice;

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[89] *Id*.

Supreme Court E-Library

c. Whether respondent failed to comply with the submission of SALNs as required by the JBC; and if so, whether the failure to submit SALNs to the JBC voids the nomination and appointment of respondent as Chief Justice;

d. In case of a finding that respondent is ineligible to hold the position of Chief Justice, whether the subsequent nomination by the JBC and the appointment by the President cured such ineligibility.

4. Whether respondent is a *de jure* or *de facto* officer.

The Ruling of the Court

Preliminary Issues

Intervention is an ancillary remedy restricted in purpose and in time

Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings.[90]

Nevertheless, the remedy of intervention is not a matter of right but rests on the sound discretion of the court upon compliance with the first requirement on legal interest and the second requirement that no delay and prejudice should result as spelled out under Section 1, Rule 19 of the Rules of Court, as follows:

Sec. 1. *Who may intervene*. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of

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[90] *Hi-Tone Marketing Corp. v. Baikal Realty Corp.,* 480 Phil. 545, 569 (2004).

the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Each of the movant-intervenors in this case seek to intervene as citizens and taxpayers, whose claimed interest to justify their intervention is their "sense of patriotism and their common desire to protect and uphold the Philippine Constitution." The movant-intervenors further assert a "public right" to intervene in the instant case by virtue of its "transcendental importance for the Filipino people as a whole". Apart from such naked allegations, movant-intervenors failed to establish to the Court's satisfaction the required legal interest. Our jurisprudence is well-settled on the matter:

> Intervention is not a matter of absolute right but may be permitted by the court **when the applicant shows facts which satisfy the requirements of the statute authorizing intervention**. Under our Rules of Court, what qualifies a person to intervene is his **possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both**; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. As regards the legal interest as qualifying factor, this Court has ruled that such **interest must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral**. x x x.[91] (Emphasis ours)

Clearly, herein movant-intervenors' sentiments, no matter how noble, do not, in any way, come within the purview of the concept of "legal interest" contemplated under the Rules to justify the allowance of intervention. Movant-intervenors failed to show any legal interest of such nature that they will "either gain or lose by the direct legal operation of the judgment."

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[91] *Ongco v. Dalisay*, 691 Phil. 462, 469-470 (2012) citing *Hon. Executive Secretary, et al. v. Northeast Freight Forwarders, Inc.*, 600 Phil. 789, 799 (2009).

Supreme Court E-Library

Even the IBP's assertion of their "fundamental duty to uphold the Constitution, advocate for the rule of law, and safeguard the administration of justice", being the official organization of all Philippine lawyers, will not suffice. Admittedly, their interest is merely out of "sentimental desire" to uphold the rule of law. Meanwhile, Senators De Lima and Trillanes' claimed legal interest is mainly grounded upon their would-be participation in the impeachment trial as Senators-judges if the articles of impeachment will be filed before the Senate as the impeachment court. Nevertheless, the fact remains that as of the moment, such interest is still contingent on the filing of the articles of impeachment before the Senate. It bears stressing that the interest contemplated by law must be actual, substantial, material, direct and immediate, and *not simply contingent or expectant*.[92]

Indeed, if every person, not parties to the action but assert their desire to uphold the rule of law and the Constitution, were allowed to intervene, proceedings would become unnecessarily complicated, expensive, and interminable.[93]

Emphatically, a *quo warranto* proceeding is an action by the government against individuals unlawfully holding an office. Section 1, Rule 66 provides:

> Section 1. *Action by Government against individuals.* — An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:
>
> (a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;
>
> (b) A public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office; or

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[92] *Mactan-Cebu International Airport Authority v. Heirs of Estanislao Miñoza*, 656 Phil. 537, 547 (2011).

[93] *Id*. at 547-548.

(c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act.

The remedy of *quo warranto* is vested in the people, and not in any private individual or group, because disputes over title to public office are viewed as a public question of governmental legitimacy and not merely a private quarrel among rival claimants.[94]

Newman v. United States ex Rel. Frizzell,[95] historically traced the nature of *quo warranto* proceedings as a crime which could only be prosecuted in the name of the King by his duly authorized law officers. In time, the criminal features of *quo warranto* proceedings were modified and as such, the writ came to be used as a means to determine which of two claimants was entitled to an office and to order the ouster and the payment of a fine against the usurper. This quasi-criminal nature of *quo warranto* proceedings was adopted in some American states. Nonetheless, *Newman* explains that the Code of the District of Colombia, which was the venue of the case, continues to treat usurpation of office as a public wrong which can be corrected only by proceeding in the name of the government itself. Thus:

In a sense – in a very important sense – every citizen and every taxpayer is interested in the enforcement of law, in the administration of law, and in having only qualified officers execute the law. But that general interest is not a private, but a public interest. Being such, it is to be represented by the Attorney General or the District Attorney, who are expected by themselves or those they authorize to institute quo warranto proceedings against usurpers in the same way that they are expected to institute proceedings against any other violator of the law. That general public interest is not sufficient to authorize a private citizen to institute such proceedings, for, if it was, then every citizen and every taxpayer would have the same interest and the same right to institute such proceedings, and a public officer might, from

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[94] *Oakland Municipal Improvement League v. City of Oakland* (1972) 23 Cal. App. 3D 165, 170.

[95] 238 U.S. 537 (1915).

Supreme Court E-Library

the beginning to the end of his term, be harassed with proceedings to try his title.

The only time that an individual, in his own name, may bring an action for *quo warranto* is when such individual has a claim over the position in question. Section 5 of Rule 66 of the Rules of Court provides:

> Section 5. *When an individual may commence such an action.* — A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name.

In this case, the movants-intervenors are neither individuals claiming to be entitled to the questioned position nor are they the ones charged with the usurpation thereof.

Furthermore, it should be emphasized that the movants-intervenors, in their respective Motions, presented nothing more than a mere reiteration of respondent's allegations and arguments in her Comment.

For these reasons, the Court, in its Resolution[96] dated April 3, 2018, resolved to deny the motions for intervention respectively filed by Capistrano *et al.,* and Zarate *et al.*, and to note the IBP's intervention. For similar reasons, the Court resolves to deny the motion for intervention of Senators De Lima and Trillanes.

No basis for the Associate Justices of the Supreme Court to inhibit in the case

The instant petition comes at the heels of the recently-concluded hearings on the determination of probable cause in the impeachment complaint against respondent before the House Committee on Justice. Several Members of the Court, both incumbent and retired, were invited, under pain of contempt, to serve as resource persons. Those Members who were present

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[96] *Rollo*, pp. 501-505.

at the Committee hearings were armed with the requisite imprimatur of the Court *En Banc,* given that the Members are to testify only on matters within their personal knowledge and insofar as material and relevant to the issues being heard. For lack of particularity, the Court supposes that the attendance of some of its Members in the House Committee hearings is the basis of movant-intervenor Saguisag's motion to recuse.

On the other hand, respondent was more emphatic when she sought affirmative relief, in the form of the inhibition of six (6) Justices, of the Court, whose jurisdiction she questions and assails. Specifically, respondent prays for the inhibition of Associate Justices Lucas P. Bersamin, Diosdado M. Peralta, Francis H. Jardeleza, Noel Gimenez Tijam, Teresita J. Leonardo-De Castro and Samuel R. Martires fundamentally on the ground of actual bias for having commonly testified before the House Committee on Justice on the impeachment case.

As for Justice Samuel R. Martires, respondent concludes Justice Martires' manifested actual bias based on his statements during the Oral Arguments which purportedly tended to question respondent's mental and psychological fitness.

In particular, respondent seeks the inhibition of Justice Tijam based on the latter's statement as quoted in a Manila Times article to the effect that if respondent continues to ignore and to refuse to participate in the impeachment process, she is clearly liable for culpable violation of the Constitution.

Respondent cites the article entitled, "*Appear in Congress or violate Constitution*," dated December 4, 2017, where Justice Tijam was purportedly quoted to have said:

> Impeachment is a constitutional process and a mandate enshrined in the Constitution. Justices took an oath to defend, preserve, protect the Constitution. **If Chief Justice Sereno continues to ignore and continues to refuse to participate in the impeachment process, ergo, she is clearly liable for culpable violation of the Constitution. (emphasis supplied)**

Respondent claims that the aforesaid statements of Justice Tijam are indicative of his stance that there may be a ground

Supreme Court E-Library

to impeach and remove respondent from office, which is also the objective of the *quo warranto* petition against her.

Ultimately, the cause for inhibition simmers to the question of whether, in so appearing and testifying before the House Committee on Justice, the Members of the Court are precluded from hearing and deciding the instant petition for *quo warranto*. To this, the Court answers in the negative.

Jurisprudence recognizes the right of litigants to seek disqualification of judges. Indeed, elementary due process requires a hearing before an impartial and disinterested tribunal. "A judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to its fairness and as to his integrity."[97]

However, the right of a party to seek the inhibition or disqualification of a judge who does not appear to be wholly free, disinterested, impartial and independent in handling the case must be balanced with the latter's sacred duty to decide cases without fear of repression. The movant must therefore prove the ground of bias and prejudice by clear and convincing evidence to disqualify a judge from participating in a particular trial. "[W]hile it is settled principle that opinions formed in the course of judicial proceedings, based on the evidence presented and conduct observed by the judge, do not prove personal bias or prejudice on the part of the judge."[98]

A circumspect reading of Justice Tijam's statements in the Manila Times article reveals that the manifest intent of the statements was only to prod respondent to observe and respect the constitutional process of impeachment, and to exemplify the ideals of public accountability, thus:

He added that he wanted **to encourage Sereno to show up at the Congress hearings "to respect and participate in the impeachment (process), and to defend herself and protect the institution."**

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[97] *Query of Exec. Judge Estrada, RTC, Malolos, Bulacan*, 239 Phil. 1, 6 (1987).

[98] *People v. Hon. Ong*, 523 Phil. 347, 358 (2006).

Sereno, he said, should be a **role model when it comes to respecting the Constitution.**

"Impeachment is not an invention of politicians. It was drafted by the framers of the Constitution. Media, which propagates the myth that impeachment is a numbers game, hence, is political and arbitrary, fails to emphasize the fact that the rule of the majority is the essence of democracy," the magistrate stressed.

Tijam believes that the impeachment process against Sereno is not an attack on the high court or the Judiciary because the Supreme Court does not consist of the chief justice alone.

"Impeachment is [neither] an assault on the Judiciary nor an infringement on the independence of the Judiciary, because it is enshrined in the Constitution. Parenthetically, when the SC strikes down acts of Congress and acts of the President and the Executive Department for being unlawful and unconstitutional, the SC is not assaulting the independence of Congress and the Executive Department because the expanded power of judicial review is enshrined in the Constitution," Tijam pointed out.

Sereno, he said, **should be a role model when it comes to respecting the Constitution.**[99] (Emphasis ours)

Notably, respondent conveniently and casually invoked only a portion of the article which suited her objective of imputing bias against Justice Tijam.

As to the act of wearing a red tie which purportedly establishes Justices Tijam and Bersamin's prejudice against her, the argument is baseless and unfair. There is no basis, whether in logic or in law, to establish a connection between a piece of clothing and a magistrate's performance of adjudicatory functions. Absent compelling proof to the contrary, the red piece of clothing was merely coincidental and should not be deemed a sufficient ground to disqualify them.

In Philippine Commercial International Bank v. Sps. Dy Hong Pi, et al.,[100] this Court explained that:

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[99] <http://www.manilatimes.net/appear-congress-violate-constitution/366575/> (visited on April 6, 2018).

[100] 606 Phil. 615 (2009).

Supreme Court E-Library

[T]he second paragraph of Rule 137, Section 1,[101] does not give judges unfettered discretion to decide whether to desist from hearing a case. The inhibition must be for just and valid causes, and in this regard, We have noted that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. This Court has to be shown acts or conduct clearly indicative of arbitrariness or prejudice before it can brand them with the stigma of bias or partiality. Moreover, extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice.[102] (Citations omitted)

In this case, it does not appear that there are grounds for compulsory inhibition. As to voluntary inhibition, the mere fact that some of the Associate Justices participated in the hearings of the Committee on Justice determining probable cause for the impeachment of respondent does not make them disqualified to hear the instant petition. Their appearance thereat was in deference to the House of Representatives whose constitutional duty to investigate the impeachment complaint filed against respondent could not be doubted. Their appearance was with the prior consent of the Supreme Court *En Banc* and they faithfully observed the parameters that the Court set for the purpose. Their statements in the hearing, should be carefully

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[101] Section 1. *Disqualification of judges*. – No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

[102] *Supra* at 638-639.

viewed within this context, and should not be hastily interpreted as an adverse attack against respondent.

In fact, Justice Tijam, in his Sworn Statement[103] submitted to the House Committee on Justice, clearly identified the purpose of his attendance thereat:

> 2. In reply, I sent a letter to Representative Umali on November 24, 2017, informing him that inasmuch as the issue involved actions of the Supreme Court *En Banc*, **I deemed it proper to first secure its approval before participating in the House Committee hearing**.
>
> 3. On November 28, 2017, the Supreme Court *En Banc* gave clearance for Justices who have been invited by the House Committee on Justice to testify in connection with the impeachment complaint, to give testimony on administrative matters if they so wish. **The Court's Resolution in this regard states that the authority was granted "only because the proceedings before the Committee on Justice of the House of Representatives constitute part of the impeachment process under Section 3, Article XI of the 1987 Constitution."**
>
> A copy of the Court's Resolution is hereto attached as Annex "A."
>
> 4. I am submitting this Sworn Statement to the House Committee on Justice as my testimony in relation to A.M. No. 17-06-02-SC, based on my best recollection of events relating to said matter and available records. I shall, however, be willing to give further testimony should the House Committee find it appropriate to propound questions thereon at the December 11, 2017 Committee hearing, subject to applicable limitations under law and relevant rules.
>
> 5. **I will appear and give testimony before the House Committee on Justice not as a witness for the complainant, but to honor the Committee's invitation** to shed light on A.M. No. 17-06-02-SC **and to accord due respect to the Constitutionally established process of impeachment.** (Emphasis ours)

Likewise, the Justices, including Justice Tijam, who appeared during the House Committee on Justice hearings, refused to form any conclusion or to answer the uniform query as to whether respondent's acts constitute impeachable offenses, as it was

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[103] Dated December 6, 2017.

Supreme Court E-Library

not theirs to decide but a function properly belonging to the Senate, sitting as an impeachment court.[104] Evidently, no bias and prejudice on the part of the Justices could be inferred therein.

A judge may decide, "*in the exercise of his sound discretion,*" to recuse himself from a case for *just or valid reasons*. The phrase *just or valid reasons*, as the second requisite for voluntary inhibition, must be taken to mean —

> x x x causes which, though not strictly falling within those enumerated in the first paragraph, are akin or analogous thereto. In determining what causes are just, judges must keep in mind that next to importance to the duty of rendering a righteous judgment is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge. For it is an accepted axiom that every litigant, including the state, in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge, and the law intends that no judge shall preside in any case in which he is not wholly free, disinterested, impartial, and independent.[105]

Respondent's call for inhibition has been based on speculations, or on distortions of the language, context and meaning of the answers the Justices may have given as sworn witnesses in the proceedings of the House Committee on Justice.

Justice Bersamin's statement that *"Ang Supreme Court ay hindi po maaring mag function kung isa ay diktador,"* is clearly a hypothetical statement, an observation on what would the Court be if any of its Members were to act dictatorially.

Likewise, the Court cannot ascribe bias in Justice Bersamin's remark that he was offended by respondent's attitude in ignoring the collegiality of the Supreme Court when she withdrew the Justices' "privilege" to recommend nominees to fill vacancies in the Supreme Court. It would be presumptuous to equate this statement to a personal resentment as respondent regards it. There has always been a high degree of professionalism among

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[104] *See* TSN of the House Committee on Justice dated December 11, 2017, p. XI-2;XVII-1.

[105] 30 Am. Jr. 767.

the Members of the Court in both their personal and official dealings with each other. It cannot also be denied that the statement reflected a natural sentiment towards a decision reached and imposed by a member of a collegial body without consultation or consensus.

Meanwhile, respondent's allegation of actual bias and partiality against Justice Peralta is negated by his testimony during the January 15, 2018 hearing of the House Committee on Justice, where he stated that he has been very supportive of the Judiciary reforms introduced by respondent as the Chief Justice, even if she suspects that he is one of those behind her impeachment.

Justice Peralta's testimony before the House Committee on Justice also contradicts respondent's allegation that Justice Peralta's apparent bias arose from his belief that respondent caused the exclusion of his wife, Court of Appeals (CA) Associate Justice Fernanda Lampas Peralta, from the list of applications for the position of CA Presiding Justice. Justice Peralta has made it clear during the February 12, 2018 Congressional hearing that he has already moved on from said issue and that the purpose of his testimony was merely to protect prospective applicants to the Judiciary.

Justice Peralta's testimony during the Congressional hearing that "*had (he) been informed of (the) letter dated July 23, 2012 and a certificate of clearance, (he) could have immediately objected to the selection of the Chief Justice for voting because this is a very clear deviation from existing rules that if a member of the Judiciary would like...or...a candidate would like to apply for Chief Justice, then she or he is mandated to submit the SALNs,*" is clearly a hypothetical statement, which will not necessarily result in the disqualification of respondent from nomination. It was also expressed in line with his functions as then Acting Chairperson of the JBC, tasked with determining the constitutional and statutory eligibility of applicants for the position of Chief Justice. It bears stressing, too, that at the time said statement was made, the petition for *quo warranto* has not been filed; thus, such statement cannot amount to a prejudgment of the case.

Supreme Court E-Library

Furthermore, according to Justice Peralta, while he was then the Acting *Ex Officio* Chairperson of the JBC at the time of respondent's application for the position of Chief Justice, he had no personal knowledge of the disputed facts concerning the proceedings, specifically the matters considered by the members of the JBC in preparing the shortlist of nominees. He explained that it was the ORSN of the JBC which was tasked to determine completeness of the applicants' documentary requirements, including the SALNs.

As for Justice Martires' statements during the Oral Arguments, this Court does not view them as indication of actual bias or prejudice against respondent. Our review of the record reveals that Justice Martires' did not refer to respondent as the object of his statements, as follows:

JUSTICE MARTIRES :

Solicitor Calida, would you agree with me *na lahat ng taong may dibdib ay may kaba sa dibdib? At lahat ng taong may ulo ay may katok sa ulo.*

SOLICITOR GENERAL CALIDA:

Yes, Your Honor, I agree.

JUSTICE MARTIRES:

Now would you consider it a mental illness (sic) when a person always invokes God as the source of his strength? The source of his inspiration? The source of happiness? The source of everything in life? Is that a mental illness.

SOLICITOR GENERAL CALIDA:

Not necessarily, Your Honor.

JUSTICE MARTIRES:

So, I'm just making a follow-up to the question that Justice Velasco earlier asked. So, would you agree with me that the psychiatrist made a wrong evaluation with respect to the psychiatric report of the Chief Justice?[106]

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[106] Transcript of Stenographic Notes dated April 10, 2018, pp. 234-235.

Neither are We prepared to conclude that Justice Martires' statements were based on an extraneous source, other than what what he has learned or encountered over the course of the instant proceedings. There is nothing in the interpellation, nor in Justice Martires' statements that he has read the psychiatric report, nor has read newspaper accounts tackling the same. He merely asked the OSG if he has read the same, and his opinion regarding it.

Contrary to respondent's contentions, Justice Martires has not suggested that she suffers from some mental or psychological illness. At most, his questions and statements were merely hypothetical in nature, which do not even constitute as an opinion against respondent. Certainly, to impute actual bias based on such a brief discourse with respect to hypothetical matters is conjectural and highly speculative. "Allegations and perceptions of bias from the mere tenor and language of a judge is insufficient to show prejudgment."[107]

In the same vein, insinuations that the Justices of the Supreme Court are towing the line of President Rodrigo Roa Duterte in entertaining the *quo warranto* petition must be struck for being unfounded and for sowing seeds of mistrust and discordance between the Court and the public. The Members of the Court are beholden to no one, except to the sovereign Filipino people who ordained and promulgated the Constitution. It is thus inappropriate to misrepresent that the Solicitor General who has supposedly met consistent litigation success before the Supreme Court shall likewise automatically and positively be received in the present *quo warranto* action. That the Court spares the Solicitor General the rod is easily dispelled by the Court's firm orders in G.R. Nos. 234359 and 234484 concerning alleged extra legal killings – a case directly concerning the actuations of the executive department – to provide the Court with documents relative to the Oplan Tokhang operations and by a uninamous vote, rebuked the Solicitor General's plea for reconsideration. Suffice to say that the Court decides based on

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[107] *Gochan v. Gochan*, 446 Phil. 433, 439 (2003); *People v. Court of Appeals*, 369 Phil. 150, 158 (1999).

Supreme Court E-Library

the merits of a case and not on the actors or the supposed benefactors involved.

Absent strong and compelling evidence establishing actual bias and partiality on the part of the Justices whose recusal was sought, respondent's motions for inhibition must perforce fail. Mere conjectures and speculations cannot justify the inhibition of a Judge or Justice from a judicial matter. The presumption that the judge will undertake his noble role of dispensing justice in accordance with law and evidence, and without fear or favor, should not be abandoned without clear and convincing evidence to the contrary.

In *Dimo Realty & Development, Inc. v. Dimaculangan,*[108] We held:

"[B]ias and prejudice, to be considered valid reasons for the voluntary inhibition of judges, must be proved with clear and convincing evidence. Bare allegations of partiality and prejudgment will not suffice. These cannot be presumed, especially if weighed against the sacred obligation of judges whose oaths of office require them to administer justice without respect to person and to do equal right to the poor and the rich."[109] (Citation omitted)

The Court has pointedly observed in *Pimentel v. Hon. Salanga:*[110]

Efforts to attain fair, just and impartial trial and decision, have a natural and alluring appeal. But, we are not licensed to indulge in unjustified assumptions, or make a speculative approach to this ideal. **It ill behooves this Court to tar and feather a judge as biased or prejudiced, simply because counsel for a party litigant happens to complain against him. As applied here, respondent judge has not as yet crossed the line that divides partiality and impartiality. He has not thus far stepped to one side of the fulcrum. No act or conduct of his would show arbitrariness or prejudice. Therefore,**

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[108] 469 Phil. 373 (2004).

[109] *Id*. at 384-385.

[110] 128 Phil. 176 (1967).

we are not to assume what respondent judge, not otherwise legally disqualified, will do in a case before him. We have had occasion to rule in a criminal case that a charge made before trial that a party "will not be given a fair, impartial and just hearing" is "premature." Prejudice is not to be presumed. Especially if weighed against a judge's legal obligation under his oath to administer justice "without respect to person and do equal right to the poor and the rich." To disqualify or not to disqualify himself then, as far as respondent judge is concerned, *is a matter of conscience*.[111] (Citations omitted and emphasis ours)

The Court has consequently counseled that no Judge or Justice who is not legally disqualified should evade the duty and responsibility to sit in the adjudication of any controversy without committing a dereliction of duty for which he or she may be held accountable. Towards that end, the Court has aptly reminded:

> To take or not to take cognizance of a case, does not depend upon the discretion of a judge not legally disqualified to sit in a given case. It is his duty not to sit in its trial and decision if legally disqualified; but if the judge is not disqualified, it is a matter of official duty for him to proceed with the trial and decision of the case. He cannot shirk the responsibility without the risk of being called upon to account for his dereliction.[112]

It is timely to be reminded, too, that the Supreme Court is a collegial judicial body whose every Member has solemnly and individually sworn to dispense and administer justice to every litigant. As a collegial body, the Supreme Court adjudicates without fear or favor. The only things that the Supreme Court collectively focuses its attention to in every case are the merits thereof, and the arguments of the parties on the issues submitted for consideration and deliberation. Only thereby may the solemn individual oath of the Members to do justice be obeyed.

In line with the foregoing, We deem it baseless, not to mention problematic, the respondent's prayer that the matter of inhibition

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[111] *Id*. at 182-183.

[112] *People v. Moreno*, 83 Phil. 286, 294 (1949); *Perfecto v. Contreras*, 28 Phil. 538 (1914); *Joaquin v. Barretto*, 25 Phil. 281, 287 (1913).

Supreme Court E-Library

of the six Associate Justices be decided by the remaining members of the Court *En Banc*. The respondent herself was cognizant that the prevailing rule allows challenged Justices to participate in the deliberations on the matter of their disqualification. Moreover, exclusion from the deliberations due to *delicadeza* or sense of decency, partakes of a ground apt for a voluntary inhibition. It bears to be reminded that voluntary inhibition, leaves to the sound discretion of the judges concerned whether to sit in a case for other just and valid reasons, with only their conscience as guide.[113] Indeed, the best person to determine the propriety of sitting in a case rests with the magistrate sought to be disqualified. Moreover, to compel the remaining members to decide on the challenged member's fitness to resolve the case is to give them authority to review the propriety of acts of their colleagues, a scenario which can undermine the independence of each of the members of the High Court.

In the *En Banc* case of *Jurado & Co. v. Hongkong Bank*,[114] the Court elucidated that a challenge to the competency of a judge may admit two constructions: *first*, the magistrate decides for himself the question of his competency and when he does so, his decision therein is conclusive and the other Members of the Court have no voice in it; and *second*, the challenged magistrate sits with the Court and decides the challenge as a collegial body. It was in *Jurado* that the Court adopted the second view as the proper approach when a challenge is poised on the competency of a sitting magistrate, that is, the Court, *together with* the challenged magistrate, decides. Jurado further expressly excluded a possible third construction wherein the Court decides the challenge but without the participation of the challenged member on the ground that such construction would place power on a party to halt the proceedings by the simple expedient of challenging a majority of the Justices. The Court sees no reason to deviate from its standing practice of

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[113] *Dr. Raul M. Sunico v. Judge Pedro Dl. Gutierrez*, A.M. No. RTJ-16-2457, February 21, 2017.

[114] 1 Phil. 395 (1902).

resolving competency challenges as a collegial body without excluding the challenged Member from participating therein.

Accordingly, the Court resolves to DENY respondent's motion to exclude Associate Justices Peralta, Leonardo-De Castro, Jardeleza, Tijam, Bersamin, and Martires in the resolution of the separate motions for inhibition against the said Associate Justices. Likewise, the Court resolves to DENY the said separate motions for inhibition.

Substantive Issues

I.

The Court has Jurisdiction over the instant Petition for *Quo Warranto*

The petition challenges respondent's right and title to the position of Chief Justice. The Republic avers that respondent unlawfully holds her office because in failing to regularly declare her assets, liabilities and net worth as a member of the career service prior to her appointment as an Associate Justice, and later as Chief Justice, of the Court, she cannot be said to possess the requirement of proven integrity demanded of every aspiring member of the Judiciary. The Republic thus prays that respondent's appointment as Chief Justice be declared void. Respondent counters that, as an impeachable officer, she may only be removed through impeachment by the Senate sitting as an impeachment court.

Supreme Court has original jurisdiction over an action for quo warranto

Section 5, Article VIII of the Constitution, in part, provides that the Supreme Court shall exercise original jurisdiction over petitions for *certiorari, prohibition, mandamus, quo warranto,* and *habeas corpus*. This Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue the extraordinary writs, including *quo warranto*.

Supreme Court E-Library

Relatedly, Section 7, Rule 66 of the Rules of Court provides that the venue of an action for *quo warranto*, when commenced by the Solicitor General, is either the Regional Trial Court in the City of Manila, in the Court of Appeals, or in the Supreme Court.

While the hierarchy of courts serves as a general determinant of the appropriate forum for petitions for the extraordinary writs, a direct invocation of the Supreme Court's original jurisdiction to issue such writs is allowed when there are special and important reasons therefor, clearly and specifically set out in the petition.[115] In the instant case, direct resort to the Court is justified considering that the action for *quo warranto* questions the qualification of no less than a Member of the Court. The issue of whether a person usurps, intrudes into, or unlawfully holds or exercises a public office is a matter of public concern over which the government takes special interest as it obviously cannot allow an intruder or impostor to occupy a public position.[116]

The instant petition is a case of transcendental importance

While traditionally, the principle of transcendental importance applies as an exception to the rule requiring *locus standi* before the Courts can exercise its judicial power of review, the same principle nevertheless, finds application in this case as it is without doubt that the State maintains an interest on the issue of the legality of the Chief Justice's appointment.

Further, it is apparent that the instant petition is one of first impression and of paramount importance to the public in the sense that the qualification, eligibility and appointment of an incumbent Chief Justice, the highest official of the Judiciary, are being scrutinized through an action for *quo warranto*. The Court's action on the present petition has far-reaching

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[115] *Chamber of Real Estate and Builders Assn., Inc. (CREBA) v. Sec. of Agrarian Reform*, 635 Phil. 283, 300 (2010).

[116] *Republic of the Philippines v. Pablico Corpin,* 104 Phil. 49, 53 (1958).

implications, and it is paramount that the Court make definitive pronouncements on the issues herein presented for the guidance of the bench, bar, and the public in future analogous cases. Thus, the questions herein presented merit serious consideration from the Court and should not be trifled on.

Policy and ethical considerations likewise behoove this Court to rule on the issues put forth by the parties. This Court has always been a vigilant advocate in ensuring that its members and employees continuously possess the highest ideals of integrity, honesty, and uprightness. More than professional competence, this Court is cognizant of the reality that the strength of Our institution depends on the confidence reposed on Us by the public. As can be gleaned from Our recent decisions, this Court has not hesitated from disciplining its members whether they be judges, Justices or regular court employees. This case should not therefore be treated merely with kid gloves because it involves the highest official of the judicial branch of the government. On the contrary, this is an opportune time for this Court to exact accountability by examining whether there has been strict compliance with the legal and procedural requirements in the appointment of its Members.

Respondent, however, pounds on the fact that as a member of the Supreme Court, she is an impeachable officer. As such, respondent argues that a *quo warranto* proceeding, which may result in her ouster, cannot be lodged against her, especially when there is an impending impeachment case against her.

This argument is misplaced.

The origin, nature and purpose of impeachment and quo warranto are materially different

While both impeachment and *quo warranto* may result in the ouster of the public official, the two proceedings materially differ. At its most basic, impeachment proceedings are political in nature, while an action for *quo warranto* is judicial or a proceeding traditionally lodged in the courts.

Supreme Court E-Library

To lend proper context, We briefly recount the origin and nature of impeachment proceedings and a *quo warranto* petition:

Impeachment

Historians trace the origin of impeachment as far as the 5th century in ancient Greece in a process called *eisangelia*.[117] The grounds for impeachment include treason, conspiracy against the democracy, betrayal of strategic posts or expeditionary forces and corruption and deception.[118]

Its modern form, however, appears to be inspired by the British parliamentary system of impeachment. Though both public and private officials can be the subject of the process, the British system of impeachment is largely similar to the current procedure in that it is undertaken in both Houses of the Parliament. The House of Commons determines when an impeachment should be instituted. If the grounds, normally for treason and other high crimes and misdemeanor, are deemed sufficient, the House of Commons prosecutes the individual before the House of Lords.[119]

While impeachment was availed for "high crimes and misdemeanors", it would appear that the phrase was applied to a variety of acts which can arguably amount to a breach of the public's confidence, such as advising the King to grant liberties and privileges to certain persons to the hindrance of the due execution of the laws, procuring offices for persons who were unfit, and unworthy of them and squandering away the public treasure, browbeating witnesses and commenting on their credibility, cursing and drinking to excess, thereby bringing

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[117] <Matthew R. Romney, *The Origins and Scope of Presidential Impeachment*, HINCKLEY JOURNAL OF POLITICS> (visited on March 15, 2018).

[118] *Id*.

[119] Jack Simson Caird, Impeachment, BRIEFING PAPER, Number CBP7612, 6 June 2016. Accessed from <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7612#fullreport> (visited on March 15, 2018).

the highest scandal on the public justice of the kingdom, and failure to conduct himself on the most distinguished principles of good faith, equity, moderation, and mildness.[120]

While heavily influenced by the British concept of impeachment, the United States of America made significant modifications from its British counterpart. Fundamentally, the framers of the United States visualized the process as a means to hold accountable its public officials, as can be gleaned from their basic law:

> The President, Vice-President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, treason, Bribery, or other High Crimes and Misdemeanors.[121]

Other noted differences from the British process of impeachment include limiting and specifying the grounds to "treason, Bribery, or other High Crimes and Misdemeanors", and punishing the offender with removal and disqualification to hold public office instead of death, forfeiture of property and corruption of blood.[122]

In the Philippines, the earliest record of impeachment in our laws is from the 1935 Constitution.[123] Compared to the US Constitution, it would appear that the drafters of the 1935 Constitution further modified the process by making impeachment applicable only to the highest officials of the country; providing "culpable violation of the Constitution" as

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[120] <Matthew R. Romney, *The Origins and Scope of Presidential Impeachment*, HINCKLEY JOURNAL OF POLITICS> (visited on March 15, 2018).

[121] Section 4, Article II of the US Constitution.

[122] *See* Justice Jose Vitug's Separate Opinion, *Francisco, Jr. v. House of Representatives* in G.R. No. 160261, 460 Phil. 830 (2003); Puno, Renato V., *The Process of Impeachment and its applicability in the Philippine Legal System*, Ateneo Law Journal (1982). p. 165.

[123] *See* Justice Jose Vitug's Separate Opinion, *Francisco, Jr. v. House of Representatives* in G.R. No. 160261, 460 Phil. 830 (2003).

Supreme Court E-Library

an additional ground, and requiring a two-thirds vote of the House of Representatives to impeach and three-fourths vote of the Senate to convict.

As currently worded, our 1987 Constitution, in addition to those stated in the 1935 basic law, provided another additional ground to impeach high-ranking public officials: "betrayal of public trust". Commissioner Rustico De los Reyes of the 1986 Constitutional Commission explained this ground as a "catch-all phrase to include all acts which are not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in office. It includes betrayal of public interest, inexcusable negligence of duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance, cronyism, favoritism, etc. to the prejudice of public interest and which tend to bring the office into disrepute."[124]

From the foregoing, it is apparent that although the concept of impeachment has undergone various modifications to suit different jurisdictions and government forms, the consensus seems to be that it is essentially a political process meant to vindicate the violation of the public's trust. Buckner Melton, in his book *The First Impeachment: The Constitution's Framers and the Case of Senator William Blount*, succintly opined:

> Practically all who have written on the subject agree that impeachment involves a protection of a public interest, incorporating a public law element, much like a criminal proceeding....[I]mpeachment is a process instigated by the government, or some branch thereof, against a person who has somehow harmed the government or the community. The process, moreover, is adversarial in nature and resembles, to that extent, a judicial trial.[125]

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[124] Records of Constitutional Commission, Vol. II, p. 272.

[125] <As cited in Matthew R. Romney, The Origins and Scope of Presidential Impeachment, HINCKLEY JOURNAL OF POLITICS> (visited on March 15, 2018).

Supreme Court E-Library

Quo warranto

The oft-cited origin of *quo warranto* was the reign of King Edward I of England who questioned the local barons and lords who held lands or title under questionable authority. After his return from his crusade in Palestine, he discovered that England had fallen because of ineffective central administration by his predecessor, King Henry III.[126] The inevitable result was that the barons, whose relations with the King were governed on paper by Magna Carta, assumed to themselves whatever power the King's officers had neglected. Thus, King Edward I deemed it wise to inquire as to what right the barons exercised any power that deviated in the slightest from a normal type of feudalism that the King had in mind. The theory is that certain rights are *regalia* and can be exercised only upon showing of actual grants from the King or his predecessor. Verily, King Edward's purpose was to catalogue the rights, properties and possessions of the kingdom in his efforts to restore the same.

In the Philippines, the remedies against usurpers of public office appeared in the 1900s, through Act No. 190.[127] Section 197 of the Act provides for a provision comparable to Section 1, Rule 66 of the Rules of Court:

Sec. 197. *Usurpation of an Office or Franchise* — A civil action may be brought in the name of the Government of the Philippine Islands:

1. Against a person who usurps, intrudes into, or unlawfully holds or exercises a public civil office or a franchise within the Philippine Islands, or an office in a corporation created by the authority of the Government of the Philippine Islands;
2. Against a public civil officer who does or suffers an act which, by the provisions of law, works a forfeiture of his office;

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[126] Nathan Isaacs, *The Statutes of Edward I. Their Relation to Finance and Administration*, Michigan Law Review, Vol. 19, No. 8 (Jun., 1921), pp. 804-818.

[127] See *Agcaoili v. Suguitan*, *supra* note 87.

Supreme Court E-Library

3. Against an association of persons who act as a corporation within the Philippine Islands, without being legally incorporated or without lawful authority so to act.

Based from the foregoing, it appears that impeachment is a proceeding exercised by the legislative, as representatives of the sovereign, to vindicate the breach of the trust reposed by the people in the hands of the public officer by determining the public officer's fitness to stay in the office. Meanwhile, an action for *quo warranto*, involves a judicial determination of the eligibility or validity of the election or appointment of a public official based on predetermined rules.

Quo warranto and impeachment can proceed independently and simultaneously

Aside from the difference in their origin and nature, *quo warranto* and impeachment may proceed independently of each other as these remedies are distinct as to (1) jurisdiction (2) grounds, (3) applicable rules pertaining to initiation, filing and dismissal, and (4) limitations.

The term *"quo warranto"* is Latin for "by what authority."[128] Therefore, as the name suggests, *quo warranto* is a writ of inquiry.[129] It determines whether an individual has the legal right to hold the public office he or she occupies.[130]

In review, Section 1, Rule 66 of the Rules of Court provides:

Action by Government against individuals. – An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:

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[128] Legal Opinions of the Attorney General – *Quo Warranto* – Right to Public Office by Attorney General Xavier Becerra of the State of California.

[129] Gerald Kogan and Robert Craig Waters, The Jurisdiction of the Florida Supreme Court by, The Record (Journal of the Appellate Practice and Advocacy Section) of the Florida Bar, Vol. VI, No. 1, August 1997.

[130] Legal Opinions of the Attorney General – *Quo Warranto* – Right to Public Office by Attorney General Xavier Becerra of the State of California.

(a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;

(b) A public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office; or

(c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act.

Thus, a *quo warranto* proceeding is the proper legal remedy to determine the right or title to the contested public office or to oust the holder from its enjoyment. In *quo warranto* proceedings referring to offices filled by election, what is to be determined is the eligibility of the candidates elected, while in *quo warranto* proceedings referring to offices filled by appointment, what is determined is the legality of the appointment.

The title to a public office may not be contested collaterally but only directly, by *quo warranto* proceedings. In the past, the Court held that title to public office cannot be assailed even through *mandamus* or a motion to annul or set aside order.[131] That *quo warranto* is the proper legal vehicle to directly attack title to public office likewise precludes the filing of a petition for prohibition for purposes of inquiring into the validity of the appointment of a public officer. Thus, in *Nacionalista Party v. De Vera*,[132] the Court held:

"[T]he writ of prohibition, even when directed against persons acting as judges or other judicial officers, cannot be treated as a substitute for *quo warranto* or be rightfully called upon to perform any of the functions of the writ. If there is a court, judge or officer *de facto*, the title to the office and the right to act cannot be questioned by prohibition. If an intruder takes possession of a judicial office,

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[131] *Topacio v. Assoc. Justice Gregory Santos Ong, et al.*, 595 Phil. 491, 501-502 (2008) citing *Pilar v. Sec. of the DPWTC, et al.*, 125 Phil. 766 (1967) and *Gamboa, et al. v. CA, et al.*, 194 Phil. 624 (1981).

[132] *Supra* note 66.

Supreme Court E-Library

the person dispossessed cannot obtain relief through a writ of prohibition commanding the alleged intruder to cease from performing judicial acts, since in its very nature prohibition is an improper remedy by which to determine the title to an office."[133]

As earlier discussed, an action for *quo warranto* may be commenced by the Solicitor General or a public prosecutor, or by any person claiming to be entitled to the public office or position usurped or unlawfully held or exercised by another.[134]

That usurpation of a public office is treated as a public wrong and carries with it public interest in our jurisdiction is clear when Section 1, Rule 66 provides that where the action is for the usurpation of a public office, position or franchise, it shall be commenced by a verified petition brought in the name of the Republic of the Philippines through the Solicitor General or a public prosecutor.[135]

Nonetheless, the Solicitor General, in the exercise of sound discretion, may suspend or turn down the institution of an action for *quo warranto* where there are just and valid reasons. Upon receipt of a case certified to him, the Solicitor General may start the prosecution of the case by filing the appropriate action in court or he may choose not to file the case at all. The Solicitor General is given permissible latitude within his legal authority in actions for *quo warranto*, circumscribed only by the national interest and the government policy on the matter at hand.[136]

The instance when an individual is allowed to commence an action for *quo warranto* in his own name is when such person is claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another.[137] *Feliciano v.*

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[133] *Id*. at 133.

[134] Sections 2, 3 and 5, Rule 66 of the Rules of Court.

[135] Section 2, Rule 66 of the Rules of Court.

[136] *Topacio v. Assoc. Justice Gregory Santos Ong, et al.*, *supra* note 131, citing *Gonzales v. Chavez,* 282 Phil. 858, 885 (1992).

[137] Section 5, Rule 66 of the Rules of Court.

Villasin[138] reiterates the basic principle enunciated in *Acosta v. Flor*[139] that for a *quo warranto* petition to be successful, the private person suing must show no less than a clear right to the contested office.

In case of usurpation of a public office, when the respondent is found guilty of usurping, intruding into, or unlawfully holding or exercising a public office, position or franchise, the judgment shall include the following:

(a) the respondent shall be ousted and excluded from the office;
(b) the petitioner or relator, as the case may be, shall recover his costs; and
(c) such further judgment determining the respective rights in and to the public office, position or franchise of all the parties to the action as justice requires.[140]

The remedies available in a *quo warranto* judgment do not include correction or reversal of acts taken under the ostensible authority of an office or franchise. Judgment is limited to ouster or forfeiture and may not be imposed retroactively upon prior exercise of official or corporate duties.[141]

Quo warranto and impeachment are, thus, not mutually exclusive remedies and may even proceed simultaneously. The existence of other remedies against the usurper does not prevent the State from commencing a *quo warranto* proceeding.[142]

Respondent's Reply/Supplement to the Memorandum *Ad Cautelam* specifically tackled the objection to the petition on the ground of forum shopping. Essentially, respondent points

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[138] 578 Phil 889 (2008).

[139] 5 Phil. 18 (1905).

[140] Section 9, Rule 66 of the Rules of Court.

[141] Ensher, *Alexander & Barsoom, Inc. v. Ensher* (1965) 238 Cal. App. 2d 250, 255.

[142] *Citizens Utilities Co. v. Super Ct.,* 56 Cal. App. 3d 399, 405 (1076); 18 Ops.Cal.Atty.Gen. 7 (1951).

Supreme Court E-Library

out that the inclusion of the matter on tax fraud, which will further be discussed below, is already covered by Article I of the Articles of Impeachment. Hence, respondent argues, among others, that the petition should be dismissed on the ground of forum shopping.

Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.[143] Forum shopping originated as a concept in private international law, where non-resident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue.[144] At present, our jurisdiction has recognized several ways to commit forum shopping, to wit: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[145]

We have already settled that the test for determining existence of forum shopping is as follows:

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[143] *Grace Park International Corporation v. Eastwest Banking Corporation*, G.R. No. 210606, July 27, 2016, 798 SCRA 644, 651.

[144] *First Philippine International Bank v. CA*, 322 Phil. 280, 303 (1996).

[145] *City of Taguig v. City of Makati*, G.R. No. 208393, June 15, 2016, 793 SCRA 527, 550.

Supreme Court E-Library

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is **whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.**[146] (Emphasis ours)

Litis pendentia is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant*. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[147]

On the other hand, *res judicata* or prior judgment bars a subsequent case when the following requisites are satisfied: (1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is — between the first and the second actions — identity of parties, of subject matter, and of causes of action.[148]

Ultimately, what is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or

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[146] *Yap v. Chua, et al.*, 687 Phil. 392, 400 (2012).

[147] *Benavidez v. Salvador*, 723 Phil. 332, 342 (2013).

[148] *City of Taguig v. City of Makati*, *supra* at 551.

Supreme Court E-Library

substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues.[149]

Guided by the foregoing, there can be no forum shopping in this case despite the pendency of the impeachment proceedings before the House of Representatives, contrary to respondent's position.

The causes of action in the two proceedings are unequivocally different. In *quo warranto*, the cause of action lies on the usurping, intruding, or unlawfully holding or exercising of a public office, while in impeachment, it is the commission of an impeachable offense. Stated in a different manner, the crux of the controversy in this *quo warranto* proceedings is the determination of whether or not respondent legally holds the Chief Justice position to be considered as an impeachable officer in the first place. On the other hand, impeachment is for respondent's prosecution for certain impeachable offenses. To be sure, respondent is not being prosecuted herein for such impeachable offenses enumerated in the Articles of Impeachment. Instead, the resolution of this case shall be based on established facts and related laws. Simply put, while respondent's title to hold a public office is the issue in *quo warranto* proceedings, impeachment necessarily presupposes that respondent legally holds the public office and thus, is an impeachable officer, the only issue being whether or not she committed impeachable offenses to warrant her removal from office.

Likewise, the reliefs sought in the two proceedings are different. Under the Rules on *quo warranto*, "*when the respondent is found guilty of usurping, intruding into, or unlawfully holding or exercising a public office, xxx, judgment shall be rendered that such respondent be ousted and altogether excluded therefrom, x x x.*"[150] In short, respondent in a *quo warranto* proceeding shall be adjudged to cease from holding

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[149] *Yap v. Chua, et al.*, *supra* at 399-400.

[150] Section 9, Rule 66 of the Rules of Court.

a public office, which he/she is ineligible to hold. On the other hand, in impeachment, a conviction for the charges of impeachable offenses shall result to the *removal* of the respondent from the public office that he/she is legally holding.[151] It is not legally possible to impeach or remove a person from an office that he/she, in the first place, does not and cannot legally hold or occupy.

In the said Reply/Supplement to the Memorandum *Ad Cautelam*, respondent advanced the argument that the "impeachment proceeding" is different from the "impeachment case", the former refers to the filing of the complaint before the Committee on Justice while the latter refers to the proceedings before the Senate. Citing *Francisco v. House of Representatives*, respondent posits that the "impeachment proceeding" against her is already pending upon the filing of the verified complaint before the House Committee on Justice albeit the "impeachment case" has not yet started as the Articles of Impeachment has not yet been filed with the Senate. Hence, in view of such proceeding before the Committee on Justice, the filing of the instant petition constitutes forum shopping.

The difference between the "impeachment proceeding" and the "impeachment case" correctly cited by the respondent, bolsters the conclusion that there can be no forum shopping. Indeed, the "impeachment proceeding" before the House Committee on Justice is not the "impeachment case" proper. The impeachment case is yet to be initiated by the filing of the Articles of Impeachment before the Senate. Thus, at the moment, there is no pending impeachment case against the respondent.

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[151] 1987 CONSTITUTION, Article XI, Section 2:

Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

Supreme Court E-Library

The House Committee on Justice's determination of probable cause on whether the impeachment against the respondent should go on trial before the Senate is akin to the prosecutor's determination of probable cause during the preliminary investigation in a criminal case. In a preliminary investigation, the prosecutor does not determine the guilt or innocence of the accused; he does not exercise adjudication nor rule-making functions. The process is merely inquisitorial and is merely a means of discovering if a person may be reasonably charged with a crime. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof.[152] As such, during the preliminary investigation before the prosecutor, there is no pending case to speak of yet. In fact, jurisprudence states that the preliminary investigation stage is not part of the trial.[153]

Thus, at the time of the filing of this petition, there is no pending impeachment case that would bar the *quo warrranto* petition on the ground of forum shopping.

In fine, forum shopping and *litis pendentia* are not present and a final decision in one will not strictly constitute as *res judicata* to the other. A judgment in a *quo warranto* case determines the respondent's constitutional or legal authority to perform any act in, or exercise any function of the office to which he lays claim;[154] meanwhile a judgment in an impeachment proceeding pertain to a respondent's "fitness for public office."[155]

Considering the legal basis and nature of an action for *quo waranto*, this Court cannot shirk from resolving the instant controversy in view of the fact that respondent is an impeachable officer and/or in view of the possibility of an impeachment trial against respondent.

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[152] 776 Phil. 623 (2016).

[153] *SPO2 Jamaca v. People*, 764 Phil. 683 (2015).

[154] *Mendoza v. Allas*, 362 Phil. 238, 246-247 (1999).

[155] Separate Opinion of Justice Jose C. Vitug in *Francisco v. HRET*, *supra* note 3.

Impeachment is not an exclusive remedy by which an invalidly appointed or invalidly elected impeachable official may be removed from office

Respondent anchors her position that she can be removed from office only by impeachment on the Court's ruling in *Lecaroz v. Sandiganbayan*,[156] *Cuenco v. Fernan*,[157] *In Re Gonzales*,[158] *Jarque v. Desierto*[159] and *Marcoleta v. Borra*.[160] It should be stressed, however, that none of these cases concerned the validity of an impeachable officer's appointment. *Lecaroz* involved a criminal charge against a mayor before the Sandiganbayan, while the rest were disbarment cases filed against impeachable officers principally for acts done during their tenure in public office. Whether the impeachable officer unlawfully held his office or whether his appointment was void was not an issue raised before the Court. The principle laid down in said cases is to the effect that during their incumbency, impeachable officers cannot be criminally prosecuted for an offense that carries with it the penalty of removal, and if they are required to be members of the Philippine Bar to qualify for their positions, they cannot be charged with disbarment. The proscription does not extend to actions assailing the public officer's title or right to the office he or she occupies. The ruling therefore cannot serve as authority to hold that a *quo warranto* action can never be filed against an impeachable officer. In issuing such pronouncement, the Court is presumed to have been aware of its power to issue writs of *quo warranto* under Rule 66 of the Rules of Court.

Even the PET Rules expressly provide for the remedy of either an election protest or a petition for *quo warranto* to question

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[156] 213 Phil. 288 (1984).

[157] 241 Phil. 816 (1988).

[158] 243 Phil. 167 (1988).

[159] *En Banc* Resolution dated December 5, 1995 in A.C. No. 4509.

[160] 601 Phil. 470 (2009).

Supreme Court E-Library

the eligibility of the President and the Vice-President, both of whom are impeachable officers. Following respondent's theory that an impeachable officer can be removed only through impeachment means that a President or Vice-President against whom an election protest has been filed can demand for the dismissal of the protest on the ground that it can potentially cause his/her removal from office through a mode other than by impeachment. To sustain respondent's position is to render election protests under the PET Rules nugatory. The Constitution could not have intended such absurdity since fraud and irregularities in elections cannot be countenanced, and the will of the people as reflected in their votes must be determined and respected. The Court could not, therefore, have unwittingly curtailed its own judicial power by prohibiting *quo warranto* proceedings against impeachable officers.

Further, the PET Rules provide that a petition for *quo warranto*, contesting the election of the President or Vice-President on the ground of *ineligibility* or *disloyalty to the Republic of the Philippines,* may be filed by any registered voter who has voted in the election concerned within ten (10) days after the proclamation of the winner.[161] Despite disloyalty

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[161] A.M. No. 10-4-29-SC or The 2010 Rules of the Presidential Electoral Tribunal, pertinently provide:

ELECTION CONTESTS

RULE 13. Jurisdiction. – The Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President of the Philippines.

RULE 14. How initiated. – **An election contest is initiated by the filing of an election protest or a petition for *quo warranto* against the President or Vice-President. An election protest shall not include a petition for *quo warranto*. A petition for *quo warranto* shall not include an election protest.**

RULE 15. Election protest. – The registered candidate for President or Vice-President of the Philippines who received the second or third highest number of votes may contest the election of the President or Vice-President, as the case may be, by filing a verified election protest with the Clerk of the Presidential Electoral Tribunal within thirty days after the proclamation of the winner.

Supreme Court E-Library

to the Republic being a crime against public order[162] defined and penalized under the penal code, and thus may likewise be treated as "other high crimes,"[163] constituting an impeachable

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RULE 16. *Quo warranto*. – A verified petition for *quo warranto* contesting the election of the President or Vice- President on the ground of ineligibility or disloyalty to the Republic of the Philippines may be filed by any registered voter who has voted in the election concerned within ten days after the proclamation of the winner.

RULE 17. Contents of the protest or petition. – (A) An election protest or petition for *quo warranto* shall commonly state the following facts:

(a) the position involved;

(b) the date of proclamation; and

(c) the number of votes credited to the parties per the proclamation.

(B) A *quo warranto* petition shall also state:

(a) the facts giving the petitioner standing to file the petition;

(b) the legal requirements for the office and the disqualifications prescribed by law;

(c) the protestee's ground for ineligibility or the specific acts of disloyalty to the Republic of the Philippines.

(C) An election protest shall also state:

(a) that the protestant was a candidate who had duly filed a certificate of candidacy and had been voted for the same office.

(b) the total number of precincts of the region, province, or city concerned;

(c) the protested precincts and votes of the parties to the protest in such precincts per the Statement of Votes By Precinct or, if the votes of the parties are not specified, an explanation why the votes are not specified; and

(d) a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies, or irregularities in the protested precincts.

[162] Art. 137. Disloyalty of public officers or employees. — The penalty of *prision correccional* in its minimum period shall be imposed upon public officers or employees who have failed to resist a rebellion by all the means in their power, or shall continue to discharge the duties of their offices under the control of the rebels or shall accept appointment to office under them.

[163] Michael J. Gerhardt in *"Putting the Law of Impeachment in Perspective"(1999).FacultyPublications.Paper975.http://scholarship.law.wm.edu/facpubs/975 made the following observations:*

Supreme Court E-Library

offense, *quo warranto* as a remedy to remove the erring President or Vice-President is nevertheless made expressly available.

In fact, this would not be the first time the Court shall take cognizance of a *quo warranto* petition against an impeachable officer. In the consolidated cases of *Estrada v. Desierto, et al.* and *Estrada v. Macapagal-Arroyo*,[164] the Court took cognizance and assumed jurisdiction over the *quo warranto* petition filed against respondent therein who, at the time of the filing of the petition, had taken an oath and assumed the Office of the President. Petitioner therein prayed for judgment confirming him to be the lawful and incumbent President of the Republic temporarily unable to discharge the duties of his office, and declaring respondent to have taken her oath and to be holding the Office of the President, only in an acting capacity. In fact, in the said cases, there was not even a claim that respondent therein was disqualified from holding office and accordingly challenged respondent's status as *de jure* 14th President of the Republic. By entertaining the *quo warranto* petition, the Court in fact determined whether then President Estrada has put an end to his official status by his alleged act of resignation.

In the English experience prior to the drafting and ratification of the Constitution, impeachment was primarily a political proceeding, and impeachable offenses were regarded as "political crimes." For instance, Raoul Berger observed in his influential study of the impeachment process that the English practice treated "[h]igh crimes and misdemeanors [as] a category of political crimes against the state." Berger supported this observation with quotations from relevant periods in which the speakers use terms equivalent to "political" and "against the state" to identify the distinguishing characteristics of an impeachable event. In England, the critical element of injury in an impeachable offense had been injury to the state. The eminent legal historian, Blackstone, traced this peculiarity to the ancient law of treason, which distinguished **"high" treason, which was disloyalty against some superior, from "petit" treason, which was disloyalty to an equal or an inferior. The late Professor Arthur Bestor explained further that "[t]his element of injury to the commonwealth-that is, to the state and to its constitution-was historically the criterion for distinguishing a 'high' crime or misdemeanor** from an ordinary one." (Emphasis ours)

[164] 406 Phil. 1 (2001).

Supreme Court E-Library

Furthermore, the language of Section 2, Article XI of the Constitution does not foreclose a *quo warranto* action against impeachable officers. The provision reads:

> **Section 2.** The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman **may be removed from office** on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment. (Emphasis ours)

It is a settled rule of legal hermeneutics that if the language under consideration is plain, it is neither necessary nor permissible to resort to extrinsic aids, like the records of the constitutional convention, for its interpretation.[165]

The provision uses the permissive term "may" which, in statutory construction, denotes discretion and cannot be construed as having a mandatory effect.[166] We have consistently held that the term "*may*" is indicative of a mere possibility, an opportunity or an option. The grantee of that opportunity is vested with a right or faculty which he has the option to exercise.[167] An option to remove by impeachment admits of an alternative mode of effecting the removal.

On this score, Burke Shartel in his work *Federal Judges: Appointment, Supervision, and Removal: Some Possibilities under the Constitution*,[168] makes an interesting and valid observation on a parallel provision on impeachment under the U.S. Constitution from which ours was heavily patterned:

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[165] *People v. Amigo*, 322 Phil. 40 (1996).

[166] *Bayan Muna v. Romulo,* 656 Phil. 246 (2011).

[167] *Muñoz v. Commission on Elections,* 527 Phil. 733 (2006).

[168] Michigan Law Review, Vol. 28, No. 7 (May, 1930), pp. 870-909, published by The Michigan Law Review Association; <http://www.jstor.org/stable/1279763>(visited on April 20, 2018).

Supreme Court E-Library

x x x it is not reasonable to spell out of the express provision for impeachment, an intention or purpose of the framers to create an exclusive remedy. The common canon for interpreting legislation, — *expresio unius excusio est alterius* – has no proper application to an express provision for one of several common-law remedies. The express provision for removal by impeachment ought not to be taken as a tacit prohibition of removal by other methods when there are other adequate reasons to account for this express provision. The main purpose of the framers of the Constitution in providing for impeachment was to supply a legislative check on the other departments of our government, and particularly on the chief executive. Without an express provision, impeachment would have been impliedly prohibited by the doctrine of separation of powers. If this legislative check was desired, a reservation in express words was essential. Another reason for the express provisions on this subject was that the framers of the Constitution did not wish to make the executive and judicial officers of our government completely dependent on Congress. They wanted to confer only a limited power of removal, and the desired limitations on the power to impeach had to be explicitly stated. These two reasons explain the presence in the Constitution of the express provisions for impeachment; it is not necessary to resort to any supposed intent to establish an exclusive method of removal in order to account for them. On the contrary, logic and sound policy demand that the Congressional power be construed to be a concurrent, not an exclusive, power of removal.

We hold, therefore, that by its tenor, Section 2, Article XI of the Constitution allows the institution of a *quo warranto* action against an impeachable officer. After all, a *quo warranto* petition is predicated on grounds distinct from those of impeachment. The former questions the validity of a public officer's appointment while the latter indicts him for the so-called impeachable offenses without questioning his title to the office he holds.

Further, that the enumeration of "impeachable offenses" is made absolute, that is, only those enumerated offenses are treated as grounds for impeachment, is not equivalent to saying that the enumeration likewise purport to be a complete statement of the causes of removal from office. *Shartel*, above cited, eloquently incites as follows:

x x x. There is no indication in the debates of the Convention that the framers of the Constitution intended at this point to make a complete statement of causes of removal from office. The emphasis was on the causes for which Congress might remove executive and judicial officers, not on causes of removal as such. x x x How then can the causes of removal by impeachment be construed as a recital of the causes for which judges may be removed? It is especially hard to see why the express provision for impeachment – a limited legislative method of removing all civil officers for serious misconduct – should be construed to forbid removal of judges by judicial action on account of disability or any reasonable cause not a proper ground for action by the Houses of Congress.

Neither can the Court accept respondent's argument that the term "may" in Section 2, Article XI qualifies only the penalty imposable at the conclusion of the impeachment trial, such that conviction may result in lesser penalties like censure or reprimand. Section 3(7), Article XI of the Constitution specifies the penalty of "removal from office" and "disqualification to hold any office under the Republic of the Philippines" in impeachment cases.[169] There is nothing in the said provision that deliberately vests authority on the impeachment court to impose penalties lower than those expressly mentioned. Also, respondent has not shown that such was authority was intended by the framers of the 1987 Constitution. The ultimate penalty of removal is imposed owing to the serious nature of the impeachable offenses. This Court had occasion to rule:

The task of the Court is rendered lighter by the existence of relatively clear provisions in the Constitution. In cases like this, we follow what the Court, speaking through Mr. Justice (later, Chief Justice) Jose Abad Santos stated in *Gold Creek Mining Corp. v. Rodriguez,* that:

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[169] Section 3(7), Article XI of the 1987 Constitution states: " Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial and punishment according to law."

Supreme Court E-Library

> The fundamental principle of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it. **The intention to which force is to be given is that which is embodied and expressed in the constitutional provisions themselves.**[170] (Emphasis supplied)

To subscribe to the view that appointments or election of impeachable officers are outside judicial review is to cleanse their appointments or election of any possible defect pertaining to the Constitutionally-prescribed qualifications which cannot otherwise be raised in an impeachment proceeding.

The courts should be able to inquire into the validity of appointments even of impeachable officers. To hold otherwise is to allow an absurd situation where the appointment of an impeachable officer cannot be questioned even when, for instance, he or she has been determined to be of foreign nationality or, in offices where Bar membership is a qualification, when he or she fraudulently represented to be a member of the Bar. Unless such an officer commits any of the grounds for impeachment and is actually impeached, he can continue discharging the functions of his office even when he is clearly disqualified from holding it. Such would result in permitting unqualified and ineligible public officials to continue occupying key positions, exercising sensitive sovereign functions until they are successfully removed from office through impeachment. This could not have been the intent of the framers of the Constitution.

We must always put in mind that public office is a public trust.[171] Thus, the people have the right to have only qualified individuals appointed to public office. To construe Section 2, Article XI of the Constitution as proscribing a *quo warranto* petition is to deprive the State of a remedy to correct a "public wrong" arising from defective or void appointments. Equity

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[170] *Sarmiento v. Mison,* G.R. No. 79974, December 17, 1987, 156 SCRA 549, 552.

[171] 1987 CONSTITUTION, Article XI, Section 1.

will not suffer a wrong to be without remedy. *Ubi jus ibi remedium.* Where there is a right, there must be a remedy.[172]

As respondent herself previously opined in one case: "Reason is the foundation of all legal interpretation, including that of constitutional interpretation. And the most powerful tool of reason is reflecting on the essence of things."[173]

The essence of *quo warranto* is to protect the body politic from the usurpation of public office and to ensure that government authority is entrusted only to qualified individuals. Reason therefore dictates that *quo warranto* should be an available remedy to question the legality of appointments especially of impeachable officers considering that they occupy some of the highest-ranking offices in the land and are capable of wielding vast power and influence on matters of law and policy.

At this juncture, it would be apt to dissuade and allay the fear that a ruling on the availability of *quo warranto* would allow the Solicitor General to "wield a sword over our collective heads, over all our individual heads, and on that basis, impair the integrity of the Court as a court."[174]

Such view, while not improbable, betrays a fallacious and cynical view of the competence and professionalism of the Solicitor General and the members of this Court. It presupposes that members of this Court are law offenders. It also proceeds from the premise that the Solicitor General is the Executive's pawn in its perceived quest for a "more friendly" Court. Verily, fear, particularly if unfounded, should not override settled presumptions of good faith and regularity in the performance of official duties. This Court, absent a compelling proof to the

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[172] *Re: Request of National Committee on Legal Aid to Exempt Legal Aid Clients from Paying Filing, Docket and Other Fees,* A.M. No. 08-11-7-SC, August 28, 2009.

[173] Concurring Opinion of Chief Justice Maria Lourdes P. A. Sereno in *Gutierrez v. The House of Representatives Committee on Justice*, 658 Phil. 322 (2011).

[174] TSN, Oral Arguments dated April 10, 2018, p. 200.

Supreme Court E-Library

contrary, has no basis to doubt the independence and autonomy of the Solicitor General.[175] It is worthwhile to note that while the Solicitor General has a prerogative in the institution of an action for *quo warranto*, its exercise of such discretion is nevertheless subject to the Court's review. In *Topacio v. Ong*,[176] this Court explained:

> In the exercise of sound discretion, the Solicitor General may suspend or turn down the institution of an action for quo warranto where there are just and valid reasons. Thus, in Gonzales v. Chavez, the Court ruled:
>
> Like the Attorney-General of the United States who has absolute discretion in choosing whether to prosecute or not to prosecute or to abandon a prosecution already started, our own Solicitor General may even dismiss, abandon, discontinue or compromise suits either with or without stipulation with the other party. **Abandonment of a case, however, does not mean that the Solicitor General may just drop it without any legal and valid reasons, for the discretion given him is not unlimited**. Its exercise must be, not only **within the parameters set by law** but with the best interest of the State as the ultimate goal.
>
> Upon receipt of a case certified to him, the Solicitor General exercises his discretion in the management of the case. He may start the prosecution of the case by filing the appropriate action in court or he may opt not to file the case at all. He may do everything within his legal authority but **always conformably with the national interest and the policy of the government on the matter at hand.** (Emphasis ours)

Neither should it be forgotten that the Solicitor General is an officer of the Court, tasked "to share in the task and responsibility of dispensing justice and resolving disputes;" therefore, he may be enjoined in the same manner that a special prosecutor was sought enjoined by this Court from committing

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[175] *See* Section 1 of Executive Order No. 300, July 26, 1987 entitled, Constituting The Office Of The Solicitor General As An Independent And Autonomous Office Attached To The Department Of Justice And For Other Purposes

[176] *Supra* note 131.

Supreme Court E-Library

any act which may tend to "obstruct, pervert or impede and degrade the administration of justice."[177] Either way, in the event that *quo warranto* cases against members of the Judiciary inundate the courts' dockets, it does not follow that the courts are powerless to shield its members against suits which are obviously lacking in merit, or those merely intended to harass the respondent.

The Supreme Court's exercise of its jurisdiction over a quo warranto petition is not violative of the doctrine of separation of powers

Section 3(1) and 3(6), Article XI, of the Constitution respectively provides that the House of Representatives shall have the exclusive power to initiate all cases of impeachment while the Senate shall have the sole power to try and decide all cases of impeachment. Thus, there is no argument that the constitutionally-defined instrumentality which is given the power to try impeachment cases is the Senate.

Nevertheless, the Court's assumption of jurisdiction over an action for *quo warranto* involving a person who would otherwise be an impeachable official had it not been for a disqualification, is not violative of the core constitutional provision that impeachment cases shall be exclusively tried and decided by the Senate.

Again, an action for *quo warranto* tests the right of a person to occupy a public position. It is a direct proceeding assailing the title to a public office.[178] The issue to be resolved by the Court is whether or not the defendant is legally occupying a public position which goes into the questions of whether defendant was legally appointed, was legally qualified and has complete legal title to the office. If defendant is found to be not qualified and without any authority, the relief that the Court

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[177] See *Ramon A. Gonzales vs. Hon. Francisco I. Chavez*, 282 Phil. 858, 881 (1992).

[178] *Sec. Defensor Santiago v. Sen. Guingona, Jr.,* 359 Phil. 276, 302 (1998).

Supreme Court E-Library

grants is the ouster and exclusion of the defendant from office.[179] In other words, while impeachment concerns actions that make the officer unfit to continue exercising his or her office, *quo warranto* involves matters that render him or her ineligible to hold the position to begin with.

Given the nature and effect of an action for *quo warranto*, such remedy is unavailing to determine whether or not an official has committed misconduct in office nor is it the proper legal vehicle to evaluate the person's performance in the office. *Apropos*, an action for *quo warranto* does not try a person's culpability of an impeachment offense, neither does a writ of *quo warranto* conclusively pronounce such culpability.

In *Divinagracia v. Consolidated Broadcasting System, Inc.,*[180] the Court further explained the court's authority to issue a writ

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[179] *In Mendoza v. Allas*, 362 Phil. 238, 244-245 (1999), the *possible outcome of a Petition for Quo Warranto can be any of the following:*

If the court finds for the respondent, the judgment should simply state that the respondent is entitled to the office. If, however, the court finds for the petitioner and declares the respondent guilty of usurping, intruding into, or unlawfully holding or exercising the office, judgment may be rendered as follows:

"Sec. 10. *Judgment where usurpation found*.— When the defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising an office, position, right, privilege, or franchise, judgment shall be rendered that such defendant be ousted and altogether excluded therefrom, and that the plaintiff or relator, as the case may be, recover his costs. Such further judgment may be rendered determining the respective rights in and to the office, position, right, privilege, or franchise of all the parties to the action as justice requires."

If it is found that the respondent or defendant is usurping or intruding into the office, or unlawfully holding the same, the court may order:

(1) The ouster and exclusion of the defendant from office;

(2) The recovery of costs by plaintiff or relator;

(3) The determination of the respective rights in and to the office, position, right, privilege or franchise of all the parties to the action as justice requires.

[180] 602 Phil. 625, 669 (2009).

of *quo warranto*, as complementary to, and not violative of, the doctrine of separation of powers, as follows:

> **And the role of the courts, through quo warranto proceedings, neatly complements the traditional separation of powers that come to bear in our analysis. The courts are entrusted with the adjudication of the legal status of persons, the final arbiter of their rights and obligations under law. The question of whether a franchisee is in breach of the franchise specially enacted for it by Congress is one inherently suited to a court of law, and not for an administrative agency, much less one to which no such function has been delegated by Congress.** In the same way that availability of judicial review over laws does not preclude Congress from undertaking its own remedial measures by appropriately amending laws, **the viability of quo warranto in the instant cases does not preclude Congress from enforcing its own prerogative by abrogating the legislative franchises of respondents should it be distressed enough by the franchisees' violation of the franchises extended to them.** (Emphasis ours)

Applying the ratio in *Divinagracia*, the Court's exercise of its jurisdiction over *quo warranto* proceedings does not preclude Congress from enforcing its own prerogative of determining probable cause for impeachment, to craft and transmit the Articles of Impeachment, nor will it preclude Senate from exercising its constitutionally committed power of impeachment.

Indeed, respondent's case is peculiar in that her omission to file her SALN also formed part of the allegations against her in the Verified Complaint for Impeachment. Verily, the filing of the SALN is a Constituional requirement, and the transgression of which may, in the wisdom of the impeachment court, be interpreted as constituting culpable violation of the Constitution. But then, respondent, unlike the President, the Vice-President, Members of the Constitutional Commissions, and the Ombudsman, apart from having to comply with the Constitutional SALN requirement, also answers to the unique Constitutional qualification of having to be a person of proven competence, integrity, probity, and independence – qualifications not expressly required by the fundamental law for the other impeachable

Supreme Court E-Library

officers.[181] And as will be extensively demonstrated hereunder, respondent's failure to file her SALNs and to submit the same

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[181] 1987 CONSTITUTION

Article VII, SECTION 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

Article VII, SECTION 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. He may be removed from office in the same manner as the President.

The Vice-President may be appointed as a Member of the Cabinet. Such appointment requires no confirmation.

Article IX-B, SECTION 1. (1) The Civil Service shall be administered by the Civil Service Commission composed of a Chairman and two Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, with proven capacity for public administration, and must not have been candidates for any elective position in the elections immediately preceding their appointment.

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Article IX-C, SECTION 1. (1) There shall be a Commission on Elections composed of a Chairman and six Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, holders of a college degree, and must not have been candidates for any elective position in the immediately preceding elections. However, a majority thereof, including the Chairman, shall be Members of the Philippine Bar who have been engaged in the practice of law for at least ten years.

Article IX-D, SECTION 1. (1) There shall be a Commission on Audit composed of a Chairman and two Commissioners, who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, certified public accountants with not less than ten years of auditing experience, or members of the Philippine Bar who have been engaged in the practice of law for at least ten years, and must not have been candidates for any elective position in the elections immediately preceding their appointment. At no time shall all Members of the Commission belong to the same profession.

Article XI, SECTION 8. The Ombudsman and his Deputies shall be natural-born citizens of the Philippines, and at the time of their appointment, at least forty years old, of recognized probity and independence, and members of the Philippine Bar, and must not have been candidates for any elective

to the JBC go into the very qualification of integrity. In other words, when a Member of the Supreme Court transgresses the SALN requirement prior to his or her appointment as such, he or she commits a violation of the Constitution and belies his or her qualification to hold the office. It is not therefore accurate to place Members of the Supreme Court, such as respondent, on absolutely equal plane as that of the other impeachable officers, when more stringent and burdensome requirements for qualification and holding of office are expressly placed upon them.

In the same vein, the fact that the violation of the SALN requirement formed part of the impeachment complaint does not justify shifting responsibility to the Congress, no matter how noble the respondent and the intervenors portray such act to be. The fact remains that the Republic raised an issue as to respondent's eligibility to occupy the position of Chief Justice, an obviously legal question, which can be resolved through review of jurisprudence and pertinent laws. Logic, common sense, reason, practicality and even principles of plain arithmetic bear out the conclusion that an unqualified public official should be removed from the position immediately if indeed Constitutional and legal requirements were not met or breached. To abdicate from resolving a legal controversy simply because of perceived availability of another remedy, in this case impeachment, would be to sanction the initiation of a process specifically intended to be long and arduous and compel the entire membership of the Legislative branch to momentarily abandon their legislative duties to focus on impeachment proceedings for the possible removal of a public official, who at the outset, may clearly be unqualified under existing laws and case law. Evidently, this scenario would involve waste of time, not to mention unnecessary disbursement of public funds.

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office in the immediately preceding election. The Ombudsman must have for ten years or more been a judge or engaged in the practice of law in the Philippines.

During their tenure, they shall be subject to the same disqualifications and prohibitions as provided for in Section 2 of Article IX-A of this Constitution.

Supreme Court E-Library

Further, as an impeachment court, the Senate is a tribunal composed of politicians who are indubitably versed in pragmatic decision making and cognizant of political repercussions of acts purported to have been committed by impeachable officials.[182] As representatives of the Filipino people, they determine whether the purported acts of highest ranking officials of the country constitute as an offense to the citizenry. Following this premise, the impeachment tribunal cannot be expected to rule on the validity or constitutionality of the Chief Justice's appointment, nor can their ruling be of jurisprudential binding effect to this Court. To authorize Congress to rule on public officials' eligibility would disturb the system of checks and balances as it would dilute the judicial power of courts, upon which jurisdiction is exclusively vested to rule on actions for *quo warranto*.

Nevertheless, for the guidance of the bench and the bar, and to obliviate confusion in the future as to when *quo warranto* as a remedy to oust an ineligible public official may be availed of, and in keeping with the Court's function of harmonizing the laws and the rules with the Constitution, the Court herein demarcates that an act or omission committed prior to or at the time of appointment or election relating to an official's qualifications to hold office as to render such appointment or election invalid is properly the subject of a *quo warranto* petition, provided that the requisites for the commencement thereof are present. Contrariwise, acts or omissions, even if it relates to the qualification of integrity, being a continuing requirement but nonetheless committed during the incumbency of a validly appointed and/or validly elected official, cannot be the subject of a *quo warranto* proceeding, but of something else, which may either be impeachment if the public official concerned is impeachable and the act or omission constitutes an impeachable offense, or disciplinary, administrative or criminal action, if otherwise.

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[182] Paolo Celeridad, *Evidence of Character: The Burden of Proving the Truth with respect to the Political Nature of Impeachment Trials by Means of Substantial Evidence,* 87 PHIL. L.J. 985 (2013).

Supreme Court E-Library

Judicial power versus Judicial restraint and fear of a constitutional crisis

Judicial power is vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[183]

In the presence of all the requisites[184] for the Court's exercise of judicial review, there can be no doubt that the exercise thereof is not discretionary upon the Court, nor dependent upon the whims and caprices of any of its Members nor any of the parties. Even in cases rendered moot and academic by supervening events, the Court nevertheless exercised its power of review on the basis of certain recognized exceptions.[185] Neither is its exercise circumscribed by fear of displeasing a co-equal branch of the

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[183] 1987 CONSTITUTION, Article VIII, Section 1.

[184] Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case. *(Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*, 689 Phil. 357, 369 (2012).

[185] Namely: (1) there is a grave violation of the Constitution; (2) the case involves a situation of exceptional character and is of paramount public interest; (3) the constitutional issue raised requires the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case is capable of repetition yet evading review. (*David v. Macapagal Arroyo,* 522 Phil. 705 (2006).

Supreme Court E-Library

government. Instead, the Constitution makes it crystal clear that the exercise of judicial power is a duty of the Court.

As such, the exercise of judicial power could never be made dependent upon the action or inaction of another branch of the government. The exercise of judicial restraint on the ground that the Senate, sitting as an impeachment court, has the sole power to try and decide all cases of impeachment, is thus misplaced.

For one, at the time of the filing of, and even during the pendency of the resolution of the instant petition, no impeachment trial has been commenced by the Senate. In fact, it will be purely skeptical, *nay* lackadaisical, on the part of the Court to assume, at the time the petition was filed, that the House of Representatives will affirm a favorable resolution with the Articles of Impeachment and that trial will eventually carry on.

For another, and as extensively discussed, the question of whether or not respondent usurped a public office is undoubtedly justiciable. Recall *Francisco, Jr. v. House of Representatives*:[186]

> The exercise of judicial restraint over justiciable issues is not an option before this Court. Adjudication may not be declined, because this Court is not legally disqualified. Nor can jurisdiction be renounced as there is no other tribunal to which the controversy may be referred. Otherwise, this Court would be shirking from its duty vested under Art. VIII, Sec. 1(2) of the Constitution. More than being clothed with authority thus, this Court is duty-bound to take cognizance of the instant petitions. In the august words of *amicus curiae* Father Bernas, jurisdiction is not just a power; it is a solemn duty which may not be renounced. To renounce it, even if it is vexatious, would be a dereliction of duty.

Thus, to exercise restraint in reviewing an impeachable officer's appointment is a clear renunciation of a judicial duty. We have held that:

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[186] *Supra* note 3, at 919.

While an appointment is an essentially discretionary executive power, it is subject to the limitation that the appointee should possess none of the disqualifications but all the qualifications required by law. **Where the law prescribes certain qualifications for a given office or position, courts may determine whether the appointee has the requisite qualifications, absent which, his right or title thereto may be declared void.**[187] (Emphasis ours)

Clearly, an outright dismissal of the petition based on speculation that respondent will eventually be tried on impeachment is a clear abdication of the Court's duty to settle actual controversy squarely presented before it. Indeed, the easiest way to lose power is to abdicate it.

Neither does the possibility of the occurrence of a constitutional crisis a reason for the Court to abandon its positive constitutional duty to take cognizance of a case over which it enjoys jurisdiction and is not otherwise legally disqualified. A constitutional crisis may arise from a conflict over the determination by the independent branches of government of the nature, scope and extent of their respective constitutional powers. Thus, there can be no constitutional crisis where the Constitution itself provides the means and bases for the resolution of the "conflict." To reiterate, the Court's exercise of jurisdiction over an action for *quo warranto* falls within the ambit of its judicial power to settle justiciable issues or actual controversies involving rights which are legally demandable and enforceable. In so doing, the Court is not arrogating upon itself the Congress' power to determine whether an impeachable officer may be removed by impeachment or not, which is a political, rather than a judicial, exercise.[188]

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[187] *J/Sr. Supt. Engaño v. Court of Appeals*, 526 Phil. 291, 299 (2006).

[188] In *Emilio Gonzales III v. Office of the President of the Philippines, et al.*, 725 Phil. 380 (2014), the Court held that:

"On the practical side, our nation has witnessed the complications and problems an impeachment proceeding entails, thus justifying its limited application only to the officials occupying the highest echelons of responsibility in our government. To name a few, some of the negative practical effects of impeachment are: it stalls legislative work; it is an

Supreme Court E-Library

In fine, it is settled that jurisdiction is conferred by law. It cannot be waived by stipulation, by abdication or by estoppel. *Quo warranto* proceedings are essentially judicial in character – it calls for the exercise of the Supreme Court's constitutional duty and power to decide cases and settle actual controversies. This constitutional duty cannot be abdicated or transferred in favor of, or in deference to, any other branch of the government including the Congress, even as it acts as an impeachment court through the Senate. As an impeachment court, the Senate's jurisdiction and the effect of its pronouncement is as limited under the Constitution – it cannot rule on the constitutionality of an appointment of a Member of the Supreme Court with jurisprudential binding effect because rulings of the impeachment court, being a political rather than a judicial body, do not form part of the laws of the land. Any attempt to derogate or usurp judicial power in the determination of whether the respondent's appointment is constitutional or not will, in point of fact, amount to culpable violation of the Constitution.

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expensive process in terms of the cost of prosecution alone; and, more importantly, it is inherently divisive of the nation."

In so saying, the Court referred to the words of Alexander Hamilton, thus:

Thus, impeachment is characterized as essentially raising political questions or questions of policies created by large historical forces. Alexander Hamilton observed:

A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself. ***The prosecution of them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In many cases it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence, and interest on one side or on the other; and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt. (The Federalist No. 65 [www.constitution.org/fed/federa65)***

In the same breath, the Supreme Court cannot renege on its avowed constitutional duty and abdicate its judicial power. To do so would similarly amount to culpable violation of the Constitution. Instead, this Court asserts its judicial independence and equanimity to decide cases without fear or favor; without regard as to a party's power or weakness; without regard to personalities; all to the ultimate end that Our sacrosanct oaths as magistrates of this Court, which We voluntarily imposed upon ourselves without any mental reservation or purpose of evasion, to support and defend the Constitution and to obey the laws of the land, are strongly and faithfully realized.

Seeking affirmative relief from the Court is tantamount to voluntary appearance

In repudiating the Court's jurisdiction over her person and over the subject matter, respondent harps on the fact that as Chief Justice, she is an impeachable officer who may be removed only by impeachment by the Senate constituted as an impeachment court. As extensively discussed, the Court maintains jurisdiction over the present *quo warranto* proceedings despite respondent's occupation of an impeachable office, as it is the legality or illegality of such occupation that is the subject matter of the instant petition. Further, respondent cannot now be heard to deny the Court's jurisdiction over her person even as she claims to be an impeachable official because respondent in fact invoked and sought affirmative relief from the Court by praying for the inhibition of several Members of this Court and by moving that the case be heard on Oral Arguments, albeit *ad cautelam*.

While mindful of Our ruling in *La Naval Drug Corporation v. Court of Appeals*,[189] which pronounced that a party may file a Motion to Dismiss on the ground of lack of jurisdiction over its person, and at the same time raise affirmative defenses and pray for affirmative relief without waiving its objection to the

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[189] 306 Phil. 84 (1994).

Supreme Court E-Library

acquisition of jurisdiction over its person, as well as Section 20,[190] Rule 15, this Court, in several cases, ruled that seeking affirmative relief in a court is tantamount to voluntary appearance therein.[191]

Thus, in *Philippine Commercial International Bank v. Dy Hong Pi*,[192] cited in *NM Rotchschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company*,[193] wherein defendants filed a Motion for Inhibition without submitting themselves to the jurisdiction of this Court, We held:

> Besides, any lingering doubts on the issue of voluntary appearance dissipate when the respondents' motion for inhibition is considered. This motion seeks a sole relief: inhibition of Judge Napoleon Inoturan from further hearing the case. **Evidently, by seeking affirmative relief other than dismissal of the case, respondents manifested their voluntary submission to the court's jurisdiction.** It is well-settled that the active participation of a party in the proceedings is tantamount to an invocation of the court's jurisdiction and a willingness to abide by the resolution of the case, and will bar said party from later on impugning the court's jurisdiction. (Emphasis in the original)

Accordingly, We rule that respondent, by seeking affirmative relief, is deemed to have voluntarily submitted to the jurisdiction of the Court. Following settled principles, respondent cannot invoke the Court's jurisdiction on one hand to secure affirmative relief, and then repudiate that same jurisdiction after obtaining or failing to obtain such relief.

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[190] SEC. 20. *Voluntary appearance*. The defendant's voluntary appearance in the action shall be equivalent to service of summons. **The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance**. (Emphasis ours.)

[191] See *Palma v. Hon. Galvez, et al.,* 629 Phil. 86 (2010); *Dole Philippines, Inc. (Tropifresh Division) v. Judge Quilala*, 759 Phil. 700 (2008); *Herrera-Felix v. Court of Appeals*, 479 Phil. 727, 735 (2004).

[192] 606 Phil. 351 (2011).

[193] 677 Phil. 351 (2011).

II.
The Petition is Not Dismissible on the Ground of Prescription

Prescription does not lie against the State

The rules on *quo warranto*, specifically Section 11, Rule 66, provides:

> *Limitations.* – Nothing contained in this Rule shall be construed to authorize an action against a public officer or employee for his ouster from office **unless the same be commenced within one (1) year after the cause of such ouster, or the right of the petitioner to hold such office or position, arose;** nor to authorize an action for damages in accordance with the provisions of the next preceding section unless the same be commenced within one (1) year after the entry of the judgment establishing the petitioner's right to the office in question. (Emphasis supplied)

Since the 1960's the Court had explained in ample jurisprudence the application of the one-year prescriptive period for filing an action for *quo warranto*.

In *Bumanlag v. Fernandez and Sec. of Justice*,[194] the Court held that the one-year period fixed in then Section 16, Rule 68 of the Rules of Court is a condition precedent to the existence of the cause of action for *quo warranto* and that the inaction of an officer for one year could be validly considered a waiver of his right to file the same.

In *Madrid v. Auditor General and Republic*,[195] We held that a person claiming to a position in the civil service must institute the proper proceedings to assert his right within the one-year period, otherwise, not only will he be considered to have waived his right to bring action therefor but worse, he will be considered to have acquiesced or consented to the very matter that he is questioning.

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[194] 110 Phil. 107, 111 (1960).

[195] 109 Phil. 578 (1960).

Supreme Court E-Library

The Court explained in *Madrid* that the reason for setting a prescriptive period is the urgency of the matter to be resolved. The government must be immediately informed or advised if any person claims to be entitled to an office or position in the civil service, as against another actually holding it, so that the government may not be faced with the predicament of having to pay two salaries, one for the person actually holding the office although illegally, and another for one not actually rendering service although entitled to do so.[196]

In *Torres v. Quintos*,[197] the Court further explained that public interest requires that the rights of public office should be determined as speedily as practicable. We have also explained in *Cristobal v. Melchor and Arcala*[198] that there are weighty reasons of public policy and convenience that demand the adoption of such limitation as there must be stability in the service so that public business may not be unduly retarded.[199]

Distinctively, the petitioners in these cited cases were private individuals asserting their right of office, unlike the instant case where no private individual claims title to the Office of the Chief Justice. Instead, it is the government itself which commenced the present petition for *quo warranto* and puts in issue the qualification of the person holding the highest position in the Judiciary.

Thus, the question is whether the one-year limitation is equally applicable when the petitioner is not a mere private individual pursuing a private interest, but the government itself seeking relief for a public wrong and suing for public interest? *The answer is no.*

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[196] *Id*.

[197] 88 Phil. 436 (1951).

[198] 168 Phil. 328 (1977).

[199] *Id*. at 334, citing *Unabia v. City Mayor, et al.*, 99 Phil. 253, 257 (1956).

Reference must necessarily be had to Section 2, Rule 66 which makes it *compulsory* for the Solicitor General to commence a *quo warranto* action:

> SEC. 2. When Solicitor General or public prosecutor must commence action. – The Solicitor General or a public prosecutor, when directed by the President of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in the preceding section can be established by proof **must** commence such action. (Emphasis supplied)

In other words, when the Solicitor General himself commences the *quo warranto* action either (1) upon the President's directive, (2) upon complaint or (3) when the Solicitor General has good reason to believe that there is proof that (a) a person usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise; (b) a public officer does or suffers an act which is a ground for the forfeiture of his office; or (c) an association acts as a corporation without being legally incorporated or without lawful authority so to act, he does so in the discharge of his task and mandate to see to it that the best interest of the public and the government are upheld. In these three instances, the Solicitor General is mandated under the Rules to commence the necessary *quo warranto* petition.

That the present Rule 66 on *quo warranto* takes root from Act No. 160, which is a legislative act, does not give the one-year rule on prescription absolute application. *Agcaoili v. Suguitan*,[200] squarely addressed this non-absolute character of the one-year prescriptive period as follows:

> x x x *in re* prescription or limitation of the action, it may be said that originally there was no limitation or prescription of action in an action for quo warranto, neither could there be, for the reason that it was an action by the Government and prescription could not be plead as a defense to an action by the Government. The ancient writ of quo warranto was a high prerogative writ in the nature of a writ of right by the King against any one who usurped or claimed any office, franchise or liberty of the crown, to inquire by what authority

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[200] *Agcaoili v. Saguitan*, *supra* note 87.

Supreme Court E-Library

the usurper supported his claim, in order to determine the right. Even at the present time in many of the civilized countries of the world the action is still regarded as a prerogative writ and no limitation or prescription is permitted to bar the action. **As a general principle it may be stated that ordinary statutes of limitation, civil or penal, have no application to quo warranto proceeding brought to enforce a public right.**

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In our opinion, even granting that Section 216 is applicable to the appellant, the period of prescription had not begun to run at the time of the commencement of the present action. **He was justified in delaying the commencement of his action until an answer to his protest had been made.** He had a right to await the answer to his protest, in the confident belief that it would be resolved in his favor and that action would be unnecessary.[201] (Citations omitted and emphasis ours)

Continuing, *Agcaoili* cites *People ex rel. Moloney v. Pullman's Palace Car Co.,*[202] to emphasize that the State is not bound by statute of limitations nor by the laches, acquiescence or unreasonable delay on the part of its officers:

It is conceded, the state, acting in its character as a sovereign, is not bound by any statute of limitations or technical estoppel. It is urged, however, that in quo warranto, under the common-law rule, the courts, in the exercise of their discretion to grant the writ or not, or upon final hearing, refused aid when the conditions complained of had existed for a number of years with knowledge on the part of the sovereign, and that the provisions of § 1 of chapter 112 of the Revised Statutes, entitled Quo Warranto, that leave to file the information shall be given if the court or judge to whom the petition is presented shall be satisfied there is probable cause for the proceeding, leave the court still possessed of power to consider upon the hearing, and then apply the same doctrine of waiver and acquiescence. **It is the general rule that laches, acquiescence, or unreasonable delay in the performance of duty on the part of the officers of the state, is not imputable to the state when acting in its character as a**

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[201] *Id*. at 692, 697.

[202] 175 Ill., 125; 64 L. R. A. 366.

sovereign. There are exceptions to this general rule, but we are unable to see that the allegations of the plea bring the case within the principles of any such exceptions.

Jurisprudence across the United States likewise richly reflect that when the Solicitor General files a *quo warranto* petition in behalf of the people and where the interests of the public is involved, the lapse of time presents no effective bar:

An information in the nature of a quo warranto cannot be filed by a private individual without leave, which the court may, at its discretion, either grant or refuse. To regulate their discretion as affected by the lapse of time, the English courts adopted the rule which we have stated. **But the Attorney General,** representing the Crown in England and the State in this country, **may file an information in the nature of a quo warranto, without leave, according to his own discretion**; and we find no English law which holds that an information, so filed, can be barred by the lapse of six years independently of any statute to that effect. x x x

The Attorney General being a public officer, may be presumed to be capable of a salutary and reasonable discretion, as well as the court, and when, acting in behalf of the State, he deems it his duty to prosecute for a forfeiture, it is not for the court, in the absence of any statutory limitation, to say he is too late. Indeed this court has itself decided that, after the information has once been filed, its discretion ceases, and it has then nothing to do but administer the law the same as in any other case.[203] (Citations omitted)

In *People v. Bailey*:[204]

Appellant claims that the action is barred by the provisions of the statute of limitations, xxxx We are of the opinion that the established rule of law, as to the statute of limitations and its bearing upon cases of this character, is correctly stated in the quotations above made and **"that the attorney general may file the information on behalf of the people at any time, and that lapse of time constitutes no bar to the proceeding."** The law, in thus permitting the attorney-

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[203] *State of Rhode Island v. Pawtuxet Turnpike Company* (Supreme Court of Rhode Island), Jan 1, 18678 R.I. 521 (R.I. 1867).

[204] (District Court of Appeal of California), 30 Cal.App. 581, 584, 585.

Supreme Court E-Library

general, either upon his own information or upon the information of a private party, to file an information at any time against one who has unlawfully intruded into and is holding a public office, does not place the courts or private parties in much danger of having to deal with stale claims. **The action can only be brought with the consent and permission of the attorney-general of the state, and, it is to be assumed, he will not permit the institution of such a suit, if by reason of a great lapse of time the claim has become stale, or for any other reason the state has ceased to have a present interest in it.** (Citations omitted)

People v. Bailey quotes *McPhail v. People ex rel. Lambert*,[205] as follows:

We do not consider this quo warranto proceeding, prosecuted by the state's attorney, for the purpose of ousting one charged with wrongfully and without authority of law exercising the office, jurisdiction and powers of a police magistrate, as simply a civil remedy, for the protection of private rights only. Police magistrates are public officers, that are provided for in the constitution of the state; and by that instrument the judicial powers of the state are, in part, vested in them. The office of police magistrate is one in which the state and the general public have a deep interest, and the jurisdiction attached to it is uniform with that belonging to the office of justice of the peace. It is a matter of public concern to the people of the state, and against their peace and dignity, that any one should unlawfully, and without authority of right, exercise the jurisdiction, powers and functions of such office, and also a matter of interest to the state and to the general public that more persons than the law authorizes are acting as police magistrates. In this country the rule is that **the attorney general or state's attorney may file the information in behalf of the people, where the interests of the general public are involved, at any time, and that, in conformity with the maxim, 'Nullum tempus occurrit regi,' lapse of time constitutes no bar to the proceeding.** (Citations omitted)

Aptly, in *State ex rel Stovall v. Meneley*,[206] it was held that a *quo warranto* action is a governmental function and not a

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[205] 160 Ill., 77; 52 Am. St. Rep., 806.

[206] (Supreme Court of Kansas) 271 Kan. 355, 372, 22 P.3d 124 (2001).

propriety function, and therefore the doctrine of laches does not apply:

> Governmental functions are those performed for the general public with respect to the common welfare for which no compensation or particular benefit is received. xxx **Quo warranto proceedings seeking ouster of a public official are a governmental function.** (Citations and annotations omitted) **No statute of limitations is, therefore, applicable.** The district court did not err in denying Meneley's motion to dismiss based on the statute of limitations. xxxx
>
> The doctrine of laches, furthermore, does not apply when a cause of action is brought by the State seeking to protect the public. (Citations and annotations omitted) xxx Having already noted that the quo warranto action is a governmental function and not a propriety function, we hold the district court did not err in denying Meneley's motion to dismiss on the basis of laches.

In fact, liberal interpretation to *quo warranto* provisions is sanctioned given that its primary purpose is to ascertain whether one is constitutionally authorized to hold office. *State ex rel Anaya v. McBride*[207] elucidates:

> Since the Constitution provides for separate and equal branches of government in New Mexico, any legislative measure which affects pleading, practice or procedure in relation to a power expressly vested by the Constitution in the judiciary, such as quo warranto, cannot be deemed binding. We cannot render inoperative a clause in the Constitution on so slender a reed. **One of the primary purposes of quo warranto is to ascertain whether one is constitutionally authorized to hold the office he claims, whether by election or appointment, and we must liberally interpret the quo warranto statutes to effectuate that purpose.**

Indeed, when the government is the real party in interest, and is proceeding mainly to assert its rights, there can be no defense on the ground of laches or prescription.[208] Indubitably, the basic principle that "prescription does not lie against the

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[207] 539 P.2d 1006 (1975).

[208] *Republic of the Phils v. Court of Appeals*, 253 Phil. 689, 713 (1989).

Supreme Court E-Library

State" which finds textual basis under Article 1108 (4)[209] of the Civil Code, applies in this case.

Circumstances obtaining in this case preclude the application of the prescriptive period

That prescription does not lie in this case can also be deduced from the very purpose of an action for *quo warranto*. *People v. City Whittier*,[210] explains that the remedy of *quo warranto* is intended to prevent a continuing exercise of an authority unlawfully asserted. Indeed, on point is *People v. Bailey*,[211] when it ruled that because *quo warranto* serves to end a continuous usurpation, no statute of limitations applies to the action. Needless to say, no prudent and just court would allow an unqualified person to hold public office, much more the highest position in the Judiciary.

In fact, in *Cristobal,* the Court considered certain exceptional circumstances which took the case out of the statute of limitations, to wit: (1) there was no acquiescence to or inaction on the part of the petitioner, amounting to the abandonment of his right to the position; (2) it was an act of the government through its responsible officials which contributed to the delay in the filing of the action; and (3) the petition was grounded upon the assertion that petitioner's removal from the questioned position was contrary to law.

In this case, the Republic cannot be faulted for questioning respondent's qualification for office only upon discovery of the cause of ouster.

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[209] Art. 1108. Prescription, both acquisitive and extinctive, runs against:

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(4) Juridical persons, except the State and its subdivisions.

[210] *People v. City of Whittier* (1933) 133 Cal.App. 316, 324; 25 Ops.Cal.Atty.Gen. 223 (1955).

[211] *People v. Bailey* (1916) 30 Cal.App. 581, 584, 585.

As will be demonstrated hereunder, respondent was never forthright as to whether or not she filed her SALNs covering the period of her employment in U.P. Recall that during her application for the Chief Justice position, the JBC required the submission of her previous SALNs. In response to the JBC, respondent never categorically stated that she filed the required SALNs. Instead, she cleverly hid the fact of non-filing by stating that she should not be required to submit the said documents as she was considered to be coming from private practice; that it was not feasible to retrieve most of her records in the academe considering that the same are more than fifteen years old; and that U.P. already cleared her of "all academic/administrative responsibilities, money and property accountabilities and from administrative charges as of June 1, 2006"[212] in a Clearance[213] dated September 19, 2011.

Even up to the present, respondent has not been candid on whether she filed the required SALNs or not. While respondent stated in her Comment that she filed the required SALNs when she was still connected with the U.P. College of Law,[214] she again offered as support the U.P. Clearance above-cited; that she was considered as coming from private practice when she was nominated as Associate Justice of the Supreme Court, hence, should not be required to submit those SALNs; and that it was not feasible for her to retrieve said SALNs from U.P. as her records therein are more than 15 years old. Notably, these are mere reiterations of her representations before the JBC.

Hence, until recently when respondent's qualification for office was questioned during the hearings conducted by the House Committee on Justice on the impeachment complaint against the respondent, there was no indication that would have prompted the Republic to assail respondent's appointment, much less question the wisdom or reason behind the said recommending

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[212] *Rollo*, pp. 2147-2148.

[213] *Id*. at 2144.

[214] *Id*. at 228.

Supreme Court E-Library

and appointing authorities' actions. The defect on respondent's appointment was therefore not discernible, but was, on the contrary, deliberately rendered obscure.

Given the foregoing, there can be no acquiescence or inaction, in this case, on the part of the Republic as would amount to an abandonment of its right to seek redress against a public wrong and vindicate public interest. Neither can delay be attributed to the Republic in commencing the action since respondent deliberately concealed the fact of her disqualification to the position. Prescription, therefore, cannot be pleaded against the Republic.

Neither can respondent successfully invoke Act No. 3326[215] as mentioned in her Table of Authorities.[216] Respondent refers to Section 1[217] thereof which provides for the prescriptive periods for violations penalized by special acts and municipal ordinances. Plainly, Act No. 3326 is inapplicable to the instant petition as respondent is not being sought to be penalized for violation of the laws relating to the non-filing or incomplete, irregular or untruthful filing of SALNs. At any rate, even the theorized applicability of Act No. 3326 will not work to respondent's advantage given that Section 2[218] thereof provides that the

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[215] AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN. Approved on December 4, 1926.

[216] *Rollo*, p. 1198.

[217] Section 1. Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offenses punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) after twelve years for any other offense punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years. Violations penalized by municipal ordinances shall prescribe after two months.

[218] Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from

prescriptive period shall be reckoned either from the day of the commission of the violation of the law, or if such be not known at the time, from the *discovery* thereof and the *institution of the judicial proceeding for its investigation and punishment*.

Finally, it bears to stress that this Court finds it more important to rule on the merits of the novel issues imbued with public interest presented before Us than to dismiss the case outright merely on technicality. The Court cannot compromise on the importance of settling the controversy surrounding the highest position in the Judiciary only to yield to the unacceptable plea of technicality. It is but more prudent to afford the Republic, as well as the respondent, ample opportunities to present their cases for a proper and just disposition of the case instead of dismissing the petition outright on the ground of prescription. Inasmuch as the ultimate consideration in providing for a one-year prescriptive period was public interest, so is it the same consideration which prompts this Court not to act nonchalantly and idly watch title to the public office in question be continuously subjected to uncertainty. Indeed, dismissal of cases on technicality is frowned upon especially where public interest is at the other end of the spectrum.

III.
Respondent is Ineligible as a Candidate and Nominee for the Position of Chief Justice

To arrive at a judicious appreciation of the parties' respective contentions as to respondent's qualification for the position of Chief Justice, the Court first reviews the supervisory authority exercised by it over the JBC, and visits the JBC's rules and procedure relating to the acceptance and nomination of respondent as Chief Justice.

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the discovery thereof and the institution of judicial proceeding for its investigation and punishment.

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Supreme Court E-Library

A.
The Court Exercises Supervisory Authority Over the JBC

The Court's supervisory authority over the JBC includes ensuring that the JBC complies with its own rules

Section 8(1), Article VIII of the Constitution provides:

A Judicial and Bar Council is hereby created under the supervision of the Supreme Court, composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector. (Emphasis ours)

Ambil, Jr. v. Sandiganbayan, et al.,[219] elucidates on the power of supervision in general:

On the other hand, the power of supervision means "overseeing or the authority of an officer to see to it that the subordinate officers perform their duties." If the subordinate officers fail or neglect to fulfill their duties, the official may take such action or step as prescribed by law to make them perform their duties. Essentially, the power of supervision means no more than the power of ensuring that laws are faithfully executed, or that subordinate officers act within the law. The supervisor or superintendent merely sees to it that the rules are followed, but he does not lay down the rules, nor does he have discretion to modify or replace them.[220]

Reflective of the above and similar pronouncements,[221] the seminal case of *Jardeleza v. Chief Justice Ma. Lourdes P. A. Sereno*, *et al.*,[222] explains that the power of supervision being a power of oversight does not authorize the holder of the

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[219] 669 Phil. 32 (2011).

[220] *Id*. at 50.

[221] *Hon. Drilon v. Mayor Lim*, 305 Phil. 146 (1994).

[222] 741 Phil. 460 (2014).

Supreme Court E-Library

supervisory power to lay down the rules nor to modify or replace the rules of its subordinate. If the rules are, however, not or improperly observed, then the supervising authority may order the work be done or redone, but only for the purpose of conforming to such rules.

Thus, in interpreting the power of the Court *vis-a-vis* the power of the JBC, it is consistently held that the Court's supervisory power consists of seeing to it that the JBC complies with its own rules and procedures. As when the policies of the JBC are being attacked, the Court, through its supervisory authority over the JBC, has the duty to inquire about the matter and ensure that the JBC is compliant with its own rules.[223]

The JBC occupies a unique position in the body of government. While the JBC is created by the Constitution, the Constitution itself prescribes that it exists as an office subordinate to the Supreme Court. Thus, under the Constitution, the JBC is chaired by the Chief Justice of the Supreme Court and it is the Supreme Court that determines the emoluments of the regular JBC members and provides for the appropriations of the JBC in its annual budget.[224]

The Constitution also vests upon the JBC the principal function of recommending appointees to the Judiciary and *such other functions and duties as the Supreme Court may assign to it*.[225]

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[223] *Judge Villanueva v. Judicial and Bar Council,* 757 Phil. 534 (2015).

[224] 1987 CONSTITUTION, Article VIII, Section 8:

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4.The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.

[225] 1987 CONSTITUTION, Article VIII, Section 8:

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5. The Council shall have the principal function of recommending appointees to the judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

Supreme Court E-Library

On this, Justice Arturo Brion, in his Concurring and Dissenting Opinion in *De Castro v. Judicial and Bar Council, et al.*,[226] offers a succinct point:

> Under this definition, the Court cannot dictate on the JBC the results of its assigned task, i.e., who to recommend or what standards to use to determine who to recommend. **It cannot even direct the JBC on how and when to do its duty, but it can, under its power of supervision, direct the JBC to "take such action or step as prescribed by law to make them perform their duties," if the duties are not being performed because of JBC's fault or inaction, or because of extraneous factors affecting performance. Note in this regard that, constitutionally, the Court can also assign the JBC other functions and duties – a power that suggests authority beyond what is purely supervisory.**[227] (Emphasis ours)

JBC's absolute autonomy from the Court as to place its non-action or improper actions beyond the latter's reach is therefore not what the Constitution contemplates.

What is more, the JBC's duty to recommend or nominate, although calling for the exercise of discretion, is neither absolute nor unlimited.

In *Villanueva v. Judicial and Bar Council*,[228] this Court explained that while a certain leeway must be given to the JBC in screening aspiring magistrates, the same does not give it an unbridled discretion to ignore Constitutional and legal requirements:

> The functions of searching, screening, and selecting are necessary and incidental to the JBC's principal function of choosing and recommending nominees for vacancies in the Judiciary for appointment by the President. However, the Constitution did not lay down in precise terms the process that the JBC shall follow in determining applicants' qualifications. **In carrying out its main function, the JBC has the**

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[226] 632 Phil. 657 (2010).

[227] *Id*. at 700.

[228] *Judge Villanueva v. Judicial and Bar Council*, *supra*.

authority to set the standards/criteria in choosing its nominees for every vacancy in the Judiciary, subject only to the minimum qualifications required by the Constitution and law for every position. The search for these long held qualities necessarily requires a degree of flexibility in order to determine who is most fit among the applicants. **Thus, the JBC has sufficient but not unbridled license to act in performing its duties.**

JBC's ultimate goal is to recommend nominees and not simply to fill up judicial vacancies in order to promote an effective and efficient administration of justice.[229] (Emphasis ours)

So too, the JBC's exercise of discretion is not automatically equivalent to an exercise of policy decision as to place, in wholesale, the JBC process beyond the scope of the Court's supervisory and corrective powers. The primary limitation to the JBC's exercise of discretion is that the nominee must possess the minimum qualifications required by the Constitution and the laws relative to the position. While the resolution of who to nominate as between two candidates of equal qualification cannot be dictated by this Court upon the JBC, such surrender of choice presupposes that whosoever is nominated is not otherwise disqualified. The question of whether or not a nominee possesses the requisite qualifications is determined based on facts and therefore does not depend on, nor call for, the exercise of discretion on the part of the nominating body.

Thus, along this line, the nomination by the JBC is not accurately an exercise of policy or wisdom as to place the JBC's actions in the same category as political questions that the Court is barred from resolving. Questions of policy or wisdom refer "to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which *full* discretionary authority has been delegated to the *legislative* or *executive* branch of government."[230]

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[229] *Id*. at 549.

[230] *Tañada v. Cuenco*, 103 Phil. 1051 (1957).

Supreme Court E-Library

Baker v. Carr[231] gives the classic definition of a political question:

> x x x [p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on the one question.

Obviously, the exercise of the JBC's discretion in the nomination process is not full as it is limited by the requirements prescribed by the Constitution and the laws for every position. It does not involve a question of policy but simply a determination, based on facts, of whether a candidate possesses the requisite qualifications or not. The JBC neither assumes an existence separate from the Judiciary as it is not intended to be an independent Constitutional body but merely a Constitutional office created and expressly subjected to the Court's supervision. Judicial encroachment upon the exercise of wisdom of a co-equal branch of the government, which is the very basis of the political question doctrine, is therefore not attendant when the Court supervises and reviews the action of the JBC which is neither an executive nor a legislative branch enjoying independent political prerogatives.

In fine, the Court has authority, as an incident of its power of supervision over the JBC, to insure that the JBC faithfully executes its duties as the Constitution requires of it. Wearing its hat of supervision, the Court is thus empowered to inquire into the processes leading to respondent's nomination for the position of Chief Justice on the face of the Republic's contention that respondent was ineligible to be a candidate to the position to begin with.

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[231] 369 U.S. 186.

Supreme Court E-Library

Qualifications under the Constitution cannot be waived or bargained away by the JBC

As emphasized, the JBC's exercise of discretion is limited by the Constitution itself when it prescribed the qualifications absolutely required of a person to be eligible for appointment as a Member of the Court.

The qualifications of an aspiring Member of the Supreme Court are enshrined in Section 7, Article VIII of the Constitution:

SECTION 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

(2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.

(3) A Member of the Judiciary must be a person of **proven** competence, **integrity**, probity, and independence. (Emphasis ours)

Evidently, more than age, citizenship and professional qualifications, Our fundamental law is clear that a member of the Judiciary must be a person of proven competence, integrity, probity and independence. The inclusion of subsection 3 is explained in this wise:

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MR. NOLLEDO. Thank you, Mr. Presiding Officer.

My amendment is to add a new subsection (3) on Section 4 which reads: A MEMBER OF THE Judiciary MUST BE A PERSON OF PROVEN COMPETENCE, INTEGRITY, PROBITY, AND INDEPENDENCE.

Before the Committee decides on whether or not to accept the amendment, I would like to explain it first.

Supreme Court E-Library

Mr. Presiding Officer, this is a moral provision lifted with modifications from the "Canons of Judicial Ethics." The reputation of our justices and judges has been unsavory. I hate to say this, but it seems that it has become the general rule that the members of the Judiciary are corrupt and the few honest ones are the exceptions. We hear of justices and judges who would issue injunctive relief to the highest bidder and would decide cases based on hundreds of thousands, and even millions, mercenary reasons.

The members of the deposed Supreme Court, with a few exceptions, catered to the political likings and personal convenience of Mr. Marcos by despicably surrendering their judicial independence. Why should we resist incorporating worthy moral principles in our fundamental law? Why should we canalize our conservative thoughts within the narrow confines of pure legalism?

I plead to the members of the Committee and to my colleagues in this Constitutional Commission to support my amendment in order to strengthen the moral fiber of our Judiciary. Let not our Constitution be merely a legal or political document. Let it be a moral document as well.

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Requirement of these traits stems from the need to ensure the strength and sustainability of the third branch of the government. *Caperton v. A.T. Massey Coal Co., Inc.,*[233] sufficiently explains the state interest involved in safeguarding judicial integrity:

Courts, in our system, elaborate principles of law in the course of resolving disputes. The power and the prerogative of a court to perform this function rest, in the end, upon the respect accorded to its judgments. The citizen's respect for judgments depends in turn upon the issuing court's absolute probity. Judicial integrity is, in consequence, a state interest of the highest order.

An approximation of what defines the term "integrity" was made by the Court in *Jardeleza*, as follows:

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[232] RECORDS, CONSTITUTIONAL COMMISSION, Vol. I., pp. 484-485 (July 14, 1986).

[233] 129 S. Ct. 2252, 2266-67 (2009).

In the performance of this sacred duty, the JBC itself admits, as stated in the "whereas clauses" of JBC-009, that qualifications such as "competence, integrity, probity and independence are not easily determinable as they are developed and nurtured through the years." Additionally, "it is not possible or advisable to lay down iron-clad rules to determine the fitness of those who aspire to become a Justice, Judge, Ombudsman or Deputy Ombudsman." Given this realistic situation, there is a need "to promote stability and uniformity in JBC's guiding precepts and principles." A set of uniform criteria had to be established in the ascertainment of "whether one meets the minimum constitutional qualifications and possesses qualities of mind and heart expected of him" and his office. Likewise for the sake of transparency of its proceedings, the JBC had put these criteria in writing, now in the form of JBC-009. True enough, guidelines have been set in the determination of competence," "probity and independence," "soundness of physical and mental condition, and "integrity."

As disclosed by the guidelines and lists of recognized evidence of qualification laid down in JBC-009, "integrity" is **closely related to, or if not, approximately equated to an applicant's good reputation for honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards.** That is why proof of an applicant's reputation may be shown in certifications or testimonials from reputable government officials and non-governmental organizations and clearances from the courts, National Bureau of Investigation, and the police, among others. In fact, the JBC may even conduct a discreet background check and receive feedback from the public on the integrity, reputation and character of the applicant, the merits of which shall be verified and checked. As a qualification, the term is taken to refer to **a virtue, such that, "integrity is the quality of person's character."**[234] (Emphasis ours)

The case of *Jardeleza*, however, is not the first time this Court interpreted the requirement of integrity. In *Samson v. Judge Caballero*,[235] this Court dismissed a judge for "obvious lack of integrity" in making a false statement in his Personal

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[234] *Jardeleza v. Chief Justice Ma. Lourdes P. A. Sereno, et al., supra* note 222, at 492-494.

[235] 612 Phil. 737 (2009).

Supreme Court E-Library

Data Sheet (PDS). Meanwhile, in *Re: Judge Jaime V. Quitain*,[236] this Court declared Judge Quitain to be dishonest and lacking in integrity when he failed to disclose in his PDS that he was imposed a penalty of dismissal from service in an administrative case filed against him.

Emphatically, integrity is not only a prerequisite for an aspiring Member of the Court but is likewise a continuing requirement common to judges and lawyers alike. Canon 2 of the New Code of Judicial Conduct[237] provides:

CANON 2
INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the Judiciary. Justice must not merely be done but must also be seen to be done.

SEC. 3. Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

The Code of Professional Responsibility, equally applicable to respondent being first and foremost a lawyer, mince no words in requiring that a lawyer shall perform his profession in a manner compatible with the integrity of the profession, thus:

CANON 2 – A LAWYER SHALL MAKE HIS LEGAL SERVICES AVAILABLE IN AN EFFICIENT AND CONVENIENT MANNER COMPATIBLE WITH THE INDEPENDENCE, INTEGRITY AND EFFECTIVENESS OF THE PROFESSION.

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[236] JBC No. 013, August 22, 2007.

[237] A.M. No. 03-05-01-SC Adopting the New Code of Judicial Conduct for the Philippine Judiciary. (April 27, 2004).

Rule 2.01 – A lawyer shall not reject, except for valid reasons, the cause of the defenseless or the oppressed.

Rule 2.02 – In such cases, even if the lawyer does not accept a case, he shall not refuse to render legal advice to the person concerned if only to the extent necessary to safeguard the latter's rights.

Rule 2.03 – A lawyer shall not do or permit to be done any act designed primarily to solicit legal business.

Rule 2.04 – A lawyer shall not charge rates lower than those customarily prescribed unless the circumstances so warrant.

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CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

Rule 7.01 – A lawyer shall be answerable for knowingly making a false statement or suppressing a material fact in connection with his application for admission to the bar.

Rule 7.02 – A lawyer shall not support the application for admission to the bar of any person known by him to be unqualified in respect to character, education, or other relevant attribute.

Rule 7.03 – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

It is also important to note that the Court has always viewed integrity with a goal of preserving the confidence of the litigants in the Judiciary. In *Edaño v. Judge Asdala*,[238] this Court stated that:

The New Code of Judicial Conduct for the Philippine Judiciary mandates that judges must not only maintain their independence, integrity and impartiality; but they must also avoid any appearance of impropriety or partiality, which may erode the peoples faith in the Judiciary. **Integrity and impartiality, as well as the appearance thereof,** are deemed essential not just in the proper discharge of

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[238] 555 Phil. 195 (2007).

Supreme Court E-Library

judicial office, but also to the personal demeanor of judges. This standard applies not only to the decision itself, but also to the process by which the decision is made. Section 1, Canon 2, specifically mandates judges to ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of reasonable observers. **Clearly, it is of vital importance not only that independence, integrity and impartiality have been observed by judges and reflected in their decisions, but that these must also appear to have been so observed in the eyes of the people, so as to avoid any erosion of faith in the justice system**. Thus, judges must be circumspect in their actions in order to avoid doubt and suspicion in the dispensation of justice.[239] (Emphasis ours)

To make sure that applicants to judicial positions possess these constitutionally-prescribed character requirement, the JBC was created. *Jardeleza* captures the purpose of the JBC which it finds to be rooted in the categorical constitutional declaration that "[a] member of the Judiciary must be a person of proven competence, integrity, probity, and independence." To ensure the fulfillment of these standards in every member of the Judiciary, the JBC has been tasked to screen aspiring judges and justices, among others, making certain that the nominees submitted to the President are all qualified and suitably best for appointment. *Jardeleza* continues that, in this manner, the appointing process itself is shielded from the possibility of extending judicial appointment to the undeserving and mediocre and, more importantly, to the ineligible or disqualified.

Thus, in compliance with their mandate, the JBC provided for Rule 4 on Integrity in JBC-009 Rules,[240] as follows:

RULE 4
INTEGRITY

Section 1. *Evidence of Integrity* – The council shall take every possible step to verify the applicants records and of reputation for honesty, integrity, incorruptibility, irreproachable conduct and fidelity

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[239] *Id*. at 201.

[240] September 23, 2002.

Supreme Court E-Library

to sound moral and ethical standards. For this purpose, the applicant shall submit to the council certifications or testimonials thereof from reputable government officials and non-governmental organizations, and clearances from the court National Bureau of Investigation, police, and from such other agencies as the council may require.

Section 2. *Background Check* – The Council may order a discrete [sic] background check on the integrity, reputation and character of the applicant, and receive feedback thereon from the public, which it shall check or verify to validate the means thereof.

Section 3. *Testimonies of Parties* – The Council may receive written opposition to an applicant on ground of his moral fitness and its discretion, the Council may receive the testimony of the oppositor at a hearing conducted for the purpose, with due notice to the applicant who shall be allowed to be [sic] cross-examine the opposite and to offer countervailing evidence.

Section 4. *Anonymous Complaints* – Anonymous complaints against an applicant shall not be given due course, unless there appears on its face probable cause sufficient to engender belief that the allegations may be true. In the latter case the Council may either direct a discrete [sic] investigation or require the applicant to comment thereon in writing or during the interview.

Section 5. *Disqualification* – The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman or Deputy Ombudsman:

1. Those with pending criminal or regular administrative cases;

2. Those with pending criminal cases in foreign courts or tribunals; and

3. Those who have been convicted in any criminal case; or in administrative case, where the penalty imposed is at least a fine or more than ₱10,000, unless has been granted judicial clemency.

Section 6. *Other instances of disqualification* – Incumbent judges, officials or personnel of the Judiciary who are facing administrative complaints under informal preliminary investigation (IPI) by the Office of the Court of Administrator may likewise be disqualified from being nominated if, in the determination of the Council, the charges are serious or grave as to affect the fitness of the applicant for nomination.

Supreme Court E-Library

For purpose of this Section and of the preceding Section 5 in so far as pending regular administrative cases are concerned, the Secretary of the Council shall, from time to time, furnish the Office of the Court of Administrator the name of an applicant upon receipt of the application/recommendation and completion of the required papers; and within ten days from the receipt thereof the Court Administrator shall report in writing to the Council whether or not the applicant is facing a regular administrative case or an IPI case and the status thereof. In regard to the IPI case, the Court Administrator shall attach to his report copies of the complaint and the comment of the respondent.

B.

Compliance with the Constitutional and statutory requirement of filing of SALN intimately relates to a person's integrity.

Respondent postulates that the filing of SALNs bear no relation to the Constitutional qualification of integrity. In so arguing, respondent loses sight of the fact that the SALN requirement is imposed no less than by the Constitution and made more emphatic by its accompanying laws and its implementing rules and regulations. In other words, one who fails to file his or her SALN violates the Constitution and the laws; and one who violates the Constitution and the laws cannot rightfully claim to be a person of integrity as such equation is theoretically and practically antithetical.

We elaborate:

The filing of SALN is a Constitutional and statutory requirement

The filing a SALN is an essential requirement to one's assumption of a public post. It has Constitutional, legal and jurisprudential bases.

Of paramount significance, Section 17, Article XI of the Constitution on the Accountability of Public Officers states:

Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit

a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law. (Emphasis ours)

However, even prior to the 1987 Constitution, and as early as 1960, our laws through R.A. No. 3019, required from every public officer a detailed and sworn statement of their assets and liabilities, thus:

SECTION 7. Statement of assets and liabilities. — Every public officer, within thirty days after assuming office, thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of department or Chief of an independent office, with the Office of the President, a true, detailed sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: *Provided*, That public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of the said calendar year.

SECTION 8. *Prima facie* evidence of and dismissal due to unexplained wealth. If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including but not limited to activities in any club or association or any ostentatious display of wealth including frequent travel abroad of a non-official character by any public official when such activities

Supreme Court E-Library

entail expenses evidently out of proportion to legitimate income, shall likewise be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary. The circumstances hereinabove mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation of the unexplained wealth is completed.

Respondent herself, in her Dissenting Opinion in *Phil. Savings Bank v. Senate Impeachment Court*[241] interprets that "failure to comply" with the law is "*prima facie* evidence of unexplained wealth, which may result in the dismissal from service of the public officer."

In 1961, R.A. No. 3019 was amended by R.A. No. 3047[242] by specifying the period within which a public official should make the disclosure and enumerating certain public officials who are exempt from the requirement.

Even during the martial law years, under then President Marcos, the obligation imposed upon public officers and employees to declare their assets and liabilities was maintained under Presidential Decree (P.D.) No. 379[243] but with the curious addition that the filing and submission of SALN are now to be required from all citizens, subject to few exceptions. P.D. No. 379 was later on amended by P.D. No. 417[244] which amended the contents of the statement and the manner of

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[241] Dissenting Opinion of Chief Justice Ma. Lourdes P. A. Sereno in G.R. No. 200238, November 20, 2012.

[242] AN ACT TO AMEND SECTION SEVEN OF REPUBLIC ACT NUMBERED THIRTY HUNDRED AND NINETEEN, OTHERWISE KNOWN AS THE "THE ANTIGRAFT AND CORRUPT PRACTICES ACT" SO AS TO EXEMPT CLASSROOM TEACHERS, LABORERS, CASUAL AND TEMPORARY EMPLOYEES, AND BARRIO OFFICIAL FROM THE REQUIREMENTS THEREOF. Approved June 17, 1961.

[243] REQUIRING THE SUBMISSION OF STATEMENT OF ASSETS, LIABILITIES AND NET WORTH, January 21, 1974.

[244] AMENDING CERTAIN SECTIONS OF PRESIDENTIAL DECREE NO. 379 BY ENLARGING THE COVERAGE OF THE SAME, March 19, 1974.

Supreme Court E-Library

providing the acquisition cost of the properties. Yet still, P.D. No. 379 was further amended by P.D. No. 555,[245] which prescribed stiffer penalties for violation thereof.

Two years after the birth of the 1987 Constitution, R.A. No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees[246] was enacted and thereby expanded the obligation to disclose by enumerating the information required to be disclosed as regards the assets, liabilities, business interests and financial connections; requiring the identification and disclosure of relatives in government; making the statements and disclosures available and accessible to the public; and prohibiting certain acts.

In particular, Sections 8 and 11 of R.A. No. 6713 provide:

Section 8. *Statements and Disclosure.* — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statements of Assets and Liabilities and Financial Disclosure. — All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The two documents shall contain information on the following:

(a) real property, its improvements, acquisition costs, assessed value and current fair market value;

(b) personal property and acquisition cost;

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[245] AMENDING PRESIDENTIAL DECREE NO. 379 ENTITLED "REQUIRING THE SUBMISSION OF ASSETS, LIABILITIES AND NET WORTH", September 16, 1974.

[246] February 20, 1989.

Supreme Court E-Library

(c) all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;
(d) liabilities, and;
(e) all business interests and financial connections.

The documents must be filed:

(a) within thirty (30) days after assumption of office;
(b) on or before April 30, of every year thereafter; and
(c) within thirty (30) days after separation from the service.

All public officials and employees required under this section to file the aforestated documents shall also execute, within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their assets, liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible, the year when they first assumed any office in the Government.

Husband and wife who are both public officials or employees may file the required statements jointly or separately.

The Statements of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections shall be filed by:

(1) Constitutional and national elective officials, with the national office of the Ombudsman;
(2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively; Justices, with the Clerk of Court of the Supreme Court; Judges, with the Court Administrator; and all national executive officials with the Office of the President.
(3) Regional and local officials and employees, with the Deputy Ombudsman in their respective regions;
(4) Officers of the armed forces from the rank of colonel or naval captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and
(5) All other public officials and employees, defined in Republic Act No. 3019, as amended, with the Civil Service Commission.

Supreme Court E-Library

(B) Identification and disclosure of relatives.— It shall be the duty of every public official or employee to identify and disclose, to the best of his knowledge and information, his relatives in the Government in the form, manner and frequency prescribed by the Civil Service Commission.

(C) Accessibility of documents.— (1) Any and all statements filed under this Act, shall be made available for inspection at reasonable hours.

(2) Such statements shall be made available for copying or reproduction after ten (10) working days from the time they are filed as required by law.

(3) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of reproduction and mailing of such statement, as well as the cost of certification.

(4) Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.

(D) Prohibited acts. — It shall be unlawful for any person to obtain or use any statement filed under this Act for:

(a) any purpose contrary to morals or public policy; or

(b) any commercial purpose other than by news and communications media for dissemination to the general public.

x x x x x x x x x

Section 11. Penalties. — (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (₱5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

Supreme Court E-Library

(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.

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The filing of the SALN is so important for purposes of transparency and accountability that failure to comply with such requirement may result not only in dismissal from the public service but also in criminal liability. Section 9 of R.A. No. 3019, as amended provides:

Section 9. Penalties for violations. — x x x x

(b) Any public officer violating any of the provisions of Section 7 of this Act shall be punished by a fine of not less than one thousand pesos nor more than five thousand pesos, or by imprisonment not exceeding one year and six months, or by both such fine and imprisonment, at the discretion of the Court.

The violation of said section proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution is instituted against him.

Both Section 8 of R.A. No. 6713 and Section 7 of R.A. No. 3019 require the accomplishment and submission of a true, detailed and sworn statement of assets and liabilities.[247] Further, under Section 11 of R.A. No. 6713, non-compliance with this requirement is not only punishable by imprisonment and/or a fine, it may also result in *disqualification* to hold public office. As the Court explained in *Hon. Casimiro, et al. v. Rigor*:[248]

x x x The requirement of filing a SALN is enshrined in the Constitution to promote transparency in the civil service and serves as a deterrent against government officials bent on enriching themselves through unlawful means. By mandate of law, every government official

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[247] *Presidential Anti-Graft Commission v. The Office of the President*, 661 Phil. 643 (2011).

[248] 749 Phil. 917 (2014).

or employee must make a complete disclosure of his assets, liabilities and net worth in order to avoid any issue regarding questionable accumulation of wealth. The importance of requiring the submission of a complete, truthful, and sworn SALN as a measure to defeat corruption in the bureaucracy cannot be gainsaid. Full disclosure of wealth in the SALN is necessary to particularly minimize, if not altogether eradicate, the opportunities for official corruption, and maintain a standard of honesty in the public service. Through the SALN, the public can monitor movement in the fortune of a public official; it serves as a valid check and balance mechanism to verify undisclosed properties and wealth. The failure to file a truthful SALN reasonably puts in doubts the integrity of the officer and normally amounts to dishonesty.[249]

As respondent acutely relates in her dissent in *Philippine Savings Bank*:[250]

In the present case, because of the fact that the Chief Justice is a public officer, he is constitutionally and statutorily mandated to perform a positive duty to disclose **all** of his assets and liabilities. This already operates as the consent required by law.

The Offices of the Chief Justice and of the 14 Associate Justices of the Supreme Court are an express creation of the Constitution, which vests them with explicit powers necessary for the proper functioning of a democratic government.

Foremost is the principle that public office is by virtue of the peoples mandate to exercise a sovereign function of the government. Hence, a public office is a public trust or agency. Appended to the constitutional principle that public office is a public trust is the tenet that public officers occupy very delicate positions that exact certain standards generally not demanded from or required of ordinary citizens.

Those who accept a public office do so *cum onere*, or with a burden, and are considered as accepting its burdens and obligations, together with its benefits. They thereby subject themselves to all constitutional and legislative provisions relating thereto, and undertake to perform

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[249] *Id*. at 929-930.

[250] *Philippine Savings Bank v. Senate Impeachment Court*, *supra* note 241.

Supreme Court E-Library

all the duties of their office. The public has the right to demand the performance of those duties.

One of these burdens or duties is explicitly articulated in Sec. 17 of Art. XI of the 1987 Constitution, *viz*:

x x x x x x x x x

This provision requires all public officers and employees, regardless of rank, to declare their assets and liabilities upon their assumption of office, as may be required by law. However, it likewise imposes a positive duty **and a heavier onus** on the President; the Vice-President; and members of the Cabinet, Congress, the Supreme Court, Constitutional Commissions and other Constitutional offices and officers of the Armed Forces with general or flag ranks to publicly disclose their assets and liabilities.[251] (Citations omitted and emphasis in the original)

Faithful compliance with the requirement of the filing of SALN is rendered even more exacting when the public official concerned is a member of the Judiciary. In *Office of the Court Administrator v. Judge Usman*,[252] the Court emphasized:

From the foregoing, it is imperative that every public official or government employee must make and submit a complete disclosure of his assets, liabilities and net worth in order to suppress any questionable accumulation of wealth. This serves as the basis of the government and the people in monitoring the income and lifestyle of public officials and employees in compliance with the constitutional policy to eradicate corruption, to promote transparency in government, and to ensure that all government employees and officials lead just and modest lives, with the end in view of curtailing and minimizing the opportunities for official corruption and maintaining a standard of honesty in the public service.

In the present case, respondent clearly violated the above-quoted laws when he failed to file his SALN for the years 2004-2008. He gave no explanation either why he failed to file his SALN for five (5) consecutive years. While every office in the government service is a public trust, no position exacts a greater demand on

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[251] *Id*.

[252] 675 Phil. 467 (2011).

moral righteousness and uprightness of an individual than a seat in the Judiciary. Hence, judges are strictly mandated to abide with the law, the Code of Judicial Conduct and with existing administrative policies in order to maintain the faith of our people in the administration of justice.[253] (Emphasis ours)

The above holds necessarily true considering that the obligation of members of the Judiciary to file their respective SALNs is not only a statutory requirement but forms part of the mandatory conduct expected of a judge so that an "honorable competent and independent Judiciary exists to administer justice and thus promote the unity of the country, the stability of government, and the well-being of the people."[254]

The Code of Judicial Conduct, in no uncertain terms, provide:

FINANCIAL ACTIVITIES

RULE 5.02 — A judge shall refrain from financial and business dealing that tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities or increase involvement with lawyers or persons likely to come before the court. A judge should so manage investments and other financial interests as to minimize the number of cases giving grounds for disqualifications.

x x x x x x x x x

FINANCIAL DISCLOSURE

RULE 5.08 — A judge shall make full financial disclosure as required by law. (Emphasis ours)

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Compliance with the SALN requirement indubitably reflects on a person's integrity

To recapitulate, Section 7, Article VIII of the Constitution requires that a member of the Judiciary must be of proven

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[253] *Id*. at 472.

[254] *Preamble,* The Code of Judicial Conduct.

Supreme Court E-Library

integrity. To be of proven integrity means that the applicant must have established a steadfast adherence to moral and ethical principles.[255]

The necessity of having integrity among the members of the judiciary is clearly discussed in the *Commentary on the Bangalore Principles of Judicial Conduct*:[256]

> Integrity is the attribute of rectitude and righteousness. The components of integrity are honesty and judicial morality. A judge should always, not only in the discharge of official duties, act honourably and in a manner befitting the judicial office; be free from fraud, deceit and falsehood; and be good and virtuous in behaviour and in character. There are no degrees of integrity as so defined. Integrity is absolute. In the judiciary, integrity is more than a virtue; it is a necessity.

Failure to file the SALN is clearly a violation of the law. The offense is penal in character and is a clear breach of the ethical standards set for public officials and employees. It disregards the requirement of transparency as a deterrent to graft and corruption. For these reasons, a public official who has failed to comply with the requirement of filing the SALN cannot be said to be of proven integrity and the Court may consider him/her disqualified from holding public office. In *De Castro v. Field Investigation Office, Office of the Ombudsman*,[257] We held:

> Public service demands the highest level of honesty and transparency from its officers and employees. The Constitution requires that all public officers and employees be, at all times, accountable to the people; serve with utmost responsibility, integrity, loyalty and efficiency; act with patriotism and justice; and lead modest lives. Public office *is* a public trust; it must be treated as a privilege rather

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[255] <http://www.dictionary.com/browse/integrity > visited on March 19, 2018).

[256] <https://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf> (visited on May 8, 2018)

[257] G.R. No. 192723, June 5, 2017.

than a right, and rest firmly upon one's sense of service rather than entitlement. In this light, the Court deems it necessary to reiterate, as a final note, its pronouncement in *Casimiro v. Rigor:*

> The constitutionalization of public accountability shows the kind of standards of public officers that are woven into the fabric of our legal system. To reiterate, public office is a public trust, which embodies a set of standards such as responsibility, integrity and efficiency. Unfortunately, reality may sometimes depart from these standards, but our society has consciously embedded them in our laws so that they may be demanded and enforced as legal principles, and the Court is mandated to apply these principles to bridge actual reality to the norms envisioned for our public service.

The requirement to file a SALN is not a trivial or a formal requirement. Neither is it something over which public officials can exercise discretion. It is mandated by Our Constitution and laws. It is meant to forge transparency and accountability in the government and as a measure meant to curb corruption. This is clear from the policy of R.A. No. 6713:

> Section 2. *Declaration of Policies*. — It is the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest.

Respondent nevertheless argues that the filing of SALN has no relation to an applicant's integrity, moral fitness or character. She cites the cases of *Office of the Ombudsman v. Racho,*[258] *Daplas v. Department of Finance and the Office of the Ombudsman,*[259] *Atty. Navarro v. Office of the Ombudsman and Department of Finance-Revenue Integrity Protection Services,*[260] to support her argument that in order to establish lack of integrity,

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[258] 656 Phil. 148 (2011).

[259] G.R. No. 221153, April 17, 2017.

[260] G.R. No. 210128, August 17, 2016, 801 SCRA 46.

Supreme Court E-Library

there is an additional requirement that there must be a showing that there is an intent to commit a wrong.[261]

It is inaccurate to use the aforesaid cases to support respondent's conclusion that her integrity is not affected by her failure to file SALNs.

In *Office of the Ombudsman v. Racho,*[262] the Court upheld the Ombudsman's finding that Racho is guilty of dishonesty for unexplained wealth. The Court, in that case, noted that Racho's SALN did not reflect the aggregate amount of his bank deposits.

In *Daplas v. Department of Finance and the Office of the Ombudsman,*[263] this Court merely held therein petitioner Daplas guilty of simple negligence instead of dishonesty and grave misconduct for her failure to declare several real and personal properties in her SALN. The Court found that "petitioner's failure to declare the Galant sedan in her SALNs from 1997 to 2003 stemmed from the fact that the same was registered in her husband's name, and purportedly purchased out of his personal money."

Meanwhile, in *Navarro v. Office of the Ombudsman and Department of Finance-Revenue Integrity Protection Service,*[264] this Court exonerated Atty. Navarro of dishonesty, grave misconduct and violation of R.A. No. 6713. The Court ruled, in that case, that the properties not reflected in therein petitioner's SALN were rightfully excluded as they do not actually belong to him. This Court even noted therein that the SALN before 2011 merely required a general statement of one's assets and liabilities.

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[261] *Rollo*, pp. 235-237.

[262] *Office of the Ombudsman v. Racho*, *supra*.

[263] *Daplas v. Department of Finance and the Office of the Ombudsman*, *supra*.

[264] *Navarro v. Office of The Ombudsman and Department of Finance-Revenue Integrity Protection Services*, *supra*.

It is apparent from the foregoing that the above mentioned cases are factually different from the instant petition. The aforesaid jurisprudence, aside from determining the administrative liability of therein public employees, dealt with *misdeclaration* of assets or properties. Meanwhile, the instant petition questions respondent's qualifications and as an incident thereto, the validity of the process leading to her appointment. Further, the fundamental issue in the case at bar is *not merely inaccurate entries, but the glaring absence* of respondent's SALN for various years prior to her resignation from the U.P. College of Law.

Respondent posits that a person's failure to file SALN, without more, would not automatically negate "integrity."[265] It is respondent's theory that the failure to file SALN without any allegation or evidence that one committed graft and corruption by acquiring unexplained wealth has no bearing on integrity. Respondent's argument, however, does not persuade.

The SALN laws contemplate both the (1) physical act of filing her and her family's statement of assets, liabilities and net worth and (2) filing of a true, genuine and accurate SALN. RA 6713 and RA 3019, being special laws that punish offenses, are *malum prohibitum* and not *malum in se.* Thus, it is the omission or commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated. An act which is declared *malum prohibitum* renders malice or criminal intent completely immaterial.[266] Thus, whether or not respondent accumulated unexplained wealth is not in issue at this point in time, but whether she, in the first place, complied with the mandatory requirement of filing of SALNs. Worse, to subscribe to respondent's view means that the Court would altogether be deprived of the opportunity to ascertain whether or not she accumulated unexplained wealth as the tools for doing so, that

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[265] *Rollo*, pp. 2111-2112.

[266] *People v. Quijada,* 328 Phil. 505 (1996).

Supreme Court E-Library

is, the filed SALNs and the representations contained therein, are lacking.

Respondent chronically failed to file her SALNs and thus violated the Constitution, the law and the Code of Judicial Conduct. A member of the Judiciary who commits such violations cannot be deemed to be a person of proven integrity

To recall, the record of the U.P. HRDO only contains respondent's SALNs for the years 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002. Later, respondent produced a photocopy of her SALN for 1989 and attached the same to her *Ad Cautelam* Manifestation/Submission. On the other hand, the records of the Central Records Division of the Office of the Ombudsman yields "no SALN filed by respondent except for the SALN ending December 1998" which was subscribed only in August 2003 and transmitted by the U.P. HRDO to the Ombudsman only on December 16, 2003. Further, despite having worked as legal counsel for the Republic from 2003 to 2006 (up until 2009), there is no record that respondent filed her SALNs for that period.

Respondent could have easily dispelled doubts as to the filing or non-filing of the unaccounted SALNs by presenting them before the Court. Yet, respondent opted to withhold such information or such evidence, if at all, for no clear reason. Respondent likewise manifests having been successful in retrieving most of the "missing" SALNs and yet withheld presentation of such before the Court, except for a photocopy of her 1989 SALN submitted only in the morning of the Oral Argument and allegedly sourced from the "drawers of U.P." Only in respondent's Memorandum *Ad Cautelam* did she attach the SALNs she supposedly recovered. But the SALNs so attached, except for the 1989 SALN, were the same SALNs priorly offered by the Republic. Other than offering legal or technical justifications, respondent has not endeavored to convince this

Court of the *existence* of the still unaccounted SALNs. As she herself stated in her July 23, 2012 letter to the JBC, only some, but not all, of her SALNs are infeasible to retrieve. Thus, this Court is puzzled as to why there has been no account of respondent's more recent SALNs, particularly those from 2000, 2001, 2003, 2004, 2005 and 2006.

Instead, respondent layers her defenses as follows:

1. Invoking the so-called "*Doblada* doctrine," respondent maintains having filed all her SALNs.

Respondent firmly latches on to her allegation that she filed her SALNs, only that she has no records of the same. It is, however, too shallow and impetuous for this Court to accept such excuse and disregard the overwhelming evidence to the contrary.

Respondent urges the Court to apply in her favor the case of *Concerned Taxpayer v. Doblada, Jr.,*[267] and deem as sufficient and acceptable her statement that she "maintains that she consistently filed her SALNs." Respondent argues that in *Doblada*, the Court gave no evidentiary value to the Office of the Court Administrator's (OCA) report stating that a branch Sheriff had failed to file his SALN for eighteen (18) years, based only on contrary evidence presented by the respondent Sheriff that proves the existence of only one (1) of his missing SALNs. According to respondent, the Court's rationale in *Doblada* that one cannot readily conclude that respondent failed to file his sworn SALN simply because these documents are missing in the OCA's files should likewise be made applicable to her case. Respondent thus concludes that the Republic must categorically prove its allegation that respondent did not file her SALNs for all relevant years, and not just show that the same are no longer on file with the relevant offices.

A more cerebral reading of *Doblada*, however, poses checkered differences to the case at bar.

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[267] 498 Phil. 395 (2005).

Supreme Court E-Library

To begin with, the Court imposed the ultimate penalty of dismissal, with forfeiture of all benefits and with prejudice to re-employment in any branch or service of the government including government-owned and controlled corporation against Doblada for his failure to declare a true and detailed statement of his assets and liabilities for the years 1974, 1976, 1989, 1991, 1993, 1995 and 1998. The pronouncement of the Court with regard to the non-filing of his SALNs for several years was therefore not the basis for the imposition of the appropriate penalty against Doblada.

The progenesis of Doblada's troubles was a letter-complaint filed by a concerned taxpayer with the Ombudsman. The Ombudsman, in turn, referred the complaint to the OCA. Upon report and recommendation of the OCA, the Court directed the National Bureau of Investigation (NBI) to conduct a discreet investigation of the case and thereafter, to submit a report thereon. The NBI reported discrepancies in Doblada's SALNs and his yearly salaries constituting *prima facie* evidence of unexplained wealth and further stated that "[Doblada] also failed to submit his sworn statement of assets and liabilities for the years 1975 to 1988, 1990, 1992, 1994 and 1997 as said documents were not submitted to the NBI by the Records Control Division of the Supreme Court." Thereafter, the case was referred to the OCA for evaluation, report and recommendation.

Initially, the OCA reported that Doblada's records disclose that he had not been submitting his SALNs for the years 1975, 1977 to 1988, 1990, 1992, 1999 and 2000. When asked to explain, Doblada maintains having filed all his SALNs and admits that he does not have copies of said SALNs as he might have accidentally disposed of the same during the various times that he transferred office. As proof, Doblada submitted a copy of a letter dated May 7, 2001 sent by the Acting Branch Clerk of Court, stating therein that attached to said letter are the sworn SAL[N] of the staff of RTC, Pasig City, Branch 155, including that of respondent's, for the year 2000. Said letter was established to have been sent to and duly received by the OCA, and yet Doblada's SALN for 2000 was one of those missing in the OCA's files.

It was factually established then that Doblada submitted his SALNs to the branch clerk of court, presumably as the chief or head of the office. The head of the office then transmitted the original copy of the SALNs received to the repository agency which, in Doblada's case, is the OCA. Thus, the OCA's report that Doblada did not file his SALNs was rendered inaccurate by proof that Doblada, through the head of the office, actually transmitted the required original copy of the 2000 SALN to the OCA.

Considering the *contrary proof* presented by Doblada in the form of the letter of the head of the personnel of Branch 155 that the SALN for 2000 *exists* and was *duly transmitted* and *received* by the OCA as the repository agency, the Court therein *inferred* that Doblada filed his SALNs.

In respondent's case, while the U.P. HRDO, as the concerned personnel division, produced respondent's SALNs for 1985, 1989, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002, these very same SALNs are *neither proven to be in the records of, nor was proven to have been sent to and duly received by the Ombudsman as the repository agency*. Even then, the Court presently receives the certified copies of said SALNs as evidence of the existence and the filing thereof.

Nevertheless, for the SALNs which the U.P. HRDO itself *cannot produce*, *i.e.,* 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005 and 2006, *and* not proven to be in the records of, nor proven to have been sent to and duly received by the Ombudsman, are altogether a different matter. The *existence* of these SALNs and the *fact of filing* thereof were neither established by direct proof constituting substantial evidence nor by mere inference.

The Court in *Doblada* also gave the latter the benefit of the doubt considering the lack of the categorical statement from the OCA, as the repository agency, that Doblada failed to file his SALN for the relevant years. The Court observed that the report of the OCA simply stated that "it does not have on its file the subject SAL[N] of [Doblada]." Hence, the Court therein

Supreme Court E-Library

concluded that there was no substantial evidence to show that Doblada failed to file his SALNs for the relevant years.

In stark contrast, the Certification of the Omdusman, as the repository agency in respondent's case, made the categorical statement that "based on records on file, *there is no SALN filed* by [respondent] for calendar years 1999 to 2009 except SALN ending December 1998 which was submitted to this Office on December 16, 2003."

Respondent, through counsel, attempts to mislead the Court as to the value of the Ombudsman's Certification by re-directing Our attention to a "handwritten certification"[268] affixed by the SALN custodian of the Ombudsman. Upon closer examination, the "handwritten certification" aside from having been "issued" only on April 6, 2018 appears to have been made at the behest of respondent's counsel where the handwritten words may have been tailor-fitted to suit respondent's theory. The signatory of the "handwritten certification" is the same signatory as that of the Certification earlier issued by the Ombudsman, and thus the former could not have possibly negated or altered the tenor of the latter. In any case, such "handwritten certification" cannot eclipse a Certification duly and officially issued by the Ombudsman in response to a subpoena issued by the Congress.

Thus, taking the undisputed pieces of evidence consisting of (1) the U.P. HRDO certifications proving that respondent's SALNs for 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005 and 2006 are not in its possession; and (2) the Ombudsman certification that based on its records, there is no SALN filed by respondent except that for 1998; coupled with respondent's inability to show proof that these SALNs actually exist and that these were actually transmitted to and duly received by the Ombudsman as the repository agency, conclusively establish that for the years 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005 and 2006, respondent did not file her SALNs.

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[268] *Rollo*, p. 2283.

Supreme Court E-Library

Otherwise stated, on the basis of the evidence on record and respondent's unexplained failure to support her allegation of filing with substantial proof, the Court reaches the inevitable conclusion that the only SALNs filed by respondent were those for the calendar years 1985, 1989, 1990, 1991, 1993, 1994, 1995, 1996, 1997, 1998, and 2002, or only eleven (11) SALNs out of her 20 years in U.P., or for even more if her engagement as legal counsel by the Republic and as Deputy Commissioner of the Commission on Human Rights as lauded in respondent's PDS, are treated as government service.

It is for this reason that We hold that the Republic was able to discharge its burden of proof, and thus it becomes incumbent upon respondent to discharge her burden of evidence. *Sps. De Leon, et al. v. Bank of the Philippine Islands*[269] offers a distinction between burden of proof and burden of evidence:

> Section 1, Rule 131 of the Rules of Court defines "burden of proof" as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." **In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence. Once the plaintiff has established his case, the burden of evidence shifts to the defendant, who, in turn, has the burden to establish his defense.**[270] (Emphasis ours)

Further, the burden of proof in a *quo warranto* proceeding is different when it is filed by the State. Floyd Mechem in his book, entitled *A Treatise on the Law of Public Offices and Officers*,[271] explains that when the respondent is called upon at the suit of the State to show by what warrant he assumes to exercise the functions of a public office, the burden of proving his title rests upon the respondent. When, however, the respondent has made out a *prima facie* right to the office, it is only at that time that the burden of evidence shifts to the State.[272]

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[269] 721 Phil. 839 (2013).

[270] *Id*., at 848.

[271] 1890.

[272] *Id*. at 493-494.

Supreme Court E-Library

Montgomery H. Throop adopted the same view as Mechem. Throop, in his book, entitled *A Treatise on the Law relating to Public Officers and Sureties in Official Bonds*,[273] states that upon the trial of an information in the nature of a *quo warranto*, the prosecutor is not required, in the first instance, to show want of title in the person, against whom the information is exhibited. The burden is upon the respondent to establish a good title; he must establish the continued existence of every qualification, necessary to the continued holding of the office, if any such qualifications exist. But where the respondent has shown a good *prima facie* title, the burden of proof is shifted to the prosecutor.[274]

In this jurisdiction, Vicente J. Francisco wrote in his book the *Revised Rules of Court in the Philippines*,[275] that in a *quo warranto* proceeding, the burden rests on the defendant or respondent, as against the State at least, to show his right to the office from which it is sought to oust him. Moreover, since the object of such proceedings is to test the actual right to the office, and not merely a use color of right, it is incumbent upon the respondent to show a good legal title, and not merely a colorable one, for he must rely wholly on the strength of his own title.[276]

With the submission of its evidence, including the Certifications from the U.P. College of Law and the Ombudsman showing that respondent did not file all her SALNs, the Republic has made out a *prima facie* case that respondent failed to comply with the SALN law. The duty or burden of evidence thus shifted to respondent to controvert the Republic's *prima facie* case, otherwise, a verdict must be returned in favor of the Republic.[277] However, what respondent merely offered in response to the

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[273] 1892.

[274] *Id*. at 744-745.

[275] Volume IV-B , 1972.

[276] *Id*. at 332.

[277] See *Department of Education v. Tuliao,* 735 Phil. 703 (2014).

Republic's evidence is an unsubstantiated claim that she had filed all her SALNs. Without admissible documentary and testimonial support, this bare and uncorroborated assertion scarcely overcomes the Republic's case.

2. Being on leave without pay exempts respondent from filing her SALNs.

Aside from maintaining that she filed all her SALNs, respondent layers her defenses by saying that her non-filing of SALN is nevertheless excused because she was on leave from the U.P. College of Law during June 1, 1998 to October 16, 1998, June 1, 2000 to May 31, 2001, June 1, 2001 to May 31, 2002, November 1, 2003 to May 31, 2004, June 1, 2004 to October 31, 2004, February 11, 2005 to October 31, 2005 and November 15, 2005 to May 31, 2006. However, per the Certification[278] issued by the U.P. HRDO dated December 8, 2017, it appears that respondent filed her SALN for the year ending December 31, 2002, a year she was purportedly on leave. To this Court, respondent's own act of filing a SALN in 2002 negates her argument that being on leave excuses her from filing her SALN. As likewise pointed out during the Oral Arguments,[279] respondent, as a regular faculty member, receives monthly compensation and from at least January 2000 to May 2000 (when she was not on leave), she earned income and thus should have filed her SALN covering said period.

Further, being on leave from government service is not synonymous with separation from government service. Suffice to say that one does not cease to become a government employee only because one takes an official leave.

On the contrary, relevant laws provide that **all** public officials and employees are required to file a SALN.

To review, Section 17, Article XI of the Constitution categorically requires that "[a] public officer or employee shall,

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[278] *Rollo*, p. 64.

[279] TSN, Oral Arguments on April 10, 2018, p. 102.

Supreme Court E-Library

upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law."

Section 8 of R.A. No. 6713 states that "[p]ublic officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households." Further, "[t]he [SALN] and the [d]isclosure of [b]usiness [i]nterests and [f]inancial [c]onnections shall be filed by: (1) Constitutional and national elective officials, with the national office of the Ombudsman; (2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively; Justices, with the Clerk of Court of the Supreme Court; Judges, with the Court Administrator; and all national executive officials with the Office of the President; (3) Regional and local officials and employees, with the Deputy Ombudsman in their respective regions; (4) Officers of the armed forces from the rank of colonel or naval captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and (5) All other public officials and employees, defined in RA 3019, as amended, with the Civil Service Commission."

Relatedly, Section 34, Chapter 9, Book 1 of the Administrative Code of 1987 also states that "[a] public officer or employee shall upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth."

Section 8 of R.A. No. 6713, however, provides for certain **exceptions** to the requirement: (1) those serving in honorary capacity – these are persons who are working in the government

without service credit and without pay; (2) laborers – these are persons who perform ordinary manual labor; and (3) casual or temporary workers. Respondent claims exception on the argument that for the periods she was on official leave from U.P., she did not receive any pay.

This statement, however, is inaccurate. The fact that respondent did not receive any pay for the periods she was on leave does not make her a government worker "serving in an honorary capacity" to be exempted from the SALN laws. She did not receive pay not because she was serving in an honorary capacity, but for the simple reason that she did not render any service for said period. Fundamental is the rule that workers who were not required to work are not, by law, entitled to any compensation.

3. Respondent is not required by law to keep a record of her SALNs.

Respondent invokes Section 8, paragraph C(4) of R.A. No. 6713 which provides:

Section 8. Statements and Disclosure. x x x

x x x x x x x x x

(C) Accessibility of documents. – (1) Any and all statements filed under this Act, shall be made available for inspection at reasonable hours.

(2) Such statements shall be made available for copying or reproduction after ten (10) working days from the time they are filed as required by law.

(3) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of reproduction and mailing of such statement, as well as the cost of certification.

(4) Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.

There is no argument that the filed SALNs need not be retained by the receiving officer or the custodian after more than ten

Supreme Court E-Library

years from the filing or receipt thereof as such documents may be destroyed unless needed in an ongoing investigation. In this context, the filer is likewise under no obligation to keep records of such SALNs after the ten-year period.

The fact, however, remains that even respondent's more recent SALNs falling within the ten-year period for her application to the Chief Justice position are not on record. Logically, a public officer under question should obtain a certification from the repository agency to attest to the fact of filing. In the event that the SALNs were actually filed but missing, such certification should likewise attest to the fact that the SALNs filed could no longer be located due to a valid reason (such as destruction by a natural calamity, gutted by fire or destruction pursuant to the ten-year period above-cited).

4. Respondent was never asked to comply with the SALN laws.

Respondent likewise banks on the supposed presumption that she filed the SALNs considering that the U.P. HRDO never called her attention to the non-filing thereof and instead, released a clearance and certification in her favor. However, said circumstance, if true, does not detract from the fact that the duty to properly accomplish the SALN belongs to the public official and the corrective action that the concerned authority is expected to undertake is limited only to typographical or mathematical rectifications.

For the years that respondent rendered government service in U.P., the relevant rules would be that provided under the Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees dated April 21, 1989. Rule VIII thereof provides:

Rule VIII
Review and Compliance Procedure

Section 1. The following shall have the authority to establish compliance procedures for the review of statements to determine whether said statements have been properly accomplished:

(a) In the case of Congress, the designated committees of both Houses of Congress subject to approval by the affirmative vote of the majority of the particular House concerned;
(b) In the case of the Executive Department, the heads of the departments, offices and agencies insofar as their respective departments, offices and agencies are concerned subject to approval of the Secretary of Justice
(c) In the case of the Judicial Department, the Chief Justice of the Supreme Court; and
(d) In the case of the Constitutional Commissions and other Constitutional Offices, the respective Chairman and members thereof; in the case of the Office of the Ombudsman, the Ombudsman.

The above official shall likewise have the authority to render any opinion interpreting the provisions on the review and compliance procedures in the filing of statements of assets, liabilities, net worth and disclosure of information.

In the event said authorities determine that a statement is not properly filed, they shall inform the reporting individual and direct him to take the necessary corrective action.

The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in the Code.

The Rules implementing R.A. No. 6713 thus authorize only certain officials of the Legislative, Executive and Judicial Departments, and the Constitutional Commissions and Constitutional offices to establish compliance procedures for the review of statements in the SALN to determine whether said statements have been been properly accomplished. The said officials are also authorized to render opinions interpreting the provisions on the review and compliance procedures and to determine whether or not a SALN is properly filed. If the SALN was not properly filed, the authorized officials are required to inform the reporting individual and direct him/her to take the necessary corrective action. The records do not show that at the time respondent assumed her post as a professor in U.P., or at any time thereafter until her resignation, that concerned

Supreme Court E-Library

authorized official/s of the Office of the President or the Ombudsman had established compliance procedures for the review of SALNs filed by officials and employees of State Colleges and Universities, like U.P.

The ministerial duty of the head of office to issue compliance order came about only on April 16, 2006 when the Civil Service Commission (CSC) issued Memorandum Circular No. 10, s. 2006 amending Rule VIII. This was pursuant to CSC Resolution No. 06-0231 dated February 1, 2006 wherein the CSC adopted the revised rules on review and compliance procedure. As such, the U.P. HRDO could not have been expected to perform its ministerial duty of issuing compliance orders to respondent when such rule was not yet in existence at that time.

At any rate, *Navarro v. Office of the Ombudsman*[280] clarifies on the limited corrective action which the head of office can perform as regards the review of SALNs:

x x x x x x x x x

Lest it be misunderstood, the corrective action to be allowed should only refer to typographical or mathematical rectifications and explanation of disclosed entries. It does not pertain to hidden, undisclosed or undeclared acquired assets which the official concerned intentionally concealed by one way or another like, for instance, the use of dummies. There is actually no hard and fast rule. If income has been actually reported to the BIR in one's ITR, such fact can be considered a sign of good faith.

x x x x x x x x x

The Court is mindful of the duty of public officials and employees to disclose their assets, liabilities and net worth accurately and truthfully. In keeping up with the constantly changing and fervent society and for the purpose of eliminating corruption in the government, the new SALN is stricter, especially with regard to the details of real properties, to address the pressing issue of transparency among those in the government service. Although due regard is given to those charged with the duty of filtering malicious elements in the

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[280] *Supra* note 260.

government service, it must still be stressed that such duty must be exercised with great caution as grave consequences result therefrom. Thus, some leeway should be accorded the public officials. They must be given the opportunity to explain any *prima facie* appearance of discrepancy. To repeat, where his explanation is adequate, convincing and *verifiable*, his assets cannot be considered unexplained wealth or illegally obtained.[281] (Emphasis ours)

5. Respondent's inclusion in the matrix of candidates with complete requirements and in the shortlist nominated by the JBC confirms or ratifies her compliance with the SALN requirement.

Respondent, both in her pleadings and in the Oral Arguments, harps on the purported failure of the JBC to exclude her from the list of shortlisted applicants. She points to at least eleven times that the JBC could have disqualified her due to her lack of SALNs but failed to do so. Hence, she argues that she is deemed to have substantially complied with the legal requirements at the time of her application.

Respondent's argument is specious. The invalidity of respondent's appointment springs from her lack of qualifications. Her inclusion in the shortlist of candidates for the position of Chief Justice does not negate, nor supply her with the requisite proof of integrity. She should have been disqualified at the outset. It must be underscored that the JBC *En Banc* included respondent in the shortlist for the position of Chief Justice *without* deliberating her July 23, 2012 Letter. Without prejudice to this Court's ruling in A.M No. 17-11-12-SC and A.M. No. 17-11-17-SC, the JBC *En Banc* cannot be deemed to have considered respondent eligible because it does not appear that respondent's failure to submit her SALNs was squarely addressed by the body. Her inclusion in the shortlist of nominees and subsequent appointment to the position do not estop the Republic or this Court from looking into her qualifications. Verily, no estoppel arises where the representation or conduct of the party sought to be estopped is due to ignorance founded upon an innocent

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[281] *Id*. at 71-73.

Supreme Court E-Library

mistake.[282] Again, without prejudice to the outcome of the pending administrative matter, it appears that respondent's inclusion was made under the erroneous belief that she complied with all the legal requirements concomitant to the position.

Respondent failed to properly and promptly file her SALNs, again in violation of the Constitutional and statutory requirements

Further, the failure to file a truthful SALN not only puts in doubt the integrity of the officer, but such failure to file a truthful, complete and accurate SALN would likewise amount to dishonesty if the same is attended by malicious intent to conceal the truth or to make false statements.[283]

On its face, the SALNs filed by respondent covering her years of government service in U.P., appear to have been executed and filed under suspicious circumstances:

(a) Respondent's SALN as of December 31, 1996 was accomplished and notarized only on June 29, 1998, or two years late;

(b) Her SALN as of December 31, 1998 was filed only in 2003, or five years late;

(c) Her SALNs for the years 1997, 1998, 1999 and 2002 were notarized only on August 21, 2003;[284]

(d) Both the 1996[285] and 1997[286] SALNs were subscribed and sworn to by respondent before Zenaida P. Cruz (Administrative Officer IV, Human Resource Development

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[282] See *Sps. Modesto v. Urbina, et al.,* 647 Phil. 706 (2010).

[283] *Gupilan-Aguilar v. Office of the Ombudsma*n, 728 Phil. 210, 234 (2014).

[284] *Rollo*, p. 1965.

[285] *Id*. at 1961.

[286] *Id*. at 1963.

and Records Section, U.P. Law Center) on June 29, 1998. However, under the Notarial Registry of Eugenia A. Borras, four SALNs of respondent were acknowledged before her on August 21, 2003 as cited in the next preceding paragraph. It appears thus that there were two SALNs for 1997 executed by respondent;

(d) She failed to file her SALNs for 2004, 2005, and 2006 which were the years when she received the bulk of her fees from the PIATCO cases. As respondent divulged, she received from the Republic, through the OSG, the following fees[287] in relation to the PIATCO cases:

Year	Income
2004	**₱7,055,513.56**
2005	**₱11,532,226.00**
2006	**₱2,636,006.64**
2007	₱4,673,866.36
2008	₱4,070,810.93
2009	₱301,552.00
TOTAL	₱30,269,975.49

(e) Her SALN for 2006 was accomplished only on July 27, 2010 and unsubscribed, only to be later on claimed by respondent to have been really intended as SALN as of July 27, 2010;

The SALNs that she submitted in support of her application for Chief Justice likewise bear badges of irregularities:

(f) Her SALN for 2009 was not accomplished under oath, was likewise belatedly filed only on June 22, 2012 and indicates therein that she was an Associate Justice of the Court when her appointment came only on August 16, 2010;

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[287] *Id*. at 2003.

Supreme Court E-Library

(g) Her SALNs for 2006 and 2009 did not reflect the fees she received as counsel for the Republic in the PIATCO cases.

The Bureau of Internal Revenue's (BIR) Report shows that respondent received from the OSG the total gross amount of ₱32,494,805.27 as fees from 2004 to 2009 for the PIATCO cases. The BIR Report also shows that she paid the withholding taxes on said fees in the total amount of Php4,599,504.71. By mathematical computation, respondent would have had Php27,895,300.56 as her net disposable income. This net disposable income was not reflected in respondent's SALN for 2006 (which she claims to really be her SALN as of July 27, 2010) nor in her SALN as of 2009. Her SALN for 2009 revealed a net worth of only Php17,936,353.00;

(h) The unaccounted income from the PIATCO cases could not have been due to losses or liabilities considering that respondent have had an increase in her net worth from 2002 to 2009. Her SALN for 2002 shows a net worth of only Php3,804,000.00 while her SALN for 2009 shows a net worth of Php17,936,353.00, her net worth thus increased by Php14,132,353.00. While the BIR Report shows that respondent received approximately Php27M in disposable net income, her SALN only shows an increase of approximately Php14M in net worth. The difference between the two, in the amount of estimatedly Php13M, was conspicuously missing in the SALNs filed by respondent;

(i) There is a glaring difference between the two 2010 SALNs filed. The total value of respondent's personal properties in the "SALN as of July 27, 2010" is Php9,000,000.00, while the value of her personal properties as declared in her "SALN as of December 31, 2010" increased to Php11,723,010. Respondent, therefore, enjoyed an increase of approximately Php2,700,000.00 in personal properties in just a span of five (5) months after having been appointed as Associate Justice.

(j) It is contrary to human experience that the SALNs purportedly recovered by respondent's husband were not stamped received by the UP HRDO. It is unusual that respondent did not bother to demand that her personal copy be duly stamped received with particulars as to the date and initial, at least of the party who received the same as proof that she timely filed her SALN.

(k) There is no indication from the stamped "Certified Photocopy" and initialed by Rosemarie Pabiona on the SALNs that she is the official custodian of the same, and whether the photocopies of the original are on file, contrary to Section 24, Rule 132 of the Rules of Court.

The above circumstances betray respondent's intention to falsely state a material fact and to practice deception in order to secure for herself the appointment as Chief Justice. It is therefore clear as day that respondent failed not only in complying with the physical act of filing, but also committed dishonesty betraying her lack of integrity, honesty and probity.[288]

Consistently, the Court does not hesitate to impose the supreme penalty of dismissal against public officials whose SALNs were found to have contained discrepancies, inconsistencies and non-disclosures. For instance, in *Rabe v. Flores*,[289] the Court unanimously imposed the ultimate penalty of dismissal from service upon a regional trial court interpreter with forfeiture of all retirement benefits and accrued leaves and with prejudice to re-employment for dishonesty and for failure to disclose her business interest, which was a "stall in the market" for a continued period of four years. The Court stressed that it is the obligation of an employee to submit a sworn statement as the "public has a right to know" the employee's assets, liabilities and net worth and financial and business interests.

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[288] *Office of the Ombudsman v. Racho*, *supra* note 258.

[289] 338 Phil. 919 (1997).

Supreme Court E-Library

The dockets of the Sandiganbayan itself show that several charges for violations of R.A. No. 6713 for failure to file and for untruthful declarations in the SALNs resulted to a plea of guilt from the accused, lest the latter run the risk of being imprisoned.[290] Interestingly, the Sandiganbayan concluded a criminal case[291] against a certain Rogelio Pureza, then a Senior Superintendent of the Philippine National Police, who was charged with 4 counts of violation of Section 8 in relation to Section 11 of R.A. No. 6713 for failure to file his annual SALN for the years 1990, 1991, 1992 and 1993. In the course of the investigation by the Office of the Deputy Ombudsman for the Military relative to an anonymous letter of a concerned resident of Kalookan City on the alleged illegal activities and unexplained wealth of several policemen, Pureza was found to have no record of his SALN from 1989 to 1993 on file with the PNP Records Center. In handing a guilty verdict, the Sandiganbayan reasoned that the non-existence of the SALs with the Records Center of the PNP proved that the accused did not file his SAL for 1990 to 1993. The Sandiganbayan observed that even assuming that the accused had indeed filed his SAL with the PNP and his records were lost during the transfer of records, he could have easily and conveniently obtained a copy of his SAL from either the CSC or the Office of the Military Ombudsman.

It is thus plainly obvious that the courts do not take violations of the SALN laws slightly even as against lowly public officials.

With more reason should such test of dishonesty and lack of integrity be applied in the instant case when respondent failed to file her SALNs for several years and for those years that she filed, the SALNs so filed prove to be untruthful.

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[290] See *People of the Philippines v. P/C/ Supt. Eugene G. Martine*, SB-12-CRM-0228 to SB-12-CRM-0234, January 12, 2018; *People of the Philippines v. Sadikul Adalla Sahali,* SB-16-CRM-0501 to 0506, August 18, 2017; *People of the Philippines v. Maria Gracia Cielo Magno Padaca,* SB-15-CRM-0248 to 025, September 27, 2017; *People of the Philippines v. Ruby Sahali Tan*, SB-16-CRM-1291 to 1296, September 18, 2017.

[291] *People v. Pureza*, Sandiganbayan Criminal Case Nos. 27995-98, June 30, 2006.

C.

Respondent failed to submit the required SALNs as to qualify for nomination pursuant to the JBC rules

The JBC required the submission of at least ten SALNs from those applicants who are incumbent Associate Justices, absent which, the applicant ought not to have been interviewed, much less been considered for nomination

Further compounding respondent's woes is the established and undisputed fact that she failed to submit the required number of SALNs in violation of the rules set by the JBC itself during the process of nomination.

To recall, the announcement for the opening of the application and recommendation of the position of Chief Justice in 2012 was preceded by a JBC En Banc meeting where the members thereof agreed that applicants who were previously in the government service must submit all previous SALNs. This agreement was reflected in the JBC's announcement published on June 5, 2012, where it was made clear that applicants from the government shall submit, in addition to the usual documentary requirements, *all previous SALNs*, with a warning that those with incomplete or out-of-date documentary requirements will not be interviewed or considered for nomination.

As extensively quoted, the minutes[292] of the JBC deliberation held on July 20, 2012 show that the JBC deliberated on the candidates who submitted incomplete SALNs and then determined who among them are to be considered as having "substantially complied." Senator Francis G. Escudero, as then *ex officio* member, suggested that "at least an attempt to comply

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[292] JBC Minutes, July 20, 2012.

Supreme Court E-Library

with a particular requirement" can be used as a parameter for determining substantial compliance.[293]

With this, the JBC proceeded to go over, one by one, the compliance of the candidates with the lacking documentary requirements. For instance, Justice Abad was considered as having substantially complied because he submitted 4 SALNs in his 6 year-stint with the OSG and because the filing of the SALN at the time Justice Abad joined the government was not yet required. Dean Raul C. Pangalangan lacked 5 SALNs but that he was trying to get them from the Civil Service Commission and so, regular member Justice Aurora Santiago-Lagman moved that the SALNs he submitted be considered as substantial compliance. Congressman Rufus B. Rodriguez did not submit even one SALN which prompted Justice Peralta to remark that Congressman Rodriguez may no longer be interested. Commissioner Rene V. Sarmiento also submitted incomplete SALNs, but there was no mention whether the SALNs he submitted were considered as substantial compliance. Similarly, for respondent, the JBC determined that she did not submit her SALNs from 1986 to 2006 and that, as remarked by Senator Escudero, the filing thereof during those years was already required. There was no indication that the JBC deemed the three SALNs (for the years 2009, 2010 and 2011) submitted by respondent for her 20 years as a professor in the U.P. College of Law and two years as Associate Justice, as substantial compliance.

We revisit the pertinent portions of the aforesaid Minutes as follows:

III. Deliberation on Candidates with Incomplete Documentary Requirements:

x x x x x x x x x

Justice Peralta suggested that the Council examine the matrix per candidate as follows:

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[293] JBC Minutes, July 20, 2012.

Justice Roberto A. Abad

The Executive Officer reported that Justice Abad lacks the Statement of Assets, Liabilities and Networth (SALN) for the years 1982-1983.

Justice Peralta mentioned that **Justice Abad joined the government in the late 70's and during that time there was no R.A. 6713 yet. He added that Justice Abad might no longer locate them.**

Senator Escudero said **that SALNs were not yet required at that time**.

The Executive Officer said that Justice Abad had been with the OSG from 1982 to 1986; **but he submitted only his SALNs for the period 1981, 1984, 1985 and 1986.** He was already asked to submit the lacking SALNs.

Justice Peralta asked whether there is a need for them to explain the reason for failing to comply with the requirements considering the time constraint.

Senator Escudero said that it would be more proper for the JBC to ask the candidate for the reason; however, in the case of Justice Abad, he opined that he substantially complied with the requirements of the JBC.

Justice Lagman agreed with the Senator.

There being no objection, **the Council agreed that Justice Abad had SUBSTANTIALLY COMPLIED with the requirements of the JBC**

x x x x x x x x x

The Executive Officer asked for clarification, particularly with respect to SALNs, whether five (5) SALNs would constitute a substantial compliance if the candidate has been in the government service for twenty (20) years.

The Council examined the list with regard to the SALNs, particularly the candidates coming from the government, and identified who among them, would be considered to have substantially complied:

1. Justice Arturo D. Brion- has substantially complied;
2. Justice Antonio T. Carpio- has substantially complied;

x x x x x x x x x

Supreme Court E-Library

5. Solicitor General Francis H. Jardeleza-has complied;

6. Justice Teresita J. Leonardo-De Castro-has substantially complied;

x x x x x x x x x

10. Justice Maria Lourdes P.A. Sereno

> **The Executive Officer informed the Council that she had not submitted her SALNs for a period of ten (10) years,** *(sic)* **that is, from 1986 to 2006.**
>
> Senator Escudero mentioned that Justice Sereno was his professor at U.P. and that they were required to submit SALNs during those years.

x x x x x x x x x

16. Atty. Ronaldo B. Zamora- has lacking SALNs and MCLE cert.

x x x x x x x x x

From the foregoing discourse, it appears that respondent was specifically singled out from the rest of the applicants for having failed to submit a single piece of SALN for her years of service in the U.P. College of Law. This is in obvious contrast with the other shortlisted applicants who submitted SALNs, or whose years in government service correspond to the period prior to the effectivity of R.A. No. 6713.

The minutes of the JBC *En Banc* meeting also show that Senator Escudero moved that the determination of whether a candidate has substantially complied with the requirements be delegated to the Executive Committee.[294] In the end, it appears that the JBC *En Banc* decided to require only the submission of the past ten (10) SALNs, or from 2001-2011, for applicants to the Chief Justice position.[295] This, as much, was confirmed by Atty. Pascual during the Congressional hearings.[296]

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[294] JBC Minutes.

[295] House Committee on Justice Report, p. 22.

[296] House Committee Hearing on February 27, 2018.

Supreme Court E-Library

From the foregoing, it is clear that the JBC *En Banc* did not do away with the requirement of submission of SALNs, only that substantial compliance therewith, *i.e.,* the submission of the SALNs for the immediately preceding 10 years instead of all SALNs, was deemed sufficient.

Conformably thereto, the following candidates submitted their respective letters as regards the submission of the SALNs:

(a) Justice De Castro submitted a letter[297] dated July 17, 2012 with the attached SALNs for 16 years covering the period 1997 to 2011, from the time she became an Associate Justice of the Sandiganbayan on September 23, 1997 until December 2011 as Associate Justice of the Supreme Court. She also disclosed that her SALN from February 19, 1973 until November 30, 1978 which she filed during her employment in the Supreme Court, could no longer be located. She also disclosed that her personal files, including her SALNs that she filed while employed at the Department of Justice from December 1, 1978 to September 22, 1997, were among those burned when the third floor of the DOJ was gutted by fire in late 1996 or early 1997. In any case, upon inquiry from the CSC, she was told that her SALNs filed as DOJ employee were already disposed of, as it was way beyond the statutory ten (10) – year period.

(b) Jose Manuel Diokno submitted a sworn and verified statement[298] dated July 17, 2012, stating therein that while he served as General Counsel of the Senate Blue Ribbon Committee and as Special Counsel to the Board of Directors of the Development [Bank] of the Philippines, his engagement was only as a consultant on a contractual basis and as such, was not required to file a SALN.

(c) Justice Carpio submitted a letter[299] dated July 23, 2012 stating that he resigned as Chief Presidential Legal Counsel

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[297] JBC files of Justice De Castro.

[298] JBC files of Jose Diokno.

[299] JBC files of Justice Carpio.

Supreme Court E-Library

effective January 31, 1996 and as such, he did not submit a SALN for the year 1995 because the submission for that year was on April 30, 1996 when he was no longer employed with the government. Nevertheless, the clearance issued by the Office of the President certifies that Justice Carpio has submitted his SALN and that he has no pending criminal or administrative case.

(d) Justice Abad submitted an attestation[300] dated July 23, 2012 that he does not have a copy of his SALNs for the years 1968 to 1974, 1976 to 1980 and 1982 to 1983.

(e) Dean Amado Valdez wrote a letter[301] dated July 23, 2012 saying that he could no longer find the SALNs covering the years 1985 to 1987, 2002 to 2003 and 2004 representing the years of his intermittent government service. He said that in, any case, the assets reflected in the SALN which he already filed were acquired after he left government service as shown by his income tax returns for the periods from 2005 to 2011.

Notably, Jose Manuel Diokno and Dean Amado Valdez were not included in the short list.

That such was the standing requirement of the JBC from at least the incumbent Associate Justices applying for the position of Chief Justice is evident from the fact that five (5) out of six (6) applicants who were incumbent Associate Justices, namely: (1) Justice Carpio; (2) Justice Brion; (3) Justice Velasco; and (4) Justice De Castro were determined to have completely complied with the SALN requirement; and (5) Justice Abad was determined to have substantially complied. These Justices submitted the following numbers of SALNs:[302]

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[300] JBC files of Justice Abad.

[301] JBC files of Dean Amado Valdez.

[302] ORSN Report dated August 6, 2012.

Justice Carpio	14 SALNs
Justice Brion	12 SALNs
Justice Velasco	19 SALNs
Justice Leonardo-De Castro	15 SALNs
Justice Abad	7 SALNs

This belies respondent's representation that the JBC maintained its requirement that the candidates submit all previous SALNs. If such were the case, only those candidates determined to have complied should have been shortlisted, and the others, including respondent, should not have qualified. In any case, the requirement of submitting SALNs within the ten-year period instead of all previous SALNs is more in keeping with the law. Recall that Section 8, paragraph C(4) of R.A. No. 6713 provides that the filed SALNs need not be retained by the receiving officer or the custodian after more than ten years from the filing or receipt thereof, and actually allows such documents to be destroyed unless needed in an ongoing investigation.

Be that as it may, records clearly show that the only remaining applicant-incumbent Justice who was not determined by the JBC *En Banc* to have substantially complied was respondent, who submitted only 3 SALNs, *i.e.,* 2009, 2010 and 2011, even after extensions of the deadline for the submission to do so.

Instead of complying, respondent offered, by way of her letter dated July 23, 2012, *justifications* why she should no longer be required to file the SALNs: that she resigned from U.P. in 2006 and then resumed government service only in 2009, thus her government service is not continuous; that her government records are more than 15 years old and thus infeasible to retrieve; and that U.P. cleared her of all academic and administrative responsibilities and charges.

These justifications, however, did not obliterate the simple fact that respondent submitted only 3 SALNs in her 20-year service in U.P., and that there was nary an attempt on respondent's part to comply.

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Respondent sought to be excused from complying with the SALN requirement because, allegedly, the SALNs requested from her (1995-1999 as respondent alleged) from U.P., are old and thus "infeasible to retrieve." But the Republic, through the OSG, was able to present before the Court copies of respondent's SALNs for 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002 from the U.P. HRDO. These files, therefore, are not "infeasible to retrieve." Also, in comparison with the other nominees, the SALNs which the latter could no longer produce are much older in age than the SALNs which respondent regarded as "infeasible to retrieve". For instance, Justice Abad had no copy of his SALN from 1968-1974, 1976-1980 and 1981-1983 while Justice Leonardo-De Castro had no copy of her SALNs from 1973-1978.

Respondent likewise sought special treatment as having complied with the submission of the SALN by submitting a Certificate of Clearance issued by the U.P. HRDO. This clearance, however, hardly suffice as a substitute for SALNs. The import of said clearance is limited only to clearing respondent of her academic and administrative responsibilities, money and property accountabilities and from administrative charges as of the date of her resignation on June 1, 2006. But such could not, by any stretch of imagination, be considered as compliance with the SALN requirement. Obviously, an administrative officer, performing ministerial and administrative duties, could not have certified respondent's compliance with the filing of SALNs which is a statutory, and not merely an administrative, requirement.

In all these, respondent curiously failed to mention that she, in fact, did not file several SALNs during the course of her employment in U.P. Such failure to disclose a material fact and the concealment thereof from the JBC betrays any claim of integrity especially from a Member of the Supreme Court. On this score, the observations of the Court in the case of *OCA v. Judge Estacion, Jr.*[303] ring special significance:

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[303] 317 Phil. 600 (1995).

He concealed from the appointing authority, at the time he applied for the judicial post until his appointment, information regarding the criminal charges for homicide and attempted homicide filed against him. Such fact would have totally eluded the Court had it not been complained of by one Mrs. Ruth L. Vda. de Sison who, incidentally, is the mother of one of the victims. x x x

x x x x x x x x x

x x x Respondent did not honestly divulge all that the appointing authority ought to know to correctly discern whether he is indeed fit for the judicial post. He continuously suppressed vital information on his personal circumstances under the false belief that he can mislead the Court and get away with it for good. What respondent did, or omitted to do, was a calculated deception committed not only against the Court but against the public as well, clearly indicative of his lack of moral rectitude to sit as magistrate, and sufficiently repulsive that it detracts from public confidence in the integrity of the judiciary. Dismissal indeed is the appropriate retribution for such kind of transgression.

Be it stressed that judges are held to higher standards of integrity and ethical conduct than attorneys or other persons not invested with the public trust. They should inspire trust and confidence, and should bring honor to the judiciary. And because of their critical position in the judicial bureaucracy, this Court as overseer is duty-bound to insure that the integrity of the judicial system is preserved and maintained, by pursuing that ever-vigilant search for the virtues of competence, integrity, probity and independence mandated by no less than the Constitution itself.[304] (Citations omitted)

Indubitably, respondent not only failed to substantially comply with the submission of the SALNs but there was no compliance at all. The contents of respondent's Letter dated July 23, 2012 itself betray an exercise of dishonesty and disposition to deceive in an attempt to secure for herself the appointment as Chief Justice. In *Ombudsman v. Peliño*,[305] We held:

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[304] *Id*. at 602-603.

[305] 532 Phil. 203 (2008).

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Under the laws governing civil service, dishonesty is classified as a grave offense the penalty of which is dismissal from the service at the first infraction. A person aspiring to public office must observe honesty, candor and faithful compliance with the law. Nothing less is expected. This ideal standard ensures that only those of known probity, competence and integrity are called to the challenge of public service. It is understood to imply a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. Dishonesty is a malevolent act that puts serious doubt upon one's ability to perform his duties with the integrity and uprightness demanded of a public officer or employee.[306]

For these reasons, the JBC should no longer have considered respondent for interview as it already required the submission of, at least, the SALNs corresponding to the immediately preceding 10 years up to December 31, 2011.

Parenthetically, the Court observes that the circumstances surrounding the receipt of, and the action or non-action of the JBC, on respondent's Letter dated July 23, 2012 likewise leave much to be desired. The Letter, while ostensibly sent to and received by the JBC on the same date, does not appear to have been brought to the attention of the JBC *En Banc*. Excerpts[307] from the Report of the House Committe on Justice on this point is revealing:

Justice Peralta, who was acting Chief Justice and *ex officio* Chairman of the JBC at the time, testified that he never learned about the non-submission of the SALNs by then-applicant [respondent], and that he also never saw the letter submitted by the [r]espondent explaining why she could not submit her SALNs. He stated that had he known about these matters, he could have raised these issues during the en banc meeting of the JBC. Atty. [Maria Milagros N. Fernan-]Cayosa likewise stated that she never saw the letter-explanation, and that she merely relied on the matrix prepared by the JBC Secretariat which

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[306] *Id*. at 219-220.

[307] Report of the House Committee.

stated that the Respondent Chief Justice Sereno had already submitted her complete requirements.[308]

Even the JBC's Execom to which the duty of ascertaining whether or not the candidates have substantially complied with the documentary requirements had been expressly delegated by the JBC *En Banc*, could not produce any minutes of meeting or record to show that respondent was in fact determined to have complied.

At any rate, the issue of whether or not there is administrative culpability in the ranks of the JBC, the OEO or the ORSN relative to the nomination of respondent in 2012 is not a concern in the instant petition and is a matter best left to be decided in A.M. No. 17-11-12-SC and A.M. No. 17-11-17-SC, now pending before the Court.

Respondent's failure to submit to the JBC her SALNs for several years means that her integrity was not established at the time of her application

Respondent argues that failure to submit the SALNs to the JBC is not cause for disqualification because the SALN was not among the documents which the JBC considered as evidence of integrity.

This Court, again, disagrees.

The requirement to submit SALNs is made more emphatic when the applicant is eyeing the position of the Chief Justice. The minutes of the JBC *En Banc* meeting[309] enlightens as to the rationale behind the requirement:

Senator Escudero moved that additional requirements be imposed by the (JBC) for the position of Chief Justice, namely (1) all previous SALNs (up to December 31, [2011]) for those in the government or

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[308] Report of the House Committee.

[309] Minutes on June 4, 2012.

Supreme Court E-Library

SALN as of December 31, (2011) for those from the private sector; and (2) waiver in favor of the JBC of the confidentiality of local and foreign currency bank accounts under the Bank Secrecy Law and Foreign Currency Deposits Act. The documents shall be treated with utmost confidentiality and only for the use of the JBC. He proposed that these additional requirements be included in the publication of the announcement opening the said position. **He explained that the basis of his motion was the fact that the reason why Chief Justice Corona was removed from office was due to inaccuracies in his SALN. The Members of the House of Representatives, in the exercise of their wisdom, determined that non-inclusion of assets in one's SALN is an impeachable offense. Likewise, majority of the Senate voted to convict because of the inaccuracies in the bank accounts and statements in his SALN. He said that the JBC would not want to recommend a person who is susceptible to such kind of attack. He said that the JBC should impose higher standards to aspirants for the position of Chief Justice.**

Congressman Tupas concurred with Senator Escudero's motion and suggested that the waiver should not be limited to year-end balances only.

There being no objection, the motion was APPROVED. The (JBC) agreed to PUBLISH the announcement opening the position of Chief Justice of the Supreme Court of the Philippines together with the additional requirements.

x x x x x x x x x. (Emphasis ours)

The requirement to submit the SALNs along hand with the waiver of bank deposits, is therefore not an empty requirement that may easily be dispensed with, but was placed by the *JBC itself* for a reason – in order to allow the JBC to carry on its mandate of recommending only applicants of high standards and who would be unsusceptible to impeachment attacks due to inaccuracies in SALNs.

Further, the failure to submit the required SALNs means that the JBC and the public are divested of the opportunity to consider the applicant's fitness or propensity to commit corruption or dishonesty. In respondent's case, for example, the waiver of the confidentiality of bank deposits would be practically useless for the years that she failed to submit her SALN since the JBC

cannot verify whether the same matches the entries indicated in the SALN. This is precisely the reason why the JBC required the submission of the SALNs together with the waiver of bank deposits, thus:

Justice Lagman expressed that previously the Members had agreed that they would only use the waiver when there is a complaint, doubt, or suspicion on the SALN of any of the candidates.

Senator Escudero said that if the argument that the JBC would not use the waiver unless there is a complaint, bank information could not be secured. The complaint could have no basis. He commented that by the time the JBC receives the information, the public interview is finished. In this case, the least that the JBC could do is to give the candidate an opportunity to explain his side. **He explained that the theory and logic behind the requirement of a waiver was precisely due to the fact that the former Chief Justice was impeached because of inaccuracies in his SALN. Thus, the JBC should ensure that all the nominees who would be nominated would not be accused of the same. The JBC would just want to avoid a situation where the next Chief Justice, nominated by the JBC and appointed by the President, would again be subjected to impeachment.**

Justice Peralta asked the Senator for clarification whether it is his suggestion that if the JBC finds something wrong on the bank account of any candidate, he or she would be asked in public.

Senator Escudero replied that it could be done; however, in the questions that would be propounded by a Member, or in the response of the candidates, the amounts need not be stated. **The questions should only tackle inconsistencies of bank deposits as against their SALNs.**

Justice Lagman agreed with the Senator.

x x x x x x x x x

Justice Hermosisima commented that the waiver is very easy to comply with. The problem is that banks may not be able to respond given the very short period of time. He said that the JBC requires a waiver so that in the event that there is any question as to the accuracy of a candidate's accounting in his or her SALN, then, the JBC would be able to look into the bank accounts without violating the bank secrecy law. He said that the JBC need not look into their accounts for now as no complaint has been filed yet on any of the candidates.

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Senator Escudero and Congressman Tupas commented that everybody should comply.

x x x x x x x x x.[310] (Emphasis ours)

Respondent is presumed to know of the importance of the filing of the SALN together with the bank waiver. The waiver which respondent executed under oath clearly provides:

> This waiver is executed on the condition that the JBC or its duly authorized representatives shall make use of it, as well as any and all information or data obtained by virtue thereof, **for the exclusive and sole purpose of evaluating my qualifications for the position of Chief Justice of the Supreme Court**. (Emphasis ours)

Conclusively then, respondent's failure to submit her SALNs to the JBC means that she was not able to prove her integrity at the time of her application as Chief Justice.

D.

Respondent's disposition to commit deliberate acts and omissions demonstrating dishonesty and lack of forthrightness is discordant with any claim of integrity

The Court cannot play blind against the manifest inconsistencies, lack of forthrightness and dishonesty committed by respondent as a government official prior to and at the time of her application as Chief Justice. In addition to the suspicious and highly questionable circumstances surrounding the execution of her SALNs, the following untruthful statements and dishonest acts (as herein elsewhere discussed) ultimately negate respondent's claim that she is a person of proven integrity:

> (1) Respondent had no permit from U.P. to engage in private practice while in government service but she did engage in private practice as shown in her PDS and admitted in her *Ad Cautelam* Comment;

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[310] Minutes JBC *En Banc* Meeting dated July 16, 2012, pp. 11-12.

(2) Respondent represented that after her resignation from U.P. in 2006, she was engaged, full time, in private practice. However, in her PDS, it was stated that she was engaged as counsel by the government in the PIATCO cases from 1994 up to 2009;

(3) Respondent claims that the clearance issued by U.P., clearing her of academic/administrative responsibilities, money and property accountabilities and from administrative charges as of June 1, 2006 can be taken as an assurance that U.P. considered the SALN requirements to have been met since it is the ministerial duty of the Head of the Office to ensure that the SALNs of its personnel are properly filed and accomplished. However, this ministerial duty of U.P. HRDO to call her attention as regards compliance with the SALN requirements was imposed only in April 2006 (CSC Resolution No. Memorandum Circular No. 10-2006 dated April 17, 2006) as stated in her Letter. Hence, the U.P. HRDO could not have been expected to perform its ministerial duty of issuing compliance orders to respondent when such rule was not yet in existence at that time;

(4) Her PDS shows that she was Deputy Commissioner of the Commission on Human Rights only later to be disclaimed by her during the Oral Argument stating that it was only a functional title;

(5) In her Letter dated July 23, 2012 to the JBC, respondent represented that her SALNs were infeasible to retrieve when the SALNs that she selectively filed were available all along in U.P. and in fact the OSG was able to get copies of the same. Even respondent herself was able to get a copy of her 1989 SALN from U.P.;

(6) There is a marked incompatibility between the excuse respondent proffered in her Letter dated July 23, 2012, and the explanation she gave in the Oral Argument. In the Letter, the respondent reasoned that it is "infeasible to retrieve" all her SALNs because of the age of said documents, *i.e.,* that they are more than fifteen years old.

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However, during her Oral Arguments, she explained that it was "infeasible" to retrieve them only because of time constraints;

(7) She claims that the other candidates for the Chief Justice position did not comply with the SALN requirement for the application, when it was only she who did not comply. Out of the six incumbent Justices who were candidates for the Chief Justice positions, it was only respondent who did not comply with SALN submission. There are competent proofs on record to show these other candidates' compliance, contrary to respondent's allegations.

(8) Respondent committed tax fraud when she failed to truthfully declare her income in her income tax returns for the years 2007-2009 and in her value-added tax (VAT) returns for the years 2005-2009;

Per the BIR Report,[311] respondent underdeclared her income in her quarterly VAT Returns the following amounts in the taxable years 2005-2009:

Period	Quarterly Income from PIATCO Case (Php)	Declared Income per VAT Return (Php)	Over (Under) (Php)
2005			
Q3	1,398,807.50	-	**-1,398,807.50**
Q4	7,234,455.44	667,333.33	**-6567122.11**
2006			
Q1	-	469,375.00	469,375.00
Q2	-	1,416,664.25	1,416,664.25
Q3	1,539,546.28	-	**-1,539,546.28**
Q4	1,387,292.12	1,246,992.00	**-140,300.12**

[311] *Rollo*, p. 1973.

2007			
Q1	-	2,620,340.17	2,620,340.17
Q2	-	-	
Q3	4,379,198.29	2,183,529.33	**-2,195,668.96**
Q4	633,670.58	-	**-633,670.58**
2008			
Q1	-	2,650,440.00	2,650,440.00
Q2	-	-	
Q3	-	508,032.00	508,032.00
Q4	**5,184,435.85**	**1,045,262.67**	**-4,139,173.19**
2009			
Q1	344,243.65	301,552.00	**-42,691.65**
Total Undeclared Income Subject to VAT			**-16,656,980.39**

On this matter, respondent avers in her Reply/Supplement to the Memorandum *Ad Cautelam* that she was not given the chance to be heard on this new matter in the Republic's Memorandum, which makes reference to new documents, totally alien to and outside of the matters raised in the Republic's Petition, Reply, and other previous submissions.

There is no truth to the allegation that respondent was not afforded the opportunity to address this matter or that this matter is "totally alien" to this proceedings. This matter was actually brought up during the Oral Argument. In its Memorandum, the Republic explained that during the Oral Argument, some Members of the Court raised questions regarding respondent's income as counsel in the PIATCO cases and the payment of the corresponding taxes thereto, hence, the inclusion of the same in its Memorandum.[312] In the same way, respondent could have addressed the same in her Memorandum *Ad Cautelam*, instead she opted to do so in a belatedly filed Reply/Supplement to the Memorandum *Ad Cautelam*.

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[312] *Id*. at 1884.

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At any rate, respondent's argument in the said Reply/ Supplement, implying that the allegations on the tax fraud are unfounded, and that in including this matter, which is a mere reiteration of the discussion in Article I of the Articles of Impeachment, the OSG usurped the sole power of the House of Representatives to initiate and prosecute the Articles of Impeachment in blatant disregard of the Constitution,[313] deserve scant consideration.

It bears stressing that respondent is not being prosecuted for tax fraud in this case. The Court did not discuss the merits of the said tax fraud nor did the Court made any conviction against the respondent as regards the said offense. Neither is this Court's finding of respondent's lack of proven integrity during her application anchored upon this act. This matter is cited as a corroborative circumstance to respondent's non-filing of certain SALNs, already established in this case. Notably, the Congress had already determined that a probable cause exist that respondent committed the said offense.

Further, respondent's disposition and propensity to commit dishonesty and lack of candidness are manifested through her subsequent acts committed during her incumbency as Chief Justice, which are now matters of public record and also determined to be constituting probable cause for impeachment:

> (9) Caused the procurement of a brand-new Toyota Land Cruiser worth at least Php5,000,000.00;
>
> (10) Caused the hiring of Ms. Helen Macasaet without the requisite public bidding and who received excessive compensation amounting to more than Php11,000,000.00;
>
> (11) Misused at least Php3,000,000.00 of government funds for hotel accommodation at Shangri-La Boracay as the venue of the 3rd ASEAN Chief Justices meeting;

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[313] Reply/Supplement, pp. 2-8.

(12) Created the Judiciary Decentralized Office (JDO) in the guise of reopening the Regional Court Administration Office (RCAO) without being sanctioned by the Court En Banc;

(13) Issued a Temporary Restraining Order (TRO) in Coalition of Associations of Senior Citizens in the Philippines v. COMELEC contrary to the Supreme Court's internal rules and misrepresented that the TRO was issued upon the recommendation of the Member-in-charge;

(14) Manipulated the disposition of the DOJ request to transfer the venue of the Maute cases outside of Mindanao;

(15) Ignored rulings of the Supreme Court with respect to the grant of survivorship benefits which caused undue delay to the release of survivorship benefits to spouses of deceased judges and Justices;

(16) Appointed Geraldine Econg as Head of the JDO and Brenda Jay Angeles-Mendoza as Chief of the Philippine Mediation Center Office (PMCO) without the approval of the Court *En Banc*;

(17) Failed and refused to appoint qualified applicants to several high-ranking positions in the Supreme Court;

(18) Ordered the dissemination of erroneous information on what transpired during the Supreme Court *En Banc* deliberations in A.M. No. 16-08-04-SC on the alleged involvement of four (4) incumbent judges in illegal drugs and undermined the co-equal power of the Executive Department by ordering the Executive Secretary himself to file cases against the judges;

(19) Manipulated the processes of the JBC to exclude then Solicitor General, now Associate Justice Francis Jardeleza, by using highly confidential document involving national security against the latter;

Supreme Court E-Library

(20) Clustered the nominees for the six (6) vacant positions of Associate Justice in the Sandiganbayan without legal basis and in so doing, impaired the power of the President to appoint members of the Judiciary;

(21) Misrepresented to the members of the Supreme Court *En Banc* that there were Justices who requested to do away with the voting of recommended applicants to the vacant positions in the Supreme Court;

(22) Manipulated the processes of the JBC to exclude Court of Appeals Associate Justice Fernanda Lampas-Peralta from the shortlist of nominees for the position of Presiding Justice of the Court of Appeals;

(23) Interfered with the investigation conducted by the House of Representatives on the alleged misuse of the tobacco funds in the Province of Ilocos Norte by unilaterally preparing a Joint Statement, asking the House of Representatives to reconsider its show cause order against the Justices of the Court of Appeals, and then pressuring then Presiding Justice of the Court of Appeals, now Associate Justice Andres B. Reyes, Jr. to likewise sign the same;

(24) Undermined and disrespected the impeachment proceedings conducted by the House of Representatives against her.[314]

Again, while concedingly the foregoing acts as revealed during the Congressional hearings on the impeachment are not proper subjects of the instant *quo warranto* petition, these acts are nevertheless reflective and confirmatory of respondent's lack of integrity at the time of her nomination and appointment as Chief Justice and her inability to possess such continuing requirement of integrity. Indeed, Rule 130, Section 34 of the Rules on Evidence provide:

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[314] Resolution Setting Forth the Articles of Impeachment Against Supreme Court Chief Justice Maria Lourdes P. A. Sereno, March 19, 2018.

SEC. 34. Similar acts as evidence. — Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time; **but it may be received to prove a specific inent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like.** (Emphasis ours)

E.

Respondent's ineligibility for lack of proven integrity cannot be cured by her nomination and subsequent appointment as Chief Justice

The Court is all too aware that the instant petition neither partakes of an administrative or criminal proceeding meant to determine culpability for failure to file SALNs. Respondent maintains that she filed all her SALNs, only that she refuses to present proof of such SALNs before the Court. The Court's pronouncement, however, should not be made dependent upon the pieces of evidence which a party may possibly present in a different forum. Rather, the Court is mandated to render judgment based on the evidence presented before it, in compliance with the dictates of due process. And the evidence, as it stands before Us, shows that respondent failed to file nine SALNs in her 20-year service in U.P. College of Law and submitted to the JBC only three out of the required ten SALNs at the time of her application as Chief Justice.

Respondent split hairs in stating that failure to file is different from failure to submit the SALNs to the JBC. That may be true. But it is likewise true that despite ample opportunity to do so, respondent chose not to present evidence as to preponderate the case in her favor. The Court cannot therefore be faulted, at least for purposes of the instant *quo warranto* proceedings, to conclude that respondent not only failed to submit the SALNs to the JBC, but altogether failed to file the same.

Such failure to file and to submit the SALNs to the JBC, is a clear violation not only of the JBC rules, but also of the law and the Constitution. The discordance between respondent's non-filing and non-submission of the SALNs and her claimed

Supreme Court E-Library

integrity as a person is too patent to ignore. For lack of proven integrity, respondent ought to have been disqualified by the JBC and ought to have been excluded from the list of nominees transmitted to the President. As the qualification of proven integrity goes into the barest standards set forth under the Constitution to qualify as a Member of the Court, the subsequent nomination and appointment to the position will not qualify an otherwise excluded candidate. In other words, the inclusion of respondent in the shortlist of nominees submitted to the President cannot override the minimum Constitutional qualifications.

Well-settled is the rule that qualifications for public office must be possessed at the time of appointment and assumption of office and also during the officer's entire tenure as a continuing requirement.[315] When the law requires certain qualifications to be possessed or that certain disqualifications be not possessed by persons desiring to serve as public officials, those qualifications must be met before one even becomes a candidate.[316]

The voidance of the JBC nomination as a necessary consequence of the Court's finding that respondent is ineligible, in the first place, to be a candidate for the position of Chief Justice and to be nominated for said position follows as a matter of course. The Court has ample jurisdiction to do so without the necessity of impleading the JBC as the Court can take judicial notice of the explanations from the JBC members and the OEO, as regards the circumstances relative to the selection and nomination of respondent submitted to this Court in A.M. No. 17-11-12 and A.M. No. 17-11-17-SC. Relatedly, the Court, in a *quo warranto* proceeding, maintains the power to issue *such further judgment* determining the respective rights in and to the public office, position or franchise of all the parties to the action *as justice requires*.[317]

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[315] *Maquiling v. COMELEC*, 709 Phil. 408 (2013).

[316] *Id*.

[317] SEC. 9. Judgment where usurpation found. – When the respondent is found guilty of usurping, intruding into, or unlawfully holding or exercising

Neither will the President's act of appointment cause to qualify respondent. Although the JBC is an office constitutionally created, the participation of the President in the selection and nomination process is evident from the composition of the JBC itself. The regular members of the JBC are appointees of the President, including an *ex-officio* member, the Secretary of Justice, who serves as the President's alter ego. As observed during the deliberations of the 1986 Constitutional Commission:

x x x x x x x x x

MR. CONCEPCION. The Judicial and Bar Council is no doubt an innovation. But it is an innovation made in response to the public clamor in favor of eliminating politics in the appointment of judges.

At present, there will be about 2,200 positions of judges, excluding those of the Supreme Court, to be filled. We feel that neither the President alone nor the Commission on Appointments would have the time and the means necessary to study the background of every one of the candidates for appointment to the various courts in the Philippines, specially considering that we have accepted this morning the amendment to the effect that no person shall be qualified unless he has a proven high sense of morality and probity. These are matters that require time, which we are sure the President does not have except, probably, he would have to endorse the matter to the National Bureau of Investigation or to some intelligence agency of the government. And we do not think that these agencies are qualified to pass upon questions of morality, integrity and competence of lawyers.

As regards the implication that we are, in effect, depriving the President of the power of appointment, all we do consider is the fact that the members of the Council are all appointees of the President. They are alter egos of the President so, in effect, they are exercising the power by virtue of the appointment by the President. So, the alleged negation or denial or emasculation of the appointing power of the President does not really exist since all members of the Council,

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a public office, position or franchise, judgment shall be rendered that such respondent be ousted and altogether excluded therefro, and that the petitioner or relator, as the case may be, recover his costs. Such further judgment may be rendered determining the respective rights in and to the public office, position or franchise of all the parties to the action as justice requires.

Supreme Court E-Library

except those who are ex-officio members who, by the way, are also appointees of the President, are all appointees of the President.

In effect, the action of the JBC, particularly that of the Secretary of Justice as *ex-officio* member, is reflective of the action of the President. Such as when the JBC mistakenly or wrongfully accepted and nominated respondent, the President, through his alter egos in the JBC, commits the same mistake and the President's subsequent act of appointing respondent cannot have any curative effect.

Besides in *Luego v. Civil Service Commission*,[318] We said:

> Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, **the only condition being that the appointee should possess the qualifications required by law.** If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide. (Emphasis ours)

As emphasized in *Central Bank v. Civil Service Commission:*[319]

> **It is well-settled that when the appointee is qualified, as in this case, and all the other legal requirements are satisfied**, the Commission has no alternative but to attest to the appointment in accordance with the Civil Service Law. The Commission has no authority to revoke an appointment on the ground that another person is more qualified for a particular position. It also has no authority to direct the appointment of a substitute of its choice. To do so would be an encroachment on the discretion vested upon the appointing authority. **An appointment is essentially within the discretionary power of whomsoever it is vested, subject to the only condition that the appointee should possess the qualifications required by law.** (Emphasis ours)

Thus, while the Court surrenders discretionary appointing power to the President, the exercise of such discretion is subject

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[318] 227 Phil. 303, 307 (1986).

[319] 253 Phil. 717, 725 (1989).

Supreme Court E-Library

to the non-negotiable requirements that the appointee is qualified and all other legal requirements are satisfied, in the absence of which, the appointment is susceptible to attack.

Even as respondent took her "oath of office," she remains disqualified. An oath of office is a qualifying requirement for a public office and a prerequisite to the full investiture of the office.[320] The oath, couched in the following tenor, states:

> *Ako ay taimtim na nanunumpa na tutuparin ko nang buong husay at katapatan, sa abot ng aking kakayahan, ang mga tungkulin ng aking kasalukuyang katungkulan at ng mga iba pang pagkaraan nito'y gagampanan ko sa ilalim ng Republika ng Pilipinas, na aking itataguyod at ipagtatanggol ang Saligang Batas ng Pilipinas; na tunay na mananalig at tatalima ako rito; na susundin ko ang mga batas, mga kautusang legal, at mga dekretong pinaiiral ng mga sadyang itinakdang may kapangyarihan ng Republika ng Pilipinas; at kusa kong babalikatin ang pananagutang ito nang walang ano mang pasubali o hangaring umiwas.*
>
> *Kasihan nawa ako ng Diyos.*

As respondent herself expressed through her dissent in *Philippine Savings Bank*, "*[w]hen a public officer affixes his signature on his Oath of Office, he embraces all his constitutional and statutory duties as a public officer, one of which is the positive duty to disclose* ***all*** *of his assets and liabilities. Thus, for all public officers,* ***what is absolute is not the confidentiality privilege, but the obligation of disclosure.***"[321]

While respondent putatively took an oath to defend and support the Constitution and to obey the laws of the land, she had not been forthright with the circumstances surrounding the lacking SALNs. This makes her oath untruthful and altogether false.

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[320] *Chairman Chavez v. Ronidel, et al.,* 607 Phil. 76, 83 (2009).

[321] *Philippine Savings Bank v. Senate Impeachment Court*, *supra* note 241.

Supreme Court E-Library

F.

Respondent is a *de facto* officer removable through quo warranto

The effect of a finding that a person appointed to an office is ineligible therefor is that his presumably valid appointment will give him color of title that confers on him the status of a *de facto* officer.[322]

Tayko v. Capistrano,[323] through Justice Ostrand, instructs:

> Briefly defined, a de facto judge is one who exercises the duties of a judicial office under color of an appointment or election thereto x x x. He differs, on the one hand, from a mere usurper who undertakes to act officially without any color of right, and on the others hand, from a judge de jure who is in all respects legally appointed and qualified and whose term of office has not expired x x x. (Citations omitted)

For lack of a Constitutional qualification, respondent is ineligible to hold the position of Chief Justice and is merely holding a colorable right or title thereto. As such, respondent has never attained the status of an impeachable official and her removal from the office, other than by impeachment, is justified. The remedy, therefore, of a *quo warranto* at the instance of the State is proper to oust respondent from the appointive position of Chief Justice. *Tayko* continues:

> The rightful authority of a judge, in the full exercise of his public judicial functions, cannot be questioned by any merely private suitor, nor by any other, excepting in the form especially provided by law. A judge de facto assumes the exercise of a part of the prerogative of sovereignty, and the legality of that assumption is open to the attack of the sovereign power alone. Accordingly, it is a well established principle, dating from the earliest period and repeatedly confirmed by an unbroken current of decisions, that the official acts of a de facto judge are just as valid for all purposes as those of a de jure judge, so far as the public or third persons who are interested therein

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[322] *Regala v. Court of First Instance of Bataan,* 77 Phil. 684 (1946).

[323] G.R. No. 30188, October 2, 1928.

are concerned. The rule is the same in civil and criminal cases. The principle is one founded in policy and convenience, for the right of no one claiming a title or interest under or through the proceedings of an officer having an apparent authority to act would be safe, if it were necessary in every case to examine the legality of the title of such officer up to its original source, and the title or interest of such person were held to be invalidated by some accidental defect or flaw in the appointment, election or qualification of such officer, or in the rights of those from whom his appointment or election emanated; nor could the supremacy of the laws be maintained, or their execution enforced, if the acts of the judge having a colorable, but not a legal title, were to be deemed invalid. As in the case of judges of courts of record, the acts of a justice de facto cannot be called in question in any suit to which he is not a party. The official acts of a de facto justice cannot be attacked collaterally. An exception to the general rule that the title of a person assuming to act as judge cannot be questioned in a suit before him in generally recognized in the case of a special judge, and it is held that a party to an action before a special judge may question his title to the office of judge on the proceedings before him, and that the judgment will be reversed on appeal, where proper exceptions are taken, if the person assuming to act as special judge is not a judge de jure. The title of a de facto officer cannot be indirectly questioned in a proceeding to obtain a writ of prohibition to prevent him from doing an official act nor in a suit to enjoin the collection of a judgment rendered by him. Having at least colorable right to the officer his title can be determined only in a quo warranto proceeding or information in the nature of quo warranto at suit of the sovereign. (Citation omitted)

Although *Tayko* dealt with a challenge to the title of a judge, who is not an impeachable official, the ruling therein finds suitable application since quo warranto as a remedy is available against respondent who is a *de facto* Chief Justice, having a mere colorable right thereto. This must necessarily be so since the Constitution, in providing that impeachable officials can only be removed by impeachment, presumes that such impeachable official is one having *de jure* title to the office.

Upon a finding that respondent is in fact ineligible to hold the position of Chief Justice and is therefore unlawfully holding and exercising such public office, the consequent judgment under Section 9, Rule 66 of the Rules of Court is the ouster and

Supreme Court E-Library

exclusion of respondent from holding and exercising the rights, functions and duties of the Office of the Chief Justice.

IV.

Guidelines for the Bench, the Bar and the JBC

The present is the exigent and opportune time for the Court to establish well-defined guidelines that would serve as guide posts for the bench, the bar and the JBC, as well, in the discharge of its Constitutionally-mandated functions. In sum, this Court holds:

Quo warranto as a remedy to oust an ineligible public official may be availed of, provided that the requisites for the commencement thereof are present, when the subject act or omission was committed prior to or at the time of appointment or election relating to an official's qualifications to hold office as to render such appointment or election invalid. Acts or omissions, even if it relates to the qualification of integrity being a continuing requirement but nonetheless committed during the incumbency of a validly appointed and/or validly elected official cannot be the subject of a *quo warranto* proceeding, but of impeachment if the public official concerned is impeachable and the act or omission constitutes an impeachable offense, or to disciplinary, administrative or criminal action, if otherwise.

Members of the Judiciary are bound by the qualifications of honesty, probity, competence, and integrity. In ascertaining whether a candidate possesses such qualifications, the JBC in the exercise of its Constitutional mandate, set certain requirements which should be complied with by the candidates to be able to qualify. These requirements are announced and published to notify not only the applicants but the public as well. Changes to such set of requirements, as agreed upon by the JBC *En Banc* through a proper deliberation, such as in this case when the JBC decided to allow substantial compliance with the SALN submission requirement, should also be announced and published for the same purpose of apprising the candidates and the public of such changes. At any rate, if a candidate is appointed despite

being unable to comply with the requirements of the JBC and despite the lack of the aforementioned qualifications at the time of application, the appointment may be the subject of a *quo warranto* provided it is filed within one year from the appointment or discovery of the defect. Only the Solicitor General may institute the *quo warranto* petition.

The willful non-filing of a SALN is an indication of dishonesty, lack of probity and lack of integrity. Moreso if the non-filing is repeated in complete disregard of the mandatory requirements of the Constitution and the law.

Consistent with the SALN laws, however, SALNs filed need not be retained after more than ten years by the receiving office or custodian or repository unless these are the subject of investigation pursuant to the law. Thus, to be in keeping with the spirit of the law requiring public officers to file SALNs – to manifest transparency and accountability in public office – if public officers cannot produce their SALNs from their personal files, they must obtain a certification from the office where they filed and/or the custodian or repository thereof to attest to the fact of filing. In the event that said offices certify that the SALN was indeed filed but could not be located, said offices must certify the valid and legal reason of their non-availability, such as by reason of destruction by natural calamity due to fire or earthquake, or by reason of the allowed destruction after ten years under Section 8 of R.A. No. 6713.

V.

Blatant Disregard and Open Defiance to the Sub Judice Rule

Perhaps owing to novelty, the instant case has opened a pandora's box of unsolicited opinions, streaming in abundance from those professed legal and non-legal experts alike. This flurry of opinions, demonstrations, public and media appearances made by the parties themselves or at their behest, or by their lawyers and spokespersons, had demonstrably shifted the plane from what should otherwise be a purely legal, calm and sober approach to the present controversy into a detestable feast of *pros* and *cons,* and of a mediocre and haphazard approximation

Supreme Court E-Library

of a perceived good versus evil. This veritable feast had become too delectable to escape the waiting predators' keen sense of attack, especially at a time when the prey appears to be at its most vulnerable. This Court is an institution designed and dedicated to a specific purpose and thus refuses to fall prey and invite claws to dig into its walls. Because of the various extraneous redirections from the merits which the instant case has received, there is a need to emphasize that this case involves a purely legal and justiciable matter which the Court intends, and had resolved, through the application of the Constitution, the law and relevant jurisprudence, unswayed by personalities or sentiments.

As such, the Court had lent extreme tolerance to the parties and non-parties equally, as the Court shall ultimately speak through its decision. Be that as it may, the Court, in jealous regard of judicial independence, cannot simply overlook the open and blatant defiance of the *sub judice* rule suffered by the present action.

The *sub judice* rule restricts comments and disclosures pertaining to the judicial proceedings in order to avoid prejudging the issue, influencing the court, or obstructing the administration of justice.[324] The rationale for this rule is for the courts, in the decision of issues of fact and law, to be immune from every extraneous influence; for the case to be decided upon evidence produced in court; and for the determination of such facts be uninfluenced by bias, prejudice or symphathies. In fine, what is sought to be protected is the primary duty of the courts to administer justice in the resolution of cases before them.[325]

Thus, it is generally inappropriate to discuss the merits of and make comments on cases *sub judice* and such acts may even result to contempt of court. In *U.S. v. Sullen*[326] it was stated:

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[324] *Romero, II, et al. v. Senator Estrada, et al.,* 602 Phil. 312, 319 (2009).

[325] *P/Supt. Marantan v. Atty. Diokno, et al.,* 726 Phil. 642 (2014).

[326] 36 F. 2d 220.

In a clear case where it is necessary in order to dispose of judicial business unhampered by publications which reasonably tend to impair the impartiality of verdicts, or otherwise obstruct the administration of justice, this Court will not hesitate to exercise its undoubted power to punish for contempt. This Court must be permitted to proceed with the disposition of its business in an orderly manner free from outside interference obstructive of its constitutional functions. This right will be insisted upon as vital to an impartial court, and, as a last resort, as an individual exercises the right of self-defense, it will act to preserve its existence as an unprejudiced tribunal.

In Our jurisdiction, this rule finds legal basis on the Court's power of contempt. Rule 71 of the Rules of Court provides:

Sec. 3. *Indirect contempt to be punished after charge and hearing.* – After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

x x x x x x x x x

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or **degrade the administration of justice**;

x x x x x x x x x (Emphasis ours)

The oft-cited defense of persons charged with indirect contempt for violating the *sub judice* rule is their right to free speech. Needless to say, this Court would be the first in line of combat in a legal battle to uphold such constitutionally-protected right. However, when actions, posing to be innocent exercise of such right, "impede, interfere with and embarrass the administration of justice" or "make a serious and imminent threat thereto", this Court will not hesitate to call out and punish the same.[327] In *Sheppard v. Maxwell*,[328] the US Supreme Court reminds that although the freedom of expression should be given great latitutde, it must not be so broad as to divert the trial

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[327] *P/Supt. Marantan v. Atty. Diokno, et al., supra* note 325.

[328] 384 U.S. 333 (1966).

Supreme Court E-Library

away from its objective which is to adjudicate both criminal and civil matters in an objective, calm, and solemn courtroom setting.

The *sub judice* rule finds a more austere application to members of the Bar and of the Bench as the strict observance thereof is mandated by the Code of Professional Responsibility and the Code of Judicial Conduct:

CODE OF PROFESSIONAL RESPONSIBILITY

CANON 13 — A LAWYER SHALL RELY UPON THE MERITS OF HIS CAUSE AND REFRAIN FROM ANY IMPROPRIETY WHICH TENDS TO INFLUENCE, OR GIVES THE APPEARANCE OF INFLUENCING THE COURT.

Rule 13.02 — A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party.

NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY

CANON 1 – INDEPENDENCE

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

SECTION 3. Judges shall refrain from influencing in any manner the outcome of litigation or dispute pending before any court or administrative agency.

SECTION 7. Judges shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

SECTION 8. Judges shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

CANON 2 – INTEGRITY

Integrity is essentially not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SECTION 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

CANON 3 – IMPARTIALITY

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but to the process by which the decision is made.

SECTION 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession, and litigants in the impartiality of the judge and of the judiciary.

SECTION 4. Judges shall not knowingly, while a proceeding is before or could come before them, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall judges make any comment in public or otherwise that might affect the fair trial of any person or issue.

CANON 4 – PROPRIETY

SECTION 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

SECTION 6. Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

Lawyer speech is subject to greater regulation for two significant reasons: one, because of the lawyer's relationship to the judicial process; and two, the signficant dangers that a lawyer's speech poses to the trial process.[329] As such, actions

[329] See *Gentile v. State Bar of Nevada,* 501 U.S. 1030 (1991).

Supreme Court E-Library

in violation of the *sub judice* rule may be dealt with not only through contempt proceedings but also through administrative actions.

It is thus perturbing that certain officials of the separate branches of the Government and even men and women learned in law had succumbed to the tempting affray that tends to divert the instant *quo warranto* action from its primary purpose. Even worse, respondent and her spokepersons chose to litigate respondent's case, apart from her *Ad Cautelam* submissions to the Court, before several media-covered engagements. Through her actuations, respondent appears to have forgotten that this is a court action for *quo warranto*, and as such, the concomitant rule on *sub judice* unnegotiably applies. Worst still, respondent who is a lawyer and who asserts right to the Chief Justice position and therefore must foremost be aware of the rule, continues to conjure public clamor against the Court and its Members with regard to this pending case in Court.

It is interesting to note that respondent initially refused to participate in the congressional hearings for the impeachment complaint. When this petition for *quo warranto* was filed, respondent continuously refuses to recognize this Court's jurisdiction. Instead of participating in the process and answering the charges against her truthfully to assist in the expeditious resolution of the matter, respondent opted to proceed to a nationwide campaign, conducting speeches and accepting interviews, discussing the merits of the case and making comments thereon to vilify the members of the Congress, cast aspersions on the impartiality of the Members of the Court, degrade the faith of the people to the Judiciary, and falsely impute ill-motives against the government that it is orchestrating the charges against her. It is well-nigh unthinkable for respondent to profess deprivation of due process when she herself chose to litigate her case before the media.

These public appearances,[330] to name a few, are as follows:

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[330] The websites indicated herein were last accessed on May 8, 2018.

Event	Source	Quotations
'Speak Truth to Power' forum in UP Diliman, Quezon City on **May 5, 2018**	Video: <https://web. facebook. com/juliusnleonen/videos/ 889291114607029/ >Article: <https://www.rappler.com/ nation/201854-sereno-quo-warranto-destroy-judicial-independence>	*"Kung manalo ang quo warranto, mapupunta tayo sa diktaturya," she said. "Talagang wawasakin completely ng quo warranto na ito ang judiciary."* *"Pag itong quo warranto natuloy, hindi na right and reason, kundi will — will na nu'ng whoever is on top. So kailangan natin pigilan ito. . . " she said.*
Integrated Bar of the Philippines (IBP) Central Luzon Regional Convention and Mandatory Continuing Legal Education at thr Quest Hotel here on **May 2, 2018**	Article: <https://businessmirror. com.ph/sereno-sees-dictatorship-after-filing-of-quo-warranto-petition-against-her/>	*"Ano po ang tawag sa kondisyon na ang citizen walang kalaban-laban sa gobyerno" Chief Justice Maria Lourdes A. Sereno asked. "Ang tawag po doon dictatorship, hindi po constitutional democracy ang tawag doon," she said."That is what is going to happen if the quo waranto petition is granted," Sereno stated.* *"The booming voice of Justice Vicente Mendoza has reverberated that if the quo waranto petition is granted, the Judiciary will destroy itself," Sereno said as she also praised the IBP's stand to oppose and dismiss the petition.*
Forum on upholding Judicial Independence at the Ateneo Law School in Rockwell, Makati City on Wednesday, **April 25, 2018**	Video: <https://web.facebook. com/24OrasGMA/videos/ 10156438427991977/ ?t=16> Article: <http://newsinfo. inquirer.net/985460/ defend-judicial-independence-cj-sereno-tells-law-students>	*"Of my colleagues, I know that several of them, have had their qualifications, their inability to submit documentary requirements, waived, several of them. If the JBC was correct in saying that an attempt to submit requirements, that good faith should be accorded to the 14, including those against me, why am I the only one being singled out?," she told law students at the Ateneo Law School during a forum on judicial independence.* *"The questions propounded by Supreme Court itself, they wanted to examine everything I did in the past in the hope they*

Supreme Court E-Library

		would find something scandalous in my life. I was just preparing myself for the question, 'ilang boyfriend mo na?,'" Sereno said, which elicited laughter from the crowd."Hindi ko naman po minanipula ni konti ang JBC...14 kaming pare-parehong sitwasyon. Bakit nagreklamo kung kayo nalagay sa listahan at ako nalagay sa listahan. Ang masama ay hindi kayo ang nalagay at ako ang nalagay," she added.
Speech at the Commencement Exercises of the College of Law of the University of San Agustin (USA) in Iloilo City, on **April 20, 2018**	<https://www.philstar.com/headlines/2018/04/23/1808492/sereno-camp-questions-sc-haste-decide-her-case> <https://news.mb.com.ph/2018/04/21/no-need-to-rush-quo-warranto-sereno/>	*"The month of May is a time that is supposed to be devoted to writing decisions in the many pending cases before the Court. Anyway the session will resume on June 5, so what's with the rush?"* *"Wala namang dahilan para magmadali."* *"Kung totoo po, indication po ito na mayroon na po silang conclusion bago pa man marinig ang lahat," Sereno said.*
Fellowship of the Philippine Bar Association (PBA) in Makati City on **April 11, 2018**	<http://newsinfo.inquirer.net/981806/sereno-ups-attack-vs-quo-warranto-in-speech-at lawyers forum?utm_campaign=Echobox&utm_medium=Social&utm_source=Facebook#link_time=1523450119>	*"Even your very livelihoods are threatened; there is no safety for any of you...That is how deadly this quo warranto petition is," she added.* *Sereno said if the Supreme Court would cooperate in the move of the Executive to oust her sans impeachment trial, "I will use directly the words of Chief Justice Davide that it will be judicial hara-kiri, if not a judicial kamikaze bringing it the destruction of the entire judiciary as well as the entire constitutional framework."*
30th Anniversary and 23rd National Convention of the Philippine Women Judges Association (PWJA) in Manila Hotel on Thursday, **March 8, 2018**	<http://newsinfo.inquirer.net/973692/sereno-delivers-most-powerful-speech-yet-not-all-peers-happy>	*"I look at any forum to try me other than the constitutionally exclusive form of impeachment as an admission by the complainant and my other detractors that after 15 hearings, they have failed to come up with any evidence which I can be convicted in the Senate," she asserted."*

		Sila ang nagsimula bakit ayaw nilang tapusin? Napakaaga naman yata para umamin sila na wala silang napala kundi matinding kabiguan kaya't kung anu-ano na lamang ang gimik ang ginagawa nila masunod lamang ang kanilang nais," Sereno added.
CNN Philippines (March 9, 2018); One on One with the Chief Justice with Pinky Webb	<https://www.youtube.com/watch?v=HlYKAQ4QPcY1. http://cnnphilippines.com/videos/2018/03/09/One-on-one-with-Chief-Justice-Maria-Lourdes-Sereno.html>	In this interview, CJOL Sereno, among others, stated that her defense preparation was directed towards the impeachment proceedings as she has not assessed yet the quo warranto petition as of the interview. - *"From the very beginning, we were looking really at the impeachment provisions of the Constitution so that has been the preparation all along. Well, I haven't yet assessed this latest quo warranto petition. Not yet time maybe"* - CJOL Sereno refused to talk about the quo warranto petition, but interpreted the SC's resolution which directed her to comment on said petition without taking due course to the petition. CJOL said that such action of the SC does not mean anything and affirmed Webb's interepretation that such action does not mean that the SC assumes jurisdiction over the quo warranto case. - "*Yan naman talaga ang hindi ko pwede pagusapan, ano.*" - On jurisdiction: *"Normal yan, marami kaming ganyan petition. Wala naman talagang ibig sabihin yan. In most cases, walang ibig sabihin yun kasi hindi pa prejudged. Pero hayaan niyo po muna yung lawyers ko ang magsabi kasi mahirap naman pong pangunahan ko sila eh ginagawa pa po nila yung sagot eh."* - *"Marami ho kaming laging ginagamit na without due course at marami*

Supreme Court E-Library

		kaming dinidismiss na nanggaling sa without giving due course pero pinagkocomment... It doesn't mean... Ang usual tradition po namin ay walang ibig sabihin po yun"
Speech of CJOL Sereno at the Panpacific University North Philippines (March 9, 2018) (Posted by CNN Philippines)	<https://www.youtube.com/watch?v=iN5l1xW9bpk>	Directed towards politicians supposedly regarding the ongoing impeachment proceedings, CJOL Sereno said, "'*Wag na 'wag niyo kami gigipitin*" and further stated that such what judicial independence means. - *I know that our women judges, for example, are always eager to make a stand for judicial independence. Kayong mga pulitiko, wag nyong pakialaman ang aming mga gustong gawin kung palagay nyo kayo ay tama at andyan ang ebidensya, lalabas naman yan eh. Pero huwag na huwag nyo kaming gigipitin. Yan ang ibig sabihin ng judicial independence"*
Speech on "The Mumshie on Fire: Speak Truth to Power" held at the University of the Philippines (May 5, 2018) *Forum was organized by youth groups, *Ako Ay Isang Sereno* and Youth for Miriam	<https://newsinfo.inquirer.net/987807/live-chief-justice-sereno-at-up-diliman-forum>	- CJOL Sereno emphasized that AJ Leonardo-De Castro's inhibition would prove that she is unbiased. - *Hindi sila tumigil, hangga't naisip ng isa, yung nagaakusa sa akin, "ay yung SALN niya, yung SALN nya na sinabi nya sa JBC na nahihirapan niyang humanap (sic). Yun, dun tugisin. At sinabi nya na dapat ako ay idisqualify dahil unjust daw na ako ang naappoint. May injustice na nangyari. So alam na natin ang isa sa pinagsisimulan nito"* - CJOL Sereno said that *"Even when they thought they have won, in the end, they will never win. The country is already woke. The youth would not listen to lies. The people own the judiciary. They are not owned by the judiciary, the justices, the judges" and that the "good will always prevail over evil."*

	- CJOL Sereno said that two of her accusers, who she considers as her rival also, will be one of those who will decide the quo warranto petition filed against her, thereby against the basic rules of fair play. - *"Eh bakit biglang umatras sila* (pertaining to his accusers in the impeachment proceedings) *at ginawa itong kaso na quo warranto kung saan ang dalawa sa nagsabing hindi ako dapat naappoint eh sila rin ang maghuhusga sa akin. Saan kayo nakakita ng sitwasyon na yung karibal niyo sa posisyon ang may kapangyarihan sabihin kayong dapat ka matanggal sa posisyon, hindi ikaw dapat. Paano nangyari? Under what rules of fairness, what rules of Constitution or legal system can an accuser who acted also as my prosecutor during the oral arguments now sit as judge? This violates the most basic norms of fairplay...Ngayon talaga, nakita na, na hindi ho ako bibigyan talaga ng ilang ito ng kahit anong modicum of fairness"* - She discussed that one of the effects of an invalid appointment is the forfeiture of retirement benefits. - *"At alam nyo ho, pag sinabi na invalid yung appointment, pati yung retirement benefits ho tatanggalin"* - The granting of a quo warranto would result into dictatorship and would destroy the judiciary. - *At ano ho ang mangyayari kung ang buong sangay, ang lahat ng kawani ng gobyerno ay kayang takutin at hindi na pwedeng maging independent?.. Ano hong mangyayari kung ang COMELEC ho ay sinabihan ng Presidente at Solicitor General na "yung partido lang namin ang pwedeng manalo, kung hindi i-quo warranto ka namin?" Ano po yun? Ano yung tawag sa ganoong sitwasyon na may matinding pananakot sa buong bayan? Ang tawag po dun, diktaturya.. Kung*

Supreme Court E-Library

		manalo po ang quo warranto, yan po ang magiging resulta" *- "Saang korte kayo pupunta? Sino ang magtatapang na huwes kung madali na sila mapatanggal?… Hindi na ho kayo makakatakbo, kasi lahat ho ng judges tatakutin ng Solicitor General...Saan ho kayo pupunta sa isang arbiter na impartial?.. wala na po. Wawasakin nitong quo warranto petition nito, completely ang judiciary"* *- "Ano na ho ang mangyayari sa bayan natin kung wala na hong security of tenure sa government service? Kasi kung may kaunting kulang lang sa file... kulang ang file na nabigay sa JBC.. eh naglalabasan na ho ang SALN ko… pero eto tatanggalin at gagawa sila ng prinsipyo at ikawawasak ng buong bayan para lang sa kanilang personal na interes. Nakakalagim po ang pangyayaring ito"*
Speech on Ateneo Law School for the forum Tindig: A forum on upholding judicial independence as a pillar of democracy (April 25, 2018)	<https://www.youtube.com/watch?v=oh35V4BMiww>	CJOL Sereno discussed the contents of the quo warranto petition. - On the prescriptive period, CJOL Sereno said that jobs of the justices, judges and government employees are jeopardized because of the assertion of the OSG that a petition for quo warranto does not prescribe against the government. CJOL Sereno said that such assertion makes the action imprescriptible. *- "According to the Solicitor General, the one year prescriptive period can never apply against government. It must be personal knowledge of the Solicitor General himself. And so if you change the person of the Solicitor General, the period continues to always be fresh. It's a never prescriptible, a completely imprescriptible action. So you jeopardize the jobs of the justices, the judges and all gov't employees. You allow selected targeting against the Chief Justice for reasons*

Supreme Court E-Library

	that are very obvious now and you destroy the legal profession" 1. - On the effect of the quo warranto petition, CJOL Sereno said that all incumbent judges and justices would be prejudiced because their qualifications may suddenly be reviewed. - *"The SC itself really wanted to examine every little thing I did in the past in the hope that they would find something scandalous about my life..."* - *"It also prejudices more than 2000 judges and justices that are already sitting now because all of their qualifications may* suddenly be reviewed. The JBC was wrong to waive this qualification for this position. I can tell you as a matter of record that of my colleagues, I know that several of them have had their qualifications, their inability to submit documentary requirements, waived. Several of them. So if the JBC was correct in saying that an attempt to submit the requirements, the good faith accorded to those who had missing requirements should be accorded to 14 of us, including those who have complained loudly against me among my colleagues why am I the only one being singled out? The rules of inability to submit all the SALNs were waived in favor of 14 out of 20 applicants. 6 out of the 8 were shortlisted. Why is the rule being invoked only against me? And so it would appear that this is selected targeting"

The public actuation of respondent showing disdain and contempt towards some Members of the Court whom she dubbed as "Biased 5" later increased and modified to "Biased 6" can no longer be tolerated. She may be held liable for disbarment for violating the Canons of Professional Responsibility for violating the *sub judice* rule by repeatedly discussing the merits of the *quo warranto* petition in different fora and for casting

Supreme Court E-Library

aspersions and ill motives to the Members of the Court even before a decision is made, designed to affect the results of the Court's collegial vote and influence public opinion. This wrongful actuation exemplify a poor regard for the judicial system and may amount to conduct unbecoming of a Justice and a lawyer.

Such actions, indeed, resulted to the obfuscation of the issues on hand, camouflaging the charges against her with assaults to judicial independence, and falsely conditioning the public's mind that this is a fight for democracy. Once and for all, it should be stated that this is not a fight for democracy nor for judicial independence. This is an undertaking of the Court's duty, as it is called for by the Republic, to judicially determine and settle the uncertainty in the qualification, or otherwise, of respondent to sit on the highest position in the Judiciary.

The detrimental effect of this open and blatant disregard of the *sub judice* rule or the evil sought to be prevented by the said rule is already manifest. In fact, in the May 2, 2018 issue of the Philippine Daily Inquirer, certain individuals, including lawyers, already made their own pre-judgment on the case:

GRANTING THE QUO WARRANTO PETITION IS ILLEGAL, A BETRAYAL OF DEMOCRACY

THE SUPREME COURT TRAMPLED ON the Philippine Constitution and betrayed its primary duty to the Filipino people when it violated Chief Justice Ma. Loudes Sereno's right to due process.

The Supreme Court abandoned its chief mandate to ensure an independent judiciary by accepting a bankrupt Quo Warranto petition and refusing to inhibit five openly biased Justices.

The Judiciary's Code of Conduct decrees resistance against attempts to subvert judicial independence. It orders judges to be impartial. The five justices bowed to Congress' impeachment summons. They attacked the Chief Justice in proceedings that refused her right to question accusers. Doing so, they prejudged the Chief Justice and betrayed the Court's position as a co-equal branch of the government.

We repudiate as illegal a ruling tainted with these shameful acts.

The Quo Warranto action against CJ Sereno, filed beyond the one year deadline, is itself illegal and unconstitutional. the Supreme Court has affirmed many times that impeachment is the only mode for removing an impeachable officer.

In accepting this farcical petition, it crushes constitutional checks and balances it threatens every Filipino citizen's right to a free, impartial justice system.

The State derives its power from the people. When the key instruments of the State conspire to subvert the Constitution and democracy, the people must rise as the last bastion of our rights and freedoms.

We challenge the Supreme Court: Pull back from the brink. Do not be a party to the death of judicial independence. Heed the Constitution. OBEY THE CODE OF JUDICIAL CONDUCT. COMPEL THE INHIBITION OF THE BIASED 5. DISMISS THE ILLEGAL QUO WARRANTO PETITION!

If the Biased 5 will not inhibit, then we call on them to resign. The people will not acccept any Decision tainted by gross injustice and Justices who cannot act with justice. (Emphasis ours)

It could readily be seen that such statements do not only "tend to" but categorically force and influence the deliberative and decision-making process of this Court. Notably, the threatening tenor could not go unnoticed.

To be sure, the Court is not merely being unreasonably sensitive in addressing this matter, as in fact, it guarantees that it is not swayed or influenced by such attacks and maintains its judicial independence in resolving this controversial case. However, when aggressive actions are taken against the Judiciary as an institution and clouds of doubt are casted upon the people's faith in the administration of justice, especially so when the same are perpetrated by members of the Bar, this Court cannot be apathetic to and is not helpless against such attacks, but the prudent thing to do is to stand and deal with it head on.

Epilogue

The foregoing discourse thins down to a public officer's accountability to the public. The very purpose and nature of

Supreme Court E-Library

public office is grounded upon it being a public trust. No less than our Constitution gave special importance on the principle of a public office being a public trust. Section 1, Article XI of the 1987 Constitution categorically states that:

> Section 1. **Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity**, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

It is therefore an established principle that public office is not "property" but is a public trust or agency, governed by the Constitution and by existing laws. There is no Torrens title to a public office. Justice Malcolm, in *Cornejo v. Gabriel and Provincial Board of Rizal*,[331] expounded on this principle, *viz.*:

> In the case of *Taylor v. Beckham* ([1899], 178, U. S., 548), Mr. Chief Justice Fuller said that: "Decisions are numerous to the effect that public offices are mere agencies or trust, and not property as such." The basic idea of government in the Philippine Islands, as in the United States, is that of a popular representative government, **the officers being mere agents and not rulers of the people, one where no one man or set of men has a proprietary or contractual right to an office, but where every officer accepts office pursuant to the provisions of the law and holds the office as a trust for the people whom he represents.**[332] (Emphasis ours)

The right to hold public office under our political system is therefore not a natural right. It exists, when it exists at all, only because and by virtue of some law expressly or impliedly creating and conferring it.[333] Needless to say, before one can hold public office, he or she must be eligible in accordance with the qualifications fixed by law and the authority conferring and creating the office. There is no such thing as a vested interest or an estate in an office, or even an absolute right to hold office. A public officer who is not truthful, not forthright,

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[331] 41 Phil. 188 (1920).

[332] *Id*. at 194.

[333] *Aparri v. CA., et al.*, 212 Phil. 215, 221-222 (1984).

in complying with the qualifications to public office, perforce, has not legally qualified, was not legally appointed, and consequently, has not legally assumed the said public office. A disqualification cannot be erased by intentional concealment of certain defects in complying with the qualifications to public office set by the Constitution and laws. The passage of time will not cure such invalidity of holding public office, much less, foreclose the right and duty of the government, the keeper of the said public office, to oust and remove the usurper.

One who claims title to a public office must prove beyond cavil that he/she is legally qualified to the said office, otherwise, he or she has no ground to stand upon his or her claim of title to the office and his or her title may reasonably be challenged. A qualification must be proved positively, clearly, and affirmatively. It cannot be proved by mere acquiescence nor by estoppel or prescription. In the same vein, a disqualification cannot be obliterated by intentional concealment thereof. As a matter of fact, such concealment is a clear manifestation of lack of integrity, probity, and honesty. It cannot be over-emphasized that public service requires integrity. For this reason, public servants must, at all times, exhibit the highest sense of honesty. By the very nature of their duties and responsibilities, they must faithfully adhere to, and hold sacred and render inviolate the constitutional principle that a public office is a public trust.[334] The expectation of a strong adherence to this principle escalates proportionately as one ascends to public office. John Adams, then President of the United States, said, "society's demands for moral authority and character increase as the importance of the position increases."

In this case, it was found that respondent is ineligible to hold the Chief Justice of the Supreme Court position for lack of integrity on account of her failure to file a substantial number of SALNs and also, her failure to submit the required SALNs to the JBC during her application for the position. Again, one

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[334] *Atty. Alconera v. Pallanan*, 725 Phil. 1, 17 (2014).

Supreme Court E-Library

of the Constitutional duties of a public officer is to submit a declaration under oath of his or her assets, liabilities, and net worth upon assumption of office and as often thereafter as may be required by law.[335] When the Constitution and the law exact obedience, public officers must comply and not offer excuses. When a public officer is unable or unwilling to comply, he or she must not assume office in the first place, or if already holding one, he or she must vacate that public office because it is the correct and honorable thing to do. A public officer who ignores, trivializes or disrespects Constitutional and legal provisions, as well as the canons of ethical standards, forfeits his or her right to hold and continue in that office.

WHEREFORE, the Petition for *Quo Warranto* is **GRANTED**. Respondent Maria Lourdes P.A. Sereno is found **DISQUALIFIED** from and is hereby adjudged **GUILTY of UNLAWFULLY HOLDING and EXERCISING** the **OFFICE OF THE CHIEF JUSTICE**. Accordingly, Respondent Maria Lourdes P. A. Sereno is **OUSTED** and **EXCLUDED** therefrom.

The position of the Chief Justice of the Supreme Court is declared vacant and the Judicial and Bar Council is directed to commence the application and nomination process.

This Decision is immediately executory without need of further action from the Court.

Respondent Maria Lourdes P.A. Sereno is ordered to **SHOW CAUSE** within ten (10) days from receipt hereof why she should not be sanctioned for violating the Code of Professional Responsibility and the Code of Judicial Conduct for transgressing the *sub judice* rule and for casting aspersions and ill motives to the Members of the Supreme Court.

SO ORDERED.

Reyes, Jr. and *Gesmundo, JJ.,* concur.

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[335] 1987 CONSTITUTION, Article XI, Section 17.

Leonardo-de Castro, Peralta, and *Bersamin, JJ.,* concur in separate opinions.

Jardeleza, J., J. Carpio certifies that he left his vote concurring with the *ponencia* of *J.* Tijam.

Martires, J., concurs in the result with separate opinion.

Velasco, Jr., J., see concurring and dissenting opinion.

Carpio, del Castillo, Leonen, and *Caguioa, JJ.,* dissent in separate opinions.

Perlas-Bernabe, J., J. Carpio certifies that she submitted her Separate Opinion voting to Dismiss the petition.

Sereno, C.J., no part.

CONCURRING OPINION

LEONARDO-DE CASTRO, *J.*:

I **DENY** the motion for my inhibition and concur with the **GRANT** of the Petition for *Quo Warranto*.

It is not my personal interest or actual bias but the common interest of every incumbent Member of the Court to find the truth in whether or not respondent Maria Lourdes P. A. Sereno has the integrity to qualify her to hold the highest position in the Judiciary. Did she employ deceit regarding her Sworn Statement of Assets, Liabilities and Net Worth (SALN) in order to be included by the Judicial and Bar Council (JBC) in the shortlist of nominees for the Chief Justice position? Of this I had no personal knowledge and had to ask the question ("*ang tanong*") during the hearing at the Committee on Justice of the House of Representatives, if indeed she did not submit her SALNs to the JBC and if the JBC unduly exempted her from this requirement. The question was never answered because respondent refused to appear at the hearings before the House

Supreme Court E-Library

of Representatives Committee on Justice. It is only in the proceedings of the instant Petition for *Quo Warranto* where respondent voluntarily appeared that we can ferret out the truth regarding the grave integrity issue raised against her.

I testified before the House of Representatives Committee on Justice, not as a complainant but as a resource person who must tell the truth, and I did so, based on authentic and official court records. I was merely invited by the said Committee, along with other incumbent and retired Supreme Court Associate Justices, as a resource person in the investigation. I had been duly authorized by the Court *en banc* during the *en banc* session on November 28, 2017 to testify on administrative matters and specific adjudication matters[1] subject of the impeachment complaint.

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[1] The Court Resolution dated November 28, 2017 pertinently states:

NOW, THEREFORE, the Court *En Banc* hereby authorizes the invited officials and Justices to so appear and testify, if they wish to do so, under the following conditions:

x x x x x x x x x

3. Justice Teresita J. Leonardo-De Castro of this Court may testify on administrative matters, and on adjudicatory matters only in the following cases:

a. G.R. Nos. 206844-45 (*Coalition of Association of Senior Citizens in the Philippines Party List v. Commission on Elections*): Justice Leonardo-De Castro may testify only on the issuance of the Temporary Restraining Order and on the exchange of communications between Chief Justice Sereno and Justice Leonardo-De Castro, but not on the deliberations of the *En Banc* in this case;

b. G.R. No. 224302 (*Hon. Philip Aguinaldo, et al. v. President Benigno S. Aquino III*): Justice Leonardo-De Castro may testify only on the merits of her *ponencia* but not on the deliberations of the *En Banc* in this case;

c. G.R. No. 213181 (*Francis H. Jardeleza v. Chief Justice Maria Lourdes P.A. Sereno*): Justice Leonardo-De Castro may testify only on the merits of her separate concurring opinion, but not on the deliberations of the Court in this case.

I truthfully answered questions about respondent's **falsification** of a Supreme Court Resolution and Order; her **manipulation** of the JBC processes during the screening of applicants to the position vacated by Supreme Court Associate Justice Roberto A. Abad (Abad), her **false narration** of facts in a letter she sent to each of the Justices to prevent their exercise of a function vested in them by the JBC Rules; and the **unconstitutional** clustering of nominees for the six new Associate Justices of the Sandiganbayan, adopted during her incumbency as Chairperson of the JBC.

Respondent's Motion for Inhibition against me utterly lacks basis.

Respondent's Motion for Inhibition against me is not spared of her **blatant lies**. In her said Motion, respondent alleged that:

> 15. On 27 August 2012, the first working day after the Chief Justice was sworn into office, she contacted the Associate Justices of the Supreme Court either by telephone or by personally visiting each of them at their respective offices to request their cooperation. When she came to Justice Leonardo-De Castro's office, she was told by Justice Leonardo-De Castro: "*I will never forgive you for having accepted the Chief Justiceship. You should never have even applied for it. You're not even a friend of PNoy. Buti pa si Bojie, he had the decency to refuse the appointment when it was being offered to him.*" (Bojie refers to Associate Justice Bienvenido Reyes, Jr.) The Chief Justice replied that she still hoped that she could have Justice Leonardo-De Castro's cooperation. The statement is more or less an accurate recount of what Justice Leonardo-De Castro told the Chief Justice.

The aforequoted alleged conversation between respondent and me, which she claimed was "[b]ased on the honest recollection of the Chief Justice"[2] **NEVER HAPPENED**.

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[2] Footnote no. 27 of Respondent's *Ad Cautelam* Respectful Motion for Inhibition (Of the Hon. Associate Justice Teresita J. Leonardo-De Castro).

Supreme Court E-Library

Respondent was appointed and sworn in as Chief Justice on August 24, 2012, a Friday. While respondent was rumored to be going around to see the Justices on August 27, 2012, in the morning of the following Monday, I was not at my chambers at that time and we did not have the chance to talk at all. According to my staff, they heard someone had opened the door, closed it right away, and left because there was no one in the reception area as it was too early in that morning before the flag ceremony.

The first time respondent and I saw each other after her appointment as Chief Justice was at the Court *en banc* session on Tuesday, August 28, 2012. Respondent expressed delight that all the incumbent Justices, all mindful of their official duties and very professional, were present at the first *en banc* session she would preside over. All that I said was: "It is our Constitutional duty." The Court *en banc* then proceeded to deliberate on the agenda items and the deliberations went on smoothly without any untoward incident.

It was only later when respondent had **falsified** a Court Resolution and a temporary restraining order (TRO) that I thought that a decent person like Supreme Court Associate Justice Bienvenido L. Reyes, Jr. (Reyes) would have been a better Chief Justice if he only aspired for the position, as it was widely reported that he was the first choice of then President Benigno Simeon C. Aquino III (Aquino). However, I **will not** say and, in fact, **have not** said that to respondent. Every lawyer or Member of the Court ought to know that since respondent was included in the JBC shortlist of nominees, President Aquino could appoint her to the Chief Justice position. Accepting the appointment by a nominee to the highest office in the Judiciary is to be expected and should come as a matter of course. I was not in a position to give or withhold forgiveness for respondent's acceptance of the appointment. Respondent's accusation against me is but a figment of her imagination. She lied once again as she did many times even under oath **without remorse or guilt feelings**.

I have been publicly maligned and accused to be bitter about not being appointed as Supreme Court Chief Justice. Due to this, I am forced to reveal that when I applied for the post of Chief Justice, after a battery of written tests and interviews by the JBC psychiatrist and psychologist, I had been given the highest psychiatric and psychological numerical rating of one ("1"), with the following verbal description: "[d]efenses are predominantly adaptive and healthy. Clinically assessed as having a superior functioning in a wide range of activities. Life's problems never seem to get out of hand, is sought by others because of many positive qualities." And true to said test result, I have never dwelled on not being appointed as Supreme Court Chief Justice and continued to work productively as an Associate Justice.

For years now, respondent and I have had a generally professional relationship and I have been exerting my best as a Supreme Court Associate Justice, as the Working Chairperson of the Supreme Court First Division of which respondent is the Chairperson, and with utmost dedication, I continue to serve as the Chairperson of the Supreme Court committees assigned to me by respondent, namely, the Committee on Gender Responsiveness in the Judiciary and the Committee on Family Courts and Juvenile Concerns.

The disagreements between respondent and me are clearly not personal but work-related, arising from instances when I called the Court's attention that respondent **bypassed** the Court *en banc*, **falsified** a Court Resolution and Order, and **misled or lied** to us, her colleagues in the Supreme Court. My intention was to correct the wrong done, not to rebuke or shame respondent, and only to remind her that she should not repeat the same as it will not always escape the attention of the Justices.

Hereunder are legitimate subjects of concern to the Court, of which the Supreme Court *en banc* Resolution authorized me to testify on at the House of Representatives Committee on Justice:

Supreme Court E-Library

(a) Respondent's creation of the JDO in the 7th Judicial Region without knowledge and approval of the Court *en banc* and falsification of a Court resolution to make it appear that the Court *en banc* ratified the operation of the JDO, under the pretext of reviving the RCAO in the 7th Judicial Region

Soon after her appointment as Chief Justice, respondent, without the knowledge and approval of the Court *en banc*, established a permanent office known as the Judiciary Decentralized Office (JDO) in the 7th Judicial Region by issuing Administrative Order (AO) No. 175-12 and made it **falsely** appear that she was merely reviving the Regional Court Administration Office (RCAO) in the 7th Judicial Region. Worse, when the Court *en banc* decided to form a study group to be headed by then Judge Geraldine Faith A. Econg[3] (Econg) in lieu of the JDO, respondent issued a Resolution containing a **false** narration that the Court ratified her Administrative Order.

Background of the RCAO for Region VII: Previously, through Resolutions dated November 14, 2006 in **A.M. No. 06-11-09-SC** and March 18, 2008 in **A.M. No. 06-12-06-SC**, the Court *en banc*, under Chief Justice Artemio V. Panganiban and Chief Justice Reynato S. Puno, respectively, approved the establishment and operationalization of the RCAO in the 7th Judicial Region as part of the efforts to decentralize the financial and administrative functions of the Court. However, the operations of the RCAO were eventually discontinued because of unexpected and insurmountable problems encountered during its initial implementation.

Less than three months after respondent was appointed as Supreme Court Chief Justice on August 24, 2012, she issued **AO No. 175-2012**, entitled "Designating the Head for the Judiciary Decentralized Office (JDO) in the Seventh Judicial

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[3] Now Sandiganbayan Associate Justice.

Region," on November 9, 2012, without the prior knowledge and approval of the Court *en banc*.

Despite respondent's misleading statements that the RCAO and the JDO are the same, there are marked differences between the two offices, to wit:

DIFFERENCES	**RCAO (A.M. Nos. 06-11-09-SC and 06-12-06-SC)**	**JDO (AO No. 175-2012)**
Office created	Created the Regional Court Administration Office (RCAO) in the 7th Judicial Region[4]	Created the Judiciary Decentralized Office (JDO) in the 7th Judicial Region
Period of Implementation	RCAO Pilot decentralized unit implemented over a one-year period	Effective immediately and until revoked by respondent
Implementation Head	The Court Administrator is the Implementation Head of the Pilot Project	Respondent specifically designated Judge Econg as JDO Head;[5] JDO Head is not under the Court Administrator
Official Functions	Official functions in the Pilot RCAO shall be vested in the following: · Court Administrator · Regional Court Administrator[6]	Official functions vested in the JDO Head

[4] Section 2(b), A.M. No. 06-11-09-SC.

[5] Judge Econg was then Project Management Office (PMO) Head, but was completely relieved of her functions and responsibilities as such.

[6] Part (a), Section 2, A.M. No. 06-12-06-SC.

Supreme Court E-Library

	· Deputy Regional Court Administrator[7] · Assistant Regional Court Administrator · Oversight Committee[8]	
Staffing Pattern Approval	Staffing pattern must be approved by the Court	Hiring of contractual personnel for the JDO must be consistent with the staffing pattern approved by respondent[9]

On November 23, 2012, the Office of the Chief Justice (OCJ) circulated an invitation to the Associate Justices to attend the reopening of the RCAO in Region 7 on November 29, 2012 in Cebu.

It was only then that I, along with my other colleagues at the Supreme Court, came to know of AO No. 175-2012 creating the JDO and designating Judge Econg as JDO Head. Through a Memorandum dated November 26, 2012, I questioned the creation of the JDO (made by respondent under the pretext of reopening of the RCAO) as it was neither deliberated upon nor approved by the Court *en banc*. I wrote in my Memorandum:

> With due respect to the Chief Justice, her creation of the "Judiciary Decentralized Office" (JDO) would not be in consonance with the *En Banc* Resolutions issued by the Court, which established not a JDO, but the Pilot Regional Court Administration Office (PRCAO) and designated, not [a] JDO head, but a Regional Court Administrator who is under the direction and supervision of the Court Administrator, as the Implementation Head of the Pilot Project for the RCAO in Region 7. (*En Banc* Resolutions dated November 14, 2006 in A.M. No. 06-11-09-SC [Sec. 5] and dated March 18, 2008 in A.M. No. 06-12-8-SC.)

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[7] Part (a), Section 5, A.M. No. 06-12-06-SC.

[8] Part (c), A.M. No. 06-12-06-SC.

[9] Paragraph (a), A.O. No. 175-2012.

I further suggested that the above matter be taken up at the session on November 27, 2012 for deliberation and collective action of the Court *en banc*.

During the Court *en banc* session on November 27, 2012, the Justices vehemently objected to respondent's AO No. 175-2012. In response, respondent declared before the Court *en banc* that she would **amend** her administrative order.

Yet, instead of amending AO No. 175-2012 as she had undertaken to do and in contravention of the consensus reached by the Justices during the *en banc* session, respondent caused the issuance of a **Resolution dated November 27, 2012 in A.M. No. 12-11-9-SC** (RCAO Resolution) which **falsely states**:

Please take notice that the Court en banc issued a Resolution dated **NOVEMBER 27, 2012**, *which reads as follows*:

"**A.M. No. 12-11-9-SC** (Re: Reopening of the Regional Court Administration Office [RCAO] in Region 7). – The Court Resolved to:

(a) **RATIFY** the action of Chief Justice Maria Lourdes P.A. Sereno to revive the Regional Court Administration Office in Region 7, with Phase I on: (a) procurement; (b) approval of leave; and (c) payroll administration; and

(b) **APPOINT** Judge Geraldine Faith A. Econg, Deputy Clerk of Court and Judicial Reform Program Administrator, as ***Officer-in-Charge of RCAO-Region 7***, effective immediately and for a period of two (2) months."

The aforequoted Resolution was a **complete fabrication** and a **deliberate deviation from the truth** as it was contrary to the actual resolution agreed upon by the Court *en banc* during the November 27, 2012 session.

In addition to the said falsified RCAO Resolution, respondent issued **AO Nos. 185-2012 and 186-2012**, both dated **November 27, 2012**, providing for the mandatory attendance of various officials and personnel from the Office of the Court Administrator (OCA), Project Management Office (PMO), and OCJ, as well as Judges and Clerks of Court of first and second level courts in the 7th Judicial Region, at the launching ceremony of the

Supreme Court E-Library

RCAO at the Radisson Blu Hotel in Cebu City on November 29, 2012. Although respondent, in her said AOs, misleadingly referred to the reconstitution and launching of the RCAO, she still directed the "RCAO head," namely, Judge Econg, "to perform her tasks and functions as provided by SC Administrative Order No. 175-2012[,]" which pertained to the JDO and not the RCAO.

I chose to raise respondent's **false and misleading issuances** concerning the JDO/RCAO before the Court *en banc* so that her unilateral acts could be rectified and thereby avoid detrimental consequences to the operation of the trial courts in the 7th Judicial Region, and not to rebuke or chastise her.

I then issued another Memorandum dated December 3, 2012 in which I wrote that, to the best of my recollection, the RCAO Resolution did not reflect the Court's deliberations and the Justices' consensus opposing the reopening of the RCAO when the said administrative matter was taken up during the *en banc* session on November 27, 2012. I meticulously noted down in my Memorandum the objections raised against AO No. 175-2012 during the deliberations, to wit:

(1) The Chief Justice has no authority to create the Judiciary Decentralized Office which under the **AO** shall take full responsibility over the Regional Court Administration Office in Region 7, which was to be reopened without Court *en banc* approval on November 27, 2012;

(2) The **AO** of the Chief Justice cannot deprive: (1) the Court *en banc* of its constitutional duty to exercise administrative supervision over all courts and their personnel and (2) the Office of the Court Administrator of its statutory duty under Presidential Decree No. 828, as amended[,] to assist the Supreme Court in the exercise of said power of administrative supervision, which is the case under the **AO** where an official, outside of OCA was designated to take charge of RCAO-7, answerable only to the Chief Justice without any guidelines set by the Court *en banc*;

(3) The RCAO-7 which was intended only to be a **"pilot" project** cannot be reopened or revived on a permanent basis even on a limited scale without first undertaking a study,

particularly, among many other concerns, why it failed when it was first organized, resulting in black armband rally against RCAO-7 organized by Judges and Court personnel in the Region, led by Program Management Office (PMO) head then RTC Judge Geraldine Faith Econg;

(4) The RCAO-7 cannot be reopened without showing to the Court the content/scope of the functions to be transferred from the Office of the Court Administrator to RCAO-7 and the process of decentralization or devolution of functions and the justification for the reopening;

(5) The PMO head cannot be appointed in-charge of the RCAO-7 since it is not part of her duty to assist in the administrative supervision of lower courts. At best, a Justice opined, she may take part in the conduct [of] a study for a period of say two months to determine of whether or not to reopen RCAO-7;

(6) The Court *en banc*, which is constitutionally vested with the administrative supervision of all courts has the authority to decide on the reopening of RCAO-7 and it must be assisted by the Office of the Court Administrator (OCA);

(7) Administrative Order No. 175-2012 dated November 9, 2012, which was reiterated in Administrative Order No. 185-2012 dated November 27, 2012, **had transgressed the said constitutional authority of the Court *en banc* and the statutory authority of OCA**. (Emphases mine.)

At the end of my Memorandum, I submitted that:

In view of the foregoing, the Court *en banc* did not reach a decision to reopen RCAO-7, instead it accepted the undertaking of the Chief Justice to amend **AO** No. 175-2012 to address the foregoing adverse observations of the Justices during the deliberation on November 27, 2012. The Resolution dated November 27, 2012 ratifying the action of the Chief Justice reviving RCAO-7 which she did through Administrative Order No. 175-2012 and appointing the PMO head as Officer-in-Charge of RCAO-7 must be recalled or amended to faithfully reflect the deliberation of the Court *en banc*, particularly the objections raised against said **AO**.

My Memorandum dated December 3, 2012 was taken up by the Court *en banc* during the session on December 11, 2012.

Supreme Court E-Library

Proof of the falsity of the RCAO Resolution dated November 27, 2012 issued by respondent was the subsequent issuance of the **Resolution dated January 22, 2013** by the Court *en banc* in A.M. No. 12-11-9-SC which recounts the true version of the events that transpired during the sessions on November 27, 2012 and December 11, 2012 and reflects the real intention of the Court *en banc* not to operationalize the JDO or reopen the RCAO, but to create first a committee that would study the need for decentralization of functions, thus:

CREATING A NEEDS ASSESSMENT COMMITTEE TO STUDY THE NECESSITY OF DECENTRALIZING THE FUNCTIONS IN SUPPORT OF THE SUPREME COURT'S POWER OF ADMINISTRATIVE SUPERVISION OVER LOWER COURTS

Whereas, on **27 November 2012** and on **11 December 2012**, the Supreme Court *En Banc*, considering the operational inactivity of the pilot project under A.M. No. 06-11-09-SC, determined that there is a need to further study the decentralization of functions relative to the Supreme Court's power of administrative supervision over lower courts;

NOW, THEREFORE, the Court hereby resolves to create a **Decentralization Needs Assessment Committee** to study and determine the necessity of decentralizing administrative functions appurtenant to the exercise of the Supreme Court's power of supervision over lower courts; the functions to be devolved; the implementation of the devolution of functions; and the efficient and effective performance of the devolved functions.

x x x x x x x x x

This Resolution **supersedes all prior resolutions, administrative orders and issuances** on the covered matter and shall take effect upon its promulgation. (Emphases mine.)

Thus, the Resolution dated January 22, 2013 effectively revoked AO No. 175-2012 and the **falsified** RCAO Resolution of November 27, 2012 issued by respondent. The JDO, created by virtue of respondent's AO No. 175-2012, has not been operationalized even up to this time.

(b) Respondent's falsification and unlawful expansion of the coverage of the TRO issued in the *SENIOR CITIZENS cases*, in contravention of my recommendation as the Member-in-Charge

Another example of respondent's propensity to commit acts of dishonesty was when she unlawfully expanded the coverage of the TRO she issued in *Coalition of Associations of Senior Citizens in the Philippines, Inc. v. Commission on Elections* (*SENIOR CITIZENS cases*),[10] in contravention of my recommendation as Member-in-Charge, but **falsely stated** in said TRO that it was upon my written recommendation.

The *SENIOR CITIZENS cases* involved the Omnibus Resolution dated May 10, 2013 of the Commission on Elections (COMELEC) that disqualified the Coalition of Associations of Senior Citizens in the Philippines, Inc. (SENIOR CITIZENS), among other party-list groups, from participating in the May 13, 2013 elections and cancelled its registration and accreditation as a party-list organization. Despite its disqualification, SENIOR CITIZENS still obtained 677,642 votes. Two rival groups, both claiming to represent SENIOR CITIZENS, filed their respective petitions for *certiorari* before the Court, challenging the disqualification of their party-list group.

On May 27, 2013, as the Member-in-Charge of the *SENIOR CITIZENS cases*, I forwarded to respondent the *rollos* and synopses of the petitions therein and my recommendation to grant the prayer in both petitions for the issuance of a TRO. In accordance with established practice in the Court, I attached the draft TRO, which reads:

[A] TEMPORARY RESTRAINING ORDER is hereby ISSUED, effective immediately and continuing until further orders from this Court, ordering You, respondent COMELEC, your agents,

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[10] 714 Phil. 606 (2013).

Supreme Court E-Library

representatives, or persons acting in your place or stead, **to refrain from implementing the assailed COMELEC Resolution, insofar as COALITION OF ASSOCIATIONS OF SENIOR CITIZENS IN THE PHILIPPINES, INC., is concerned**, particularly, Omnibus Resolution promulgated on May 10, 2013, issued in SPP No. 12-157 (PLM) and SPP No. 12-191 (PLM). (Emphasis mine.)

Clearly, my recommendation was to specifically enjoin the COMELEC from implementing the disqualification of the SENIOR CITIZENS as a party-list candidate in the May 13, 2013 elections. In that way, said group would be retained in the list of party-list candidates pending the disposition of the petitions before the Court, and the actual seats intended for it, based on the number of votes it garnered, would be reserved. I further expressly stated in my cover letter dated May 27, 2013 that "[t]he TRO is subject to confirmation by the Court *En Banc* on June 4, 2013."

After verifying that no TRO had been approved for release yet by respondent, I modified my draft TRO two times on May 28, 2013 but the modifications were only in the "Whereas" clauses and the substance of the draft TRO remained the same.

However, the TRO actually approved for release by respondent on May 29, 2013 contained the following directive:

[A] TEMPORARY RESTRAINING ORDER is ISSUED, effective immediately and continuing until further orders from this Court, ordering You, respondent COMELEC, your agents, representatives, or persons acting in your place or stead, **to cease and desist from further proclaiming winners from among the party-list candidates**.

"GIVEN by authority of the Honorable Maria Lourdes P. A. Sereno, Chief Justice of the Supreme Court of the Philippines, **upon the written recommendation of the Member-in-Charge** x x x."[11] (Emphases mine.)

Obviously, respondent radically changed my recommendation on the scope of the TRO, *viz.*:

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[11] *Rollo* (G.R. Nos. 206844-45), pp. 351-353.

DIFFERENCES	DRAFT TRO	ISSUED TRO
Party Enjoined	COMELEC	COMELEC
Act/s Enjoined	The implementation of the assailed Resolution, which disqualified SENIOR CITIZENS as a party-list candidate in the elections and cancelled the registration and accreditation of SENIOR CITIZENS as a party-list organization	The proclamation of winners from among party-list candidates
Parties Affected	SENIOR CITIZENS, the two rival factions of which are the petitioners in the instant cases	All winning party-list candidates in the elections who have not been proclaimed yet as of the date of issuance of the TRO, even those not party to the pending petitions

Evidently, the TRO actually issued was **NOT AT ALL** what I recommended and the statement in the said TRO that it was issued by respondent's authority, upon my written recommendation, was an **absolute falsity**.

Respondent, unilaterally – without prior notice and discussion with me as the Member-in-Charge and without authority from the Court *en banc* – essentially disregarded my draft TRO and issued her own version of the TRO. Worse, the blanket TRO respondent issued enjoining the proclamation of all winning party-list candidates, including those who were not parties to the petitions pending in court, was a violation of the constitutional right to due process of said party-list organizations.

In an exchange of correspondences, I respectfully called respondent's attention to her unauthorized and unconstitutional TRO, but respondent maintained the propriety of the same.

Supreme Court E-Library

When the TRO was submitted before the Court *en banc* during its session on June 5, 2013, it was not confirmed. Instead, the Court *en banc* issued a *Status Quo Ante* Order[12] dated June 5, 2013, the pertinent portions of which are reproduced below:

WHEREAS, the Supreme Court, on June 5, 2013, adopted a resolution in the above-entitled case, to wit:

> ***G.R. Nos. 206844-45 (Coalition of Associations of Senior Citizens in the Philippines, Inc. [Senior Citizens Party-List], represented herein by its Chairperson & 1st Nominee, Francisco G. Datol, Jr. vs. Commission on Elections)*** and ***G.R. No. 206982 (Coalition of Associations of Senior Citizens in the Philippines, Inc. [Senior Citizens], represented by its President and Incumbent Representative in the House of Representatives, Atty. Godofredo V. Arquiza vs. Commission on Elections)***. – x x x.
>
> x x x x x x x x x
>
> WHEREAS, on June 4, 2013, the TRO dated May 29, 2013 was submitted to the Court *En Banc* for confirmation;
>
> After due deliberation, the Court *En Banc* resolved as follows:
>
> (a) The COMELEC, its agents, representatives, and/or persons acting in its place or stead are directed to refrain from implementing the assailed COMELEC Omnibus Resolution promulgated on May 10, 2013 in SPP No. 12-157 (PLM) and SPP No. 12-191 (PLM), **insofar as the COALITION OF ASSOCIATIONS OF SENIOR CITIZENS IN THE PHILIPPINES, INC. is concerned** and to observe the *status quo ante* before the issuance of the assailed COMELEC Resolution;
>
> **(b) The COMELEC shall reserve the seat(s) intended for petitioner COALITION OF ASSOCIATIONS OF SENIOR CITIZENS IN THE PHILIPPINES, INC.** according to the votes it garnered in the May 13, 2013 elections; however, the proclamation insofar as petitioner is concerned shall be held in abeyance until the present petitions are decided by this Court; and

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[12] 714 Phil. 606, 627 (2013).

(c) Acting on the *Most Urgent Motion for Issuance of an Order Directing Respondent to Proclaim Petitioner Pendente Lite*, the same is denied for lack of merit.

Previous orders, resolutions or issuances of the Court in these consolidated cases are superseded only insofar as they may be inconsistent with the present resolution. Carpio, J., on official leave. Velasco, Jr., J., no part. (adv4)

NOW, THEREFORE, effective immediately and continuing until further orders from this Court, You, COMMISSION ON ELECTIONS, your agents, representatives, or persons acting in your place or stead, are hereby directed to refrain from implementing the assailed COMELEC Omnibus Resolution promulgated on May 10, 2013 in SPP No. 12-157 (PLM) and SPP No. 12-191 (PLM) **insofar as the COALITION OF ASSOCIATIONS OF SENIOR CITIZENS IN THE PHILIPPINES, INC. is concerned** and to observe the *status quo ante* before the issuance of the assailed COMELEC Resolution.

Furthermore, you shall reserve the seat(s) intended for petitioner COALITION OF ASSOCIATIONS OF SENIOR CITIZENS IN THE PHILIPPINES, INC. according to the votes it garnered in the May 13, 2013 elections; however, the proclamation insofar as petitioner is concerned shall be held in abeyance until the present petitions are decided by this Court. (Emphases mine.)

Other than issuing a *Status Quo Ante* Order in lieu of a TRO, the Court *en banc* essentially adopted my recommended action as Member-in-Charge on the scope and extent of the injunctive relief granted to the petitioners, particularly that the Order should cover only the Coalition of Associations of Senior Citizens in the Philippines, Inc.

(c) Respondent's false claim before her colleagues to deprive the Court *en banc* of the opportunity to vote on and submit recommendees for a vacancy in the Supreme Court

Another instance when respondent exhibited her **lack of candor and honesty in dealing with her colleagues** was in

Supreme Court E-Library

relation to the application of then Solicitor General (SolGen),[13] now Supreme Court Associate Justice, Francis H. Jardeleza for the vacancy in the Supreme Court brought about by Associate Justice Abad's retirement on May 22, 2014, which became the subject of the case of *Jardeleza v. Sereno*[14] (*Jardeleza case*).

SolGen Jardeleza applied for the vacant post of Supreme Court Associate Justice vice Associate Justice Abad. SolGen Jardeleza was among the applicants interviewed by the JBC. However, respondent, as JBC Chairperson, raised questions as to SolGen Jardeleza's integrity and invoked against him the "unanimity requirement" under Section 2, Rule 10 of JBC-009,[15] which imposes a higher voting requirement for applicants whose integrity is being challenged. The JBC then verbally summoned SolGen Jardeleza for a hearing on the issue of his integrity on June 30, 2014. This prompted SolGen Jardeleza to file a letter-petition before the Court *en banc*, praying that the Court exercise its power of supervision over the JBC by directing the JBC, among other things, to give him written notice of the specific details of the charges against him; to give him an opportunity to cross-examine the witnesses against him; to postpone the hearing set on June 30, 2014; and to disallow respondent from participating in the voting for the shortlist of nominees for the Supreme Court post vacated by Associate Justice Abad.

Pursuant to the summons, SolGen Jardeleza appeared before the JBC for the hearing set on June 30, 2014 but before presenting his defense, he insisted that the JBC follow due process by

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[13] I will be using the title "Solicitor General" in my narration/discussion of events prior to Justice Jardeleza's appointment as Supreme Court Associate Justice.

[14] 741 Phil. 460 (2014).

[15] Section 2, Rule 10 thereof provides:

> Section 2. *Votes required when integrity of a qualified applicant is challenged.* – In every case when the integrity of an applicant who is not otherwise disqualified for nomination is raised or challenged, the affirmative vote of all the Members of the Council must be obtained for the favorable consideration of his nomination.

first reducing the charges against him into a written sworn statement. SolGen Jardeleza also requested that the JBC postpone the hearing until after the Court *en banc* had taken up his letter-petition. Without ruling on SolGen Jardeleza's requests, the JBC excused him from the hearing. The JBC then, in the afternoon of the same day, June 30, 2014, proceeded with the voting for the shortlist of nominees for the post of Supreme Court Associate Justice vacated by Associate Justice Abad. The said shortlist did not include SolGen Jardeleza, despite the fact that he obtained four out of six votes from the JBC members, as the unanimity rule was applied to him. With the transmittal of the shortlist to Malacañang, the Court *en banc* issued a Resolution dated July 8, 2014 which merely noted SolGen Jardeleza's letter-petition since it had already become moot and academic, "without prejudice to any remedy, available in law and the rules that Solicitor General Jardeleza may still wish to pursue."

Thus, SolGen Jardeleza filed before the Court *en banc* a petition for *certiorari* and *mandamus* against respondent, the JBC, and then Executive Secretary Paquito N. Ochoa, Jr. In its Decision dated August 19, 2014, the Court *en banc* adjudged that the JBC committed grave abuse of discretion in applying the "unanimity rule" on integrity against SolGen Jardeleza, which resulted in the deprivation of his right to due process. Consequently, the Court *en banc* granted SolGen Jardeleza's petition and ordered that he be included in the shortlist of nominees for the vacancy for Supreme Court Associate Justice vice Associate Justice Abad. SolGen Jardeleza was eventually appointed as Supreme Court Associate Justice by President Aquino from among the candidates in the revised shortlist.

It was during the course of the processing by the JBC of the applications for the vacancy in the Supreme Court resulting from Associate Justice Abad's retirement, and apparently in furtherance of respondent's efforts to block the inclusion of SolGen Jardeleza in the shortlist of qualified nominees for the said vacancy, that respondent **falsely claimed** that several Supreme Court Associate Justices wished to do away with the

Supreme Court E-Library

JBC undertaking under Section 1, Rule 8 of JBC-009.[16] Said rule gives the Court *en banc* the opportunity to be part of the JBC selection process by submitting its recommendees for the Supreme Court vacancy to the JBC.

Section 1, Rule 8 of JBC-009 – then the prevailing JBC Rules – expressly stated that:

> Sec. 1. *Due weight and regard to the recommendees of the Supreme Court*. — In every case involving an appointment to a seat in the Supreme Court, **the Council shall give due weight and regard to the recommendees of the Supreme Court**. For this purpose, the Council shall submit to the Court a list of candidates for any vacancy in the Court with an executive summary of its evaluation and assessment of each of them, together with all relevant records concerning the candidates from whom the Court may base the selection of its recommendees. (Emphasis mine.)

In accordance with the above rule, the JBC would provide the Court *en banc* with the dossiers of the qualified candidates for the vacant positions in the Court. The Court *en banc* would then vote during an *en banc* session on the top five candidates whose names would be submitted by the Chief Justice for consideration by the JBC. This process was respected and enforced by all the previous Chief Justices since 2000 until respondent was appointed Chief Justice in 2012.

In this instance, however, respondent circulated a letter dated May 29, 2014 to all the Members of the Court *en banc*, which is quoted in full below:

> THE MEMBERS OF THE COURT
>
> Dear Colleagues,
>
> To accommodate **the request of several Justices** that voting no longer be conducted among the Members of the Court with respect to the candidates for Associate Justice (*vice* Justice Roberto A. Abad), please be informed that I have decided to favorably consider such

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[16] JBC-009 was promulgated on October 18, 2000. Said rules had been superseded by **JBC No. 2016-01** (the Revised Rules of the Judicial and Bar Council), which took effect on October 24, 2016.

request. I am open, however, to any input you might have regarding any particular candidate.

Very truly yours,

(Signed)
MARIA LOURDES P.A. SERENO
Chief Justice
(Emphasis mine.)

The rest of the Court *en banc* initially relied in good faith on respondent's letter and no voting was held on the Court's recommendees to the JBC for the Supreme Court Associate Justice post vacated by Justice Abad. Subsequently, though, after the factual circumstances of the *Jardeleza case* were brought to their attention, the Supreme Court Associate Justices began asking one another who made the request to do away with the voting of recommendees for the Supreme Court vacancy, but no one admitted doing so. When directly confronted during an *en banc* session by the Supreme Court Associate Justices as to the identities of the "several Justices" referred to in her letter dated May 29, 2014, respondent was unable to name any of them.

Supreme Court Associate Justice Arturo D. Brion (Brion) related the very same events in his Concurring Opinion in the *Jardeleza case*,[17] thus:

I strongly believe, too, based on the circumstances and reasons discussed below, that **CJ Sereno manipulated the JBC processes to exclude Jardeleza as a nominee**. The manipulation was a purposive campaign to discredit and deal Jardeleza a mortal blow at the JBC level to remove him as a contender at the presidential level of the appointing process.

[**Of particular note in this regard is this Court's own experience when it failed to vote for its recommendees for the position vacated by retired Associate Justice Roberto A. Abad, because of a letter dated May 29, 2014 from the Chief Justice representing to the Court that "several Justices" requested that the Court do away with the voting for Court recommendees, as provided in Section 1, Rule 8 of JBC-009. When subsequently confronted on who these**

[17] 741 Phil. 460 (2014).

Supreme Court E-Library

Justices were, the Chief Justice failed to name anyone. As a result, applicants who could have been recommended by the Court (Jardeleza, among them), missed their chance to be nominees.][18] (Emphases mine.)

Justice Brion likewise observed that:

[The integrity objection] was apparently raised after a hidden campaign to exclude Jardeleza must have failed at the JBC, *i.e.*, after it became obvious that Jardeleza would get the required votes unless an overt objection was made. Note in this regard that ***even the Supreme Court appeared to have been manipulated when it was not given the chance to vote for its recommendees*. Apparently, Jardeleza would have made, if not topped, the list of Court recommendees** since the Members of the Court have seen him in action during the oral arguments, have read his pleadings, and collectively have a very high respect for the Solicitor General's handling of the Reproductive Health, the PDAF and the DAP cases, where he conducted a very creditable (although losing) presentation of the government's case.[19]

I wholly agree with Justice Brion that respondent wrote her letter dated May 29, 2014 to the Members of the Court in order to mislead us by her **false narration** in her letter and thereby keep us from taking part in the selection procedure of the JBC through the submission to the JBC of our list of recommendees for the Supreme Court vacancy, based on the existing JBC-009 Rules adopted by the JBC on October 18, 2000 during the incumbency of Chief Justice Hilario G. Davide, Jr., which list would have most likely included SolGen Jardeleza.

As a matter of record, the Court definitively ruled in the *Jardeleza case* that respondent and the JBC under its Chairperson, respondent, violated its own rules of procedure and the basic tenets of due process when they excluded SolGen Jardeleza from the shortlist of nominees for the vacant post of Supreme Court Associate Justice vice Associate Justice Abad. Verily, respondent's letter dated May 29, 2014 was just one of respondent's manipulative acts in order to block SolGen Jardeleza's nomination.

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[18] *Id*. at 547-548.

[19] *Id*. at 576-577.

Supreme Court E-Library

(d) The JBC, during respondent's incumbency as Chairperson, clustered the nominees for simultaneous vacancies in collegiate courts into six separate shortlists in violation of the Constitution; laws, rules, and jurisprudence; and the qualified nominees' rights to due process and equal opportunity to be appointed

On May 5, 2015, Republic Act No. 10660[20] took effect, amending Section 3 of Presidential Decree No. 1606,[21] as amended, increasing the number of Sandiganbayan divisions from five to seven divisions of three Justices each, thereby, indirectly increasing the total number of Sandiganbayan Justices (including the Presiding Justice) from 15 to 21 Justices.

The JBC published the announcement of the opening for application of the six newly-created vacancies in the Sandiganbayan on July 20, 2015 in the Philippine Star and Philippine Daily Inquirer, worded as follows:

A N N O U N C E M E N T

The Judicial and Bar Council (JBC) announces the opening/reopening, for application or recommendation, of the following positions

Position	Deadline for Submission of Applications or Recommendations (with conforme) and PDS	Deadline for Submission of Supporting Documents
A. Six (6) newly-created positions of Associate Justice of the Sandiganbayan	3 August 2015	18 August 2015

[20] An Act Strengthening Further the Functional and Structural Organization of the Sandiganbayan, Further Amending Presidential Decree No. 1606, as Amended, and Appropriating Funds Therefor.

[21] Revising Presidential Decree No. 1486 Creating a Special Court to be Known as "Sandiganbayan" and for Other Purposes.

Supreme Court E-Library

For the six simultaneous vacancies in the Sandiganbayan, the JBC, chaired by respondent, submitted the names of a total of 37 qualified nominees, divided into six separate shortlists of five to seven nominees each, and with each shortlist already bearing a specific numerical designation (*i.e.*, for the 16th, 17th, 18th, 19th, 20th, and 21st Sandiganbayan Associate Justices). The six shortlists were transmitted to President Aquino through six separate letters all dated October 26, 2015.

President Aquino disregarded the clusters and appointed two nominees shortlisted purportedly for the 21st Sandiganbayan Associate Justice, namely, Michael Frederick L. Musngi (Musngi) as the 16th Sandiganbayan Associate Justice and then Judge Econg as the 18th Sandiganbayan Associate Justice; while President Aquino appointed no one from those shortlisted for the 16th Sandiganbayan Associate Justice.[22] Consequently, the nominees shortlisted for the 16th Sandiganbayan Associate Justice filed the Petition for *Quo Warranto* under Rule 66 and *Certiorari* and Prohibition under Rule 65 in *Aguinaldo v. Aquino*.[23] (*Aguinaldo case*).

In the *Aguinaldo case*, the Court *en banc* unanimously found that President Aquino did not commit grave abuse of discretion in disregarding the clustering of the 37 qualified nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice. In my *ponencia* in said case, I expressly declared that the clustering by the JBC was in violation of the Constitution; laws, rules, and jurisprudence; and the qualified nominees' rights to due process and equal opportunity to be appointed.

The clustering was unconstitutional because it impaired the President's constitutional power to appoint members of the Judiciary.

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[22] Judge Philip A. Aguinaldo, Judge Reynaldo A. Alhambra, Judge Danilo S. Cruz, Judge Benjamin T. Pozon, and Judge Salvador V. Timbang, Jr.

[23] G.R. No. 224302, Decision dated November 29, 2016 and Resolutions dated February 21, 2017 and August 8, 2017.

Section 9, Article VIII of the 1987 Constitution exclusively vests upon the President the power to appoint members of the Judiciary:

> Sec. 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

The practice consistently observed by the JBC in previous years was for the JBC to submit to the President only one shortlist of all the qualified nominees for two or more simultaneous or closely successive vacancies in collegiate courts, *i.e.*, the Court of Tax Appeals, the Sandiganbayan, the Court of Appeals, and the Supreme Court. To meet the minimum requirement under the aforequoted constitutional provision, the JBC only needed to submit the names of at least three nominees for every vacancy, such that there should at least be 18 qualified nominees in one shortlist for six vacancies. This established practice was consistent with the President's exclusive power to appoint members of the Judiciary as the President was free to choose from all qualified nominees whom to appoint to the existing vacancies in a collegiate court.

Clustering of nominees to simultaneous vacancies in collegiate courts was a completely new practice adopted by the JBC only under respondent's incumbency as Chairperson. The JBC did not offer any explanation in its shift in practice.

The clustering of nominees into six separate shortlists by the JBC, and the transmittal of said shortlists to the President through six separate letters, were intended to limit the President's power to appoint to only one nominee from each of the six shortlists. The President was not supposed to appoint a nominee from one shortlist to a position covered by another shortlist. This makes clustering an unconstitutional encroachment by the JBC of the President's constitutionally vested power of appointment.

The clustering of nominees by the JBC was also completely arbitrary. There was no legal, objective, and rational basis

Supreme Court E-Library

for the clustering of the 37 qualified nominees into six separate shortlists as the requirements and qualifications, as well as the power, duties, and responsibilities, are the same for all Sandiganbayan Associate Justices. If a nominee was found to be qualified for one vacancy, the said nominee was also qualified for all the other five vacancies for the same post of Sandiganbayan Associate Justice.

Moreover, the assignment by the JBC of numerical designations to the six vacant posts of Sandiganbayan Associate Justice was invalid for it had absolutely no legal basis. The JBC published the announcement of the opening of the "[s]ix (6) newly-created positions of Associate Justice of the Sandiganbayan" without any distinction. The judicial positions in collegiate courts are not assigned any numerical designations because the rank of each Justice in said courts changes as incumbent Justices resign or retire from service. Accordingly, the President appoints his choice nominee to the post of Sandiganbayan Associate Justice, but not to a specific rank (as will be discussed later, ranking in seniority is determined automatically by the order of issuance of commissions/ appointments).

In fact, the assignment by the JBC of numerical designations to the vacancies was not only without legal basis, but was also in actual contravention of existing laws, rules, and jurisprudence on determining seniority of members of collegiate courts.

Presidential Decree No. 1606 provides:

Sec. 1. *Sandiganbayan; composition; qualifications; tenure; removal and compensation.* – x x x

x x x x x x x x x

The Presiding Justice shall be so designated in his commission and the other Justices shall have precedence according to the **dates of their respective commissions**, or, when the commissions of two or more of them shall bear the same date, according to the **order in which their commissions have been issued** by the President. (Emphases mine.)

The foregoing statutory provision solely vests upon the President the power to determine the seniority of the Sandiganbayan Associate Justices by the order of the issuance of their commissions/appointments, but the JBC arrogated this power unto itself by already assigning numerical designations to the six vacant posts of Sandiganbayan Associate Justice.

The assignment by the JBC of numerical designations to the six vacant posts of Sandiganbayan Associate Justice was likewise in violation of the internal rules of the Sandiganbayan. Under Rule II of the Revised Internal Rules of the Sandiganbayan:

> Sec. 1. *Composition of the Court and Rule on Precedence.* –
>
> x x x x x x x x x
>
> (b) *Rule on Precedence.* – The Presiding Justice shall enjoy precedence over the other members of the Sandiganbayan in all official functions. The Associate Justices shall have precedence according to the **order of their appointments**. (Emphasis mine.)

The assignment by the JBC of numerical designations to the six vacant posts of Sandiganbayan Associate Justice was contrary to jurisprudence as well. In *Re: Seniority Among the Four (4) Most Recent Appointments to the Position of Associate Justices of the Court of Appeals,*[24] the Court settled how seniority among new appointees to the Court of Appeals is determined, thus:

> For purposes of appointments to the judiciary, therefore, the date the commission has been signed by the President (which is the date appearing on the face of such document) is the date of the appointment. Such date will determine the seniority of the members of the Court of Appeals in connection with Section 3, Chapter I of BP 129, as amended by RA 8246. In other words, **the earlier the date of the commission of an appointee, the more senior he/she is over the other subsequent appointees. It is only when the appointments of two or more appointees bear the same date that the order of issuance of the appointments by the President becomes material**. This provision of statutory law (Section 3, Chapter I of BP 129, as amended by RA 8246) controls over the provisions of the 2009 IRCA

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[24] 646 Phil. 1, 11 (2010).

Supreme Court E-Library

which gives premium to the order of appointments as transmitted to this Court. Rules implementing a particular law cannot override but must give way to the law they seek to implement. (Emphasis mine.)

The aforementioned ruling may also be applied to the Sandiganbayan, which is a collegiate court, just like the Court of Appeals.

Finally, the clustering violated the rights of the qualified nominees: (a) to due process, and (b) to fair and equal opportunity to be appointed to any of the six simultaneous vacancies for Sandiganbayan Associate Justice for which they applied due to the lack of objective criteria, standards, or guidelines for the clustering or grouping of the nominees to a single position as determined by the JBC.

The applicants were denied due process of law since they were not properly notified that there would be clustering of qualified nominees and that they would only be considered for the one vacancy for which they were clustered and no longer for the other five vacancies. It was only at the end of the selection process that the JBC precipitously clustered the 37 qualified nominees into six separate shortlists for each of the six vacant posts of Sandiganbayan Associate Justice. Consistent with the JBC public announcement of opening of the vacancies for application, the nominees applied for any of the six new positions but the clustering confined the chance of a nominee to be appointed by the President to one specific position chosen by the JBC through the clustering method.

The clustering of nominees by the JBC further deprived qualified nominees of a fair and equal opportunity to be considered and appointed by the President for any of the six available vacancies. The lack of objective criteria, standards, or guidelines in determining which nominees are to be included in which cluster made clustering **vulnerable to manipulation to favor or prejudice a qualified nominee**. A favored nominee could be included in a cluster with no other strong contender to ensure his/her appointment; or conversely, a less favored nominee could be placed in a cluster with many strong contenders to minimize his/her chances of appointment.

Consequently, the Court upheld the appointment by President Aquino of Sandiganbayan Associate Justices Musngi and Econg, although they were clustered together in one shortlist, and the seniority of the six appointees in accordance with the order of issuance by the Office of the President of their commissions/ appointments as reflected in the bar codes of said documents.

The majority of the Court *en banc* concurred in my *ponencia* in the *Aguinaldo case* with the following dispositive portion:

> **WHEREFORE**, premises considered, the Court **DISMISSES** the instant Petition for *Quo Warranto* and *Certiorari* and Prohibition for lack of merit. The Court **DECLARES** the clustering of nominees by the Judicial and Bar Council **UNCONSTITUTIONAL**, and the appointments of respondents Associate Justices Michael Frederick L. Musngi and Geraldine Faith A. Econg, together with the four other newly-appointed Associate Justices of the Sandiganbayan, as **VALID**. x x x.[25]

The incidents I have recounted above in detail reveal respondent's propensity to make false statements in order to manipulate and deceive her colleagues in the Court and the public as well. Respondent's underhanded means to achieve her objectives, often in disregard or at the expense of collegial courtesy and established Court practices and procedures, caused problems and complications in Court processes and issuances, which eventually, the Court *en banc* had to remedy or rectify.

Incidentally, respondent attached to her Motion for Inhibition against me portions of the transcript of my testimony during the hearings before the House of Representatives Committee on Justice. In her Motion, respondent attempted to refute the veracity of my statements in the hearing by referring to and attaching the respective Comments submitted by Atty. Maria Milagros N. Fernan-Cayosa (Fernan-Cayosa), Atty. Jose V. Mejia

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[25] Eventually, in the Resolution dated February 21, 2017, the Court granted the motion/prayer for intervention of the JBC, but denied for lack of merit its Motion for Reconsideration (with Motion for the Inhibition of the *Ponente*) and the Motion for Reconsideration-in-Intervention (Of the Decision dated 29 November 2016).

Supreme Court E-Library

(Mejia), Justice Aurora Santiago Lagman (Lagman), and Atty. Annaliza Ty-Capacite in A.M. Nos. 17-11-12-SC and 17-11-17-SC. However, it is improper to cite said Comments because the factual matters and issues involved therein are the very subject of A.M. Nos. 17-11-12-SC and 17-11-17-SC that are still pending before the Court.

In fine, my statement, "*Hanggang kailan pa kami magtitiis?*"[26] is a plea for respondent to mend her ways and to put a stop to her habit of misleading and/or bypassing the Court *en banc*. It does not pertain to her removal from office. All I am interested in is to put a stop to respondent's repeated violation of the Constitution by arrogating unto herself matters that should be submitted to the Court *en banc* for deliberation and approval and to prevent further adverse consequences to public service.

I reiterate that my testimony, objectively given based on facts and fully supported by official documents, could not be said to have been motivated by prejudice or personal grudge, or to be indicative of bias or partiality. Thus, any allegation of my prejudice or partiality against respondent, amounting to a denial of respondent's due process, utterly lacks basis.

For the foregoing reasons, I **DENY** respondent's motion for my inhibition.

Respondent's road to the Supreme Court began with false entries in her PDS.

From respondent's application for the position of Supreme Court Associate Justice in 2010, then subsequently to her application for the position of Supreme Court Chief Justice in 2012, a pattern of lies and deceptions characterized respondent's conduct.

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[26] *Ad Cautelam* Respectful Motion For Inhibition (Of the Hon. Associate Justice Teresita J. Leonardo-De Castro), p. 17.

Together with her applications for the vacant post of Supreme Court Associate Justice in 2010 and for the vacant post of Supreme Court Chief Justice in 2012, respondent had to submit her sworn Personal Data Sheet (PDS). The JBC provides a specialized form of PDS to applicants to the Judiciary, identified as JBC Form No. 1. Respondent's 2010 PDS and 2012 PDS essentially contained the same entries. Even in filling out the said PDS, which is required to be **under oath**, respondent still demonstrated her penchant to deceive.

That respondent was a CHR Deputy Commissioner: In respondent's 2010 PDS and 2012 PDS, she indicated under Professional Experience that she held the position of "Deputy Commissioner" in the Commission on Human Rights (CHR) without specifying the period of her tenure. During the oral arguments, respondent practically admitted that **there was no actual position of "Deputy Commissioner" in the CHR** and it was merely her "functional title" in the predecessor office of the CHR, the defunct Presidential Committee on Human Rights. Her explanation is absurd as functions cannot be attributed to a **non-existent position in the CHR**.

Our exchanges concerning this matter during the oral argument are as follows:

JUSTICE DE CASTRO:

In your PDS, you mentioned that you're a Deputy Commissioner of the Commission on Human Rights. When was that period of time? Because your PDS did not mention the year when you were a Deputy Commissioner of the Commission on Human Rights. What was the period that you served in the CHR?

CHIEF JUSTICE SERENO:

It was a functional title. I don't have the exact details because you did not ask me to prepare for my PDS, allegations on the PDS. At least I didn't see that. So…

JUSTICE DE CASTRO:

So, it was not a Position Title because the…

Supreme Court E-Library

CHIEF JUSTICE SERENO:

It was a functional… No, no, it was a functional…

JUSTICE DE CASTRO:

Excuse me. Let me finish. The PDS has a matrix and the information required of the one accomplishing the PDS stated that you should put there your Position Title. But, so, when you accomplished that form, of the PDS, you mentioned that you were a Deputy Commissioner of the Commission on Human Rights. So, the question is, is there such a position in the Commission on Human Rights?

CHIEF JUSTICE SERENO:

If you are going to look at the way the PDS was trying to condense, the Commission on Human rights succeeded the Presidential Committee on Human Rights. **I was first hired with the Presidential Committee on Human Rights and given a title of Technical Consultant then a functional title of Deputy Commissioner** where I could vote *vice* Abelardo — who was the Commissioner. Then, it morphed into the Commission on Human rights but the terms of reference that were still to be carried over into that CHR was still to carry that because I was there for a while. I was going to explain this eventually.[27] (Emphases mine.)

***That respondent was a lecturer at Murdoch University and UWA*:** Respondent further made spurious claims in her 2010 PDS and 2012 PDS when she declared that she was a lecturer at Murdoch University in 2001-2002 and at University of Western Australia (UWA) in 2003-2007, teaching International Business Law. A reading of her entries in both PDS gives the impression that she was actually a faculty member at the said universities, which are based in Perth, Western Australia, Australia. In actuality, however, respondent was a lecturer at The Esteban School, now Australian International School, based in Taguig City, Metro Manila, Philippines. The Esteban School partnered with UWA and offered UWA's MBA program in the Philippines.[28]

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[27] TSN, April 10, 2018, pp. 161-162.

[28] Australian Embassy, The Philippines, September 5, 2013, *MR090513-University of Western Australia, Esteban School Extend Partnership for*

The deliberate omission of The Esteban School in respondent's 2010 PDS and 2012 PDS was just another audacious attempt to deceive, and respondent persisted in this lie when she refused to immediately acknowledge during the oral arguments that she taught at The Esteban School, to wit:

JUSTICE DE CASTRO:

That's why I'm asking this question. And now I have another question. In your comment, you submitted some endorsement from private persons and two of them mentioned that you were a lecturer in Murdoch University, in the University of Western Australia and at the Hague Academy of International Law, that was attached to your comment in this case. Have you lectured in Murdoch? Have you been to Murdoch and the University of Western Australia?

CHIEF JUSTICE SERENO:

I have been a lecturer in the Manila program of both universities. I have evidence to show that. Again, I object because this is not part of the petition. This is part of a global roaming event.

JUSTICE DE CASTRO:

You should not have submitted that to the Court. But that was part of your comment, that you were endorsed because of your qualification and one of, and among those qualifications are…

CHIEF JUSTICE SERENO:

The petition only talks about my SALN…

JUSTICE DE CASTRO:

…being lecturer of the Hague Academy of International Law, being a lecturer of the Murdoch University in Australia and lecturer in the University of Western Australia. Those were in your comment.

CHIEF JUSTICE SERENO:

All of those are true. But again, I object because this is not part of the petition.

Quality Postgraduate Education, <http://philippines.embassy.gov.au/mnla/medrel091305.html> (visited on May 4, 2018.)

Supreme Court E-Library

JUSTICE DE CASTRO:

So, you're saying under oath that…

CHIEF JUSTICE SERENO:

All of those are true.

JUSTICE DE CASTRO:

…those are true?

CHIEF JUSTICE SERENO:

True. 100% true.

JUSTICE DE CASTRO:

100% true?

CHIEF JUSTICE SERENO:

100% true.

JUSTICE DE CASTRO:

So, you're saying you've been to Murdoch University?

CHIEF JUSTICE SERENO:

Manila program, yes.

JUSTICE DE CASTRO:

In Australia?

CHIEF JUSTICE SERENO:

That's **an Australian program in Manila.**

JUSTICE DE CASTRO:

So, in the Philippines?

CHIEF JUSTICE SERENO:

Yes.

JUSTICE DE CASTRO:

But you did not say that in your PDS. So, have you been to the University of Western Australia in Australia?

CHIEF JUSTICE SERENO:

The Manila Extension Program, yes.

JUSTICE DE CASTRO:

So here in Manila?

CHIEF JUSTICE SERENO:

Yes.

JUSTICE DE CASTRO:

So it's the Esteban School, as you mentioned in your Answer?

CHIEF JUSTICE SERENO:

Yes.

JUSTICE DE CASTRO:

So, that Esteban School only has a partnership with those…

CHIEF JUSTICE SERENO:

So, what's wrong, Justice De Castro?

JUSTICE DE CASTRO:

…universities?

CHIEF JUSTICE SERENO:

It's an honor to be considered…

JUSTICE DE CASTRO:

Oh, yes.

No. I'm referring to your truthfulness in your PDS and the truthfulness of what you submitted…[29] (Emphases mine.)

Respondent's falsehoods in her sworn PDS when she applied to vacant posts in the Supreme Court foretold the deception she perpetrated regarding her SALNs to ensure her inclusion in the shortlist of nominees for the vacant post of Supreme Court Chief Justice.

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[29] TSN, April 10, 2018, pp. 165-168.

Supreme Court E-Library

The petition for quo warranto is granted as respondent's appointment is void from the beginning.

Respondent was included in the shortlist of qualified nominees for the vacant post of Supreme Court Chief Justice despite her failure to comply with the documentary requirements of the JBC for the said position, particularly, the submission of her SALNs for the years she worked for the government in the 10-year period prior to her application, because of her deceptive and misleading letter of July 23, 2012 to the JBC.

(a) The SALN requirement of the JBC for the Chief Justice post resulting from the impeachment of Chief Justice Corona

No less than the 1987 Constitution, under Article XI on Accountability of Public Officers, mandates that public officers and employees must file their SALNs:

Sec. 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism, and lead modest lives.

x x x x x x x x x

Sec. 17. A public officer or employee shall, upon assumption of office and as often as thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

To recall, the Senate, sitting as an Impeachment Court, found Chief Justice Renato C. Corona (Corona) guilty of the charge of failure to disclose all his properties in his SALNs. The Senators who voted to convict Chief Justice Corona maintained that the absolute confidentiality clause in the Foreign Currency Deposit

Act could not prevail over a public officer's duty to provide an accurate declaration of his net worth.

With Chief Justice Corona's removal from office, the JBC published on June 6, 2012 in the Philippine Daily Inquirer and the Philippine Star the announcement of "the opening, for application or recommendation" of, among others, the position of Supreme Court Chief Justice:

ANNOUNCEMENT

The Judicial and Bar Council (JBC) announces the opening, for application or recommendation, of the following positions[:]

Position	Qualifications	Deadline for Submission of Applications or Recommendations and Personal Data Sheet (PDS)	Deadline for Submission of Other Documentary Requirements
1. CHIEF JUSTICE OF SUPREME COURT	A member of the Supreme Court must a. be a natural-born citizen of the Philippines b. be at least forty (40) years of age but not seventy years old or more c. have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines; and d. be of proven competence, integrity, probity, and independence(Secs. 7 (1 & 3) and 11, Art. VII, Constitution	**18 June 2012** (Monday)	**3 July 2012** (Tuesday)

Supreme Court E-Library

x x x x x x x x x

Candidates for the **Chief Justice** post must submit, in addition to the foregoing, the following documents:

(1) All previous **SALNs** (up to 31 December 2011) for those in government or SALN as of 31 December 2011 for those from the private sector; and (2) Waiver in favor of the JBC of the confidentiality of local and foreign currency bank accounts under the Bank Secrecy Law and Foreign Currency Deposits Act.

x x x x x x x x x

Applicants with incomplete or out of date documentary requirements will not be interviewed or considered for nomination.

The impeachment trial of Chief Justice Corona and his conviction by the Senate sitting as Impeachment Court emphasized the importance of the SALN. As Senator Francis Joseph G. Escudero (Escudero) pointed out during the JBC *en banc* meeting on June 4, 2012, "the JBC should impose higher standards to aspirants for the position of Chief Justice."[30] Resultantly, the JBC required, in addition to the PDS and other usual requirements[31] for applications to vacancies in the Judiciary, that applicants for the post of Supreme Court Chief Justice submit "**[a]ll previous SALNs** for those in government or SALN as

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[30] Judicial and Bar Council Minutes 06-2012, June 4, 2012, p. 23.

[31] Clearances from the NBI, Ombudsman, IBP, Police from place or residence, Office of the Bar Confidant, and employer; Transcript of School Records; Certificate of Admission to the Bar (with Bar rating); Income Tax Return for the past two (2) years; Proofs of age and Filipino Citizenship; Certificate of Good Standing or latest official receipt from the IBP; Certificate of Compliance with, or Exemption from, MCLE; Sworn Statements of Assets, Liabilities, and Networth for the past two (2) years (for LEB candidates); Certification as to the number of years in the teaching of law (for LEB candidates only); and Results of medical examination and sworn medical certificate with impressions on such results, both conducted/issued within 2 months prior to the filing of application.

of 31 December 2011 for those from the private sector;" with the corresponding "[w]aiver in favor of the JBC of the confidentiality of local and foreign currency bank accounts under the Bank Secrecy Law and Foreign Currency Deposits Act." These twin requirements of SALNs and waiver of confidentiality of bank deposits would allow the JBC to verify the entries in the applicants' SALNs should there be any complaint against them. At the end of the Announcement, the JBC explicitly stated that "[a]pplicants with incomplete or out of date documentary requirements will not be interviewed or considered for nomination."

However, applicants for the vacant post of Supreme Court Chief Justice who had been in government service for decades had difficulty locating all their SALNs. For this reason, the JBC allowed, as substantial compliance, the submission by said applicants of their SALNs for at least the past 10 years, consistent with Section 8(C)(4) of Republic Act No. 6713 (the Code of Conduct and Ethical Standards for Public Officials and Employees), which provides:

> Sec. 8. Statements and Disclosure. – x x x
>
> x x x x x x x x x
>
> (C) Accessibility of documents. – x x x
>
> x x x x x x x x x
>
> (4) Any statement filed under this Act shall be available to the public for a period of **ten (10) years** after receipt of the statement. **After such period, the statement may be destroyed** unless needed in an on-going investigation. (Emphases mine.)

Section 3(c), Rule VII of the Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees (Implementing Rules of Republic Act No. 6713), reiterates:

> Sec. 3. x x x
>
> x x x x x x x x x

Supreme Court E-Library

(d) Any statement filed under the Code shall be available to the public, subject to the foregoing limitations, for a period of **ten (10) years** after receipt of the statement. **The statement may be destroyed after such period** unless needed in an on-going investigation. (Emphasis mine.)

Since official repositories of the SALNs are legally required to keep copies of filed SALNs for only 10 years, it was only reasonable for the JBC to expect that the applicants for the position of Chief Justice vacated by Chief Justice Corona in 2012 would be able to secure and submit copies of their SALNs at least for the same time period.

The above provisions of the law and the Rules could have been the basis of the JBC to allow substantial compliance with the SALN requirement to cover the 10-year period.

I agree with Senior Associate Justice Antonio T. Carpio that "since the government custodian is required to keep the SALNs for only 10 years, government employees cannot be required to keep their SALNs for more than 10 years. Thus, applicant for government positions, in particular, judicial positions, should not be required to submit SALNs more than 10 years prior to the application."

Counting the 10 years backwards, applicants to the vacant position of the Chief Justice in 2012 should be able to submit their SALNs as of **December 31, 2002 until December 31, 2011**.

Respondent's two PDS showed that she was a Professor at the University of the Philippines (UP) College of Law from 1986 to 2006, obtaining permanent status in 1994. Beginning 1994, respondent should have filed her SALNs yearly on or before April 30 of the immediately succeeding year. Upon her resignation from UP on June 1, 2006, she should have also filed her SALN as of May 31, 2006 on or before June 30, 2006. When respondent was appointed as Supreme Court Associate Justice on August 16, 2010, she should have submitted her SALN as of said date on or before September 15, 2010, and then yearly thereafter as of December 31, 2010 to December 31, 2011 to be filed on or before April 30 of 2011 and 2012, respectively.

To comply with the JBC requirement of submission of SALNs for the last 10 years (2002 to 2011), respondent should have submitted with her application for the Supreme Court Chief Justice vacancy in 2012 the following SALNs:

SALNs as of	To be filed on or before	No. of SALNs
December 31, 2002 to December 31, 2005	April 30 of immediately succeeding year, *i.e.*, April 30 of 2003 to 2006	4 SALNs
May 31, 2006	June 30, 2006	1 SALN
August 16, 2010	September 15, 2010	1 SALN
December 31, 2010 to December 31, 2011	April 30 of 2011 to 2012	2 SALNs

Yet, respondent submitted to the JBC **only three SALNs**, *viz.*: (a) her SALN as of December 31, 2009, revised as of June 22, 2012; (b) her SALN as of December 31, 2010; and (c) her SALN as of December 31, 2011, all of which she filed as a Supreme Court Associate Justice.

(b) Respondent's failure to submit to the JBC her SALNs from 2002 to 2006 when she was a Professor at the UP College of Law and her deceptive letter dated July 23, 2012

During the JBC *en banc* meeting on June 18, 2012, it was agreed upon that the deadline for submission of applications/ recommendations and PDS for the Supreme Court Chief Justice vacancy would be moved to July 2, 2012 (Monday) and the deadline for other documentary requirements would be on

Supreme Court E-Library

July 17, 2012 (Tuesday).[32] The announcement of the extensions of the deadlines for submission of requirements was published in the Philippine Daily Inquirer and Philippine Star on July 20, 2012.[33]

The root of respondent's deceptions lies in her letter dated July 23, 2012 to the JBC, in which she wrote:

JUDICIAL AND BAR COUNCIL
2nd Floor Centennial Building
Supreme Court, Padre Faura
Ermita, Manila

Subject: Call of Atty. Richard Pascual on 20 July 2012

Dear Sirs and Mesdames:

I write with respect to the follow-up made by your Atty. Richard Pascual last Friday, July 20, regarding the submission of my previous Statements of Assets, Liabilities and Net Worth (SALNs) from 1995 to 1999.

As I had noted in my Personal Data Sheet, after my resignation from government service in 2006, as a professor at the University of the Philippines, I became a full-time private practitioner. Hence, when I was nominated for the position of Associate Justice of the Supreme Court in 2010, my nomination was considered as that of a private practitioner, and not as a government employee. Thus, the requirements imposed on me in connection with the consideration of my name, were those imposed on nominees from the private sector, and my earlier-terminated government service, did not control nor dominate the kind of requirements imposed on me.

Considering that most of my government records in the academe are more than fifteen years old, it is reasonable to consider it infeasible to retrieve all of those files.

In any case, the University of the Philippines has cleared me of all academic/administrative responsibilities, money and property accountabilities and from administrative charges as of 01 June 2006.

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[32] Judicial and Bar Council Minutes 07-2012, June 18, 2012, pp. 12, 14.

[33] Judicial and Bar Council Minutes 08-2012, June 25, 2012, p. 2.

Since it is the ministerial duty of the Head of the Office to ensure that the SALNs of its personnel are properly filed and accomplished (CSC Resolution No. 060231 dated 01 February 2006 and CSC Memorandum Circular No. 10-2006 dated 17 April 2006), this clearance can be taken as an assurance that my previous government employer considered the SALN requirements to have been met. A copy of the Clearance dated 19 September 2011 issued by the University of the Philippines is hereby attached.

In the 05 June 2012 Announcement, the Judicial and Bar Council imposed the requirement of submitting all previous SALNs for those in the government. As I pointed out earlier, my service in the government is not continuous. The period of my private practice between my service in the University of the Philippines ending in 2006 and my appointment to the Supreme Court in 2010 presents a break in government service. Hence, in compliance with the documentary requirements for my candidacy as Chief Justice, I submitted only the SALNs from end of 2009 up to 31 December 2011, since I am considered to have been returned to public office and rendered government service anew from the time of my appointment as Associate Justice on 16 August 2010.

Considering that I have been previously cleared from all administrative responsibilities and accountabilities from my entire earlier truncated government service, may I kindly request that the requirements that I need to comply with, be similarly viewed as that from the private sector, before my appointment to the Government again in 2010 as Associate Justice of the Supreme Court.

Thank you for your kind understanding.[34]

Respondent's letter contained several misrepresentations/lies, all with the collective intention of convincing the JBC that she need not submit her SALNs even for just the immediately preceding 10-year period.

First Observation: In her letter dated July 23, 2012 to the JBC, respondent alleged that then Atty. Richard O. Pascual[35]

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[34] Annex "11" to Respondent's Memorandum *Ad Cautelam*.

[35] Now Acting Presiding Judge, Metropolitan Trial Court, Quezon City, Branch 37.

Supreme Court E-Library

(Pascual), as Chief, Office of Recruitment, Selection and Nomination (ORSN) of the JBC, followed up on the submission of her SALNs for 1995 to 1999. However, it is doubtful that Atty. Pascual would require the submission of respondent's earlier SALNs when respondent was unable to submit even her more recent SALNs, specifically, her SALNs for 2002 to 2006, which years were more proximate to 2012 when she applied for the position of Chief Justice.

Second Observation: Respondent stated in the same letter dated July 23, 2012 to the JBC that "[c]onsidering that most of my government records in the academe are **more than fifteen years old**, it is reasonable to consider it infeasible to retrieve all of those files."

Considering that respondent referred to the SALNs of more than 15 years past from 2012, which she claimed to be irretrievable, she should have submitted her recent SALNs, that would be SALNs for 2002, 2003, 2004, 2005, and 2006, but she did not do so. She did not even make an attempt to secure the said SALNs from UP. This omission casts doubts as to the availability of all her SALNs for the said five years. In fact, it turned out that among the required SALNs, respondent only has on record in UP her 2002 SALN. Respondent did not submit to the JBC even this 2002 SALN. If she did, she could have been asked by the JBC to produce copies of her SALNs for the other abovementioned years from UP. In all probability, respondent wanted to avoid this by not submitting her readily available 2002 SALN.

Third Observation: In respondent's letter dated July 23, 2012 to the JBC, she gave the impression that she submitted all her SALNs to UP and that the clearance given to her by UP upon her resignation meant that she had duly complied with the SALN requirement.

Respondent attached to her letter dated July 23, 2012 to the JBC the Certificate of Clearance issued on September 19, 2011 in her favor by Angela D. Escoto (Escoto), Director, Human Resources Development Office of UP (UP-HRDO), which

respondent urged the JBC to take "as an assurance that my previous government employer considered the SALN requirements to have been met." Said Certificate of Clearance reads in full:

> This is to certify that **Prof. MA. LOURDES A. SERENO**, Associate Professor 2 of the U.P. Law Complex, has been cleared of all academic/administrative responsibilities, money and property accountabilities and from administrative charges in the University as of June 1, 2006.
>
> It is understood that this clearance is without prejudice to her liabilities for any accountabilities/charges reported to this office after the aforementioned date and subject to COA disallowance.
>
> This certification is issued on September 19, 2011 to Prof. Sereno in connection with her resignation on June 1, 2006.[36]

The Certificate of Clearance of the UP-HRDO cleared respondent, in general, of all "academic/administrative responsibilities, money and property accountabilities and from administrative charges in the University as of June 1, 2006." **There is no specific mention therein of respondent's SALNs or any indication that these were checked prior to the issuance of the Certificate of Clearance.** The University Clearance Form (Revised as of January 25, 2005),[37] which respondent must accomplish and submit when she resigned as UP Professor and on which the UP-HRDO most likely based its Certificate of Clearance, only required that the following university officials/ offices sign thereon to clear respondent: (a) Unit Supply Officer; (b) Adm. Officer/Office Head; (c) Dean/Director; (d) Personnel Clearance; (e) Civil/Criminal/Adm. Charges by the Diliman Legal Office; (f) Office of the Vice Chancellor for Research and Development; (g) Supply & Property Mgt. Office; (h) Credit Union; (i) Office of Community Relations; (j) Housing Office; (k) University Library; (l) OSSS (Student Loan Board); (m) UP Health Service; (n) UP Provident Fund; (o) Business Concessions Office; (p) Cash Office; and (q) Accounting Office.

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[36] Annex "2" of Respondent's Memorandum *Ad Cautelam*.

[37] <http://hrdo.upd.edu.ph/Form_Clearance.pdf> (visited on May 8, 2018).

Supreme Court E-Library

There is no apparent university official/office among those listed in the University Clearance Form who/which would particularly review respondent's compliance with the SALN requirement and sign to clear her of the same.

Indeed, Director Escoto, in her letter dated March 6, 2018,[38] directly refuted respondent's avowal that she had duly met the SALN requirement as UP Professor, by stating that only respondent's SALNs for 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002 were found in the records of the UP-HRDO. Respondent's SALNs for 2003 to 2006 were not on file.

Fourth Observation: In her letter dated July 23, 2012, respondent prodded the JBC to apply to her the requirements for those in the private sector, deliberately causing confusion as to the actual documentary requirements required of her in connection with the Supreme Court Chief Justice vacancy in 2012. Respondent was an applicant from the private sector only as regards to her application for the vacant post of Supreme Court Associate Justice in 2010, for which there was no SALN requirement. As for her application for the vacant post of Supreme Court Chief Justice in 2012, respondent was bound to comply with the express requirement that applicants in government service should submit to the JBC all their SALNs, later reduced to their SALNs for the past 10 years as substantial compliance, despite the four-year gap in her government service within the said 10-year period.

Fifth Observation: Respondent is either unable or unwilling to submit her 2003 to 2006 SALNs. During the same time periods, respondent was working as part of the legal team representing the Republic of the Philippines in the investment arbitration cases then before international forums, *i.e.*, *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines*[39] (*Fraport case*) and *Philippine International Air*

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[38] Annex "O" of the Reply to the Petition for *Quo Warranto*.

[39] ICSID Case No. ARB/03/25 before the International Centre for the Settlement of Investment Disputes (Washington, D.C.).

Supreme Court E-Library

Transport Co. v. Republic of the Philippines[40] (*PIATCO case*). In the PDS she submitted to the JBC in 2010 in connection with her application for the vacant post of Supreme Court Associate Justice, respondent herself declared that the *Fraport case* was pending from 2003 to 2007, while the *PIATCO case* was filed in 2003 and was still pending as of 2010. For her legal services in the two international investment arbitration cases, respondent received from the Office of the Solicitor General a total income of ₱30,269,975.49, broken down annually as follows:

Year	*Income from OSG*
2004	₱7,055,513.56
2005	₱11,532,226.00
2006	₱2,636,006.64
2007	₱4,673,866.36
2008	₱4,070,810.93
2009	₱301,552.00
TOTAL	₱30,269,975.49[41]

From January 1, 2004 to May 30, 2006, respondent was still a UP Professor with the duty to file her SALNs and declare therein the millions she had earned from the *Fraport case* and *PIATCO case*, but her SALNs covering said time periods were among those still missing and which she failed to submit to the JBC in connection with her application for the vacant post of Supreme Court Chief Justice in 2012.

(c) Respondent's defective or problematic SALNs

Respondent submitted to the JBC with her applications for the vacant post of Supreme Court Associate Justice in 2010

[40] ICC Case No. 12610/TE/MW/AVH/JEM, before the International Chamber of Commerce-International Court of Arbitration (Paris, Singapore).

[41] Respondent's Memorandum *Ad Cautelam*, pp. 7-8.

Supreme Court E-Library

and for the vacant post of Supreme Court Chief Justice in 2012 a total of four SALNs, *viz.*: (1) SALN as of December 31, 2006; (2) SALN as of December 31, 2009, revised as of June 22, 2012; (3) SALN as of December 31, 2010; and (4) SALN as of December 31, 2011, two of which appear defective or problematic upon closer review.

SALN as of December 31, 2006: Respondent submitted her SALN as of December 31, 2006 in connection with her application for the vacant post of Supreme Court Associate Justice in 2010.

In her letter to the JBC dated July 28, 2010, respondent wrote, "[y]esterday, I submitted my Statement of Assets and Liabilities[,]" noticeably not referring to the document as a "sworn" SALN.

An examination of the SALN[42] referred to above would reveal that printed on the top of page 1 thereof were the words "[a]s of 31 Dec. 2006"; yet on page 3, respondent filled out the *jurat* of the SALN as: "SUBSCRIBED AND SWORN TO before me this 27th day of July, 2010 x x x." The underlined portions were in respondent's handwriting. While respondent dated the *jurat*, she left the space for the date of execution of the SALN blank. Respondent signed the said SALN and dated the *jurat*, but the "Person Administering Oath" and "Duty & Unit Assignment" were also left blank, meaning that said SALN was not executed under oath.

It is also very evident that the SALN Form respondent used was not the 1994 SALN Form from the Civil Service Commission. It appears to be the SALN Form (Revised Form 24 Dec 04)[43] specific for the Armed Forces of the Philippines.

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[42] See Annex "E" of the Petition for *Quo Warranto*.

[43] Annex "43" of Respondent's Memorandum *Ad Cautelam*; <http://www.army.mil.ph/home/pdf_files/Promulgated_PA_Doctrine_Manuals/1.%20Pesronnel/PAM%201-15%20-%20OESPA.pdf> (visited on April 16, 2018).

During the oral arguments, respondent alleged that the handwritten date of July 27, 2010 on the second page is the controlling date for the SALN and not the printed date of December 31, 2006 on the first page. Respondent testified during the oral arguments that:

CHIEF JUSTICE SERENO:

The JBC did not inquire from me my 2006 SALN. They requested me to give my Statement of Assets regardless of whether it's sworn or not as of the time of application. Now, the form there, the only form I used there was a downloadable form as of 2006 but if you can look at the signature portion, it is 2010. So, it is a metric tool that was used by the JBC and they explained it to me intimately that it had to do with the measurement of the banks, deposits and the income tax return. So, that SALN is not the SALN contemplated by law but it is another measurement tool of the JBC.

x x x x x x x x x

CHIEF JUSTICE SERENO:

It's not the SALN required by law. I had to find a form I could easily file because I was being asked to immediately sent it by fax. So, the only downloadable form was what was available in the website. I downloaded it, I filled it up, I sent it.[44]

Hence, by her own words, the supposed 2006 SALN on file of the JBC – being unsubscribed, accomplished using an unauthorized form, obviously haphazardly filled out by respondent because it was "not the SALN contemplated by law," and was purportedly a mere "metric tool" for the JBC – is a just piece of paper, which does not really serve as respondent's SALN for 2006 or even for 2010.

As mandated under Section 8(A) of Republic Act No. 6713, SALNs shall be filed (a) within 30 days after assumption of office; (b) on or before April 30, of every year thereafter; and (c) within thirty 30 days after separation from the service. In 2006, respondent was supposed to have filed her SALNs twice: (1) her SALN as of December 31, 2005 to be filed on or before

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[44] TSN, April 10, 2018, pp. 34, 35.

Supreme Court E-Library

April 30, 2006; and (2) her SALN as of May 31, 2006, her last day in government service given her resignation effective June 1, 2006, to be filed on or before June 30, 2006.

There is no proof or any indication on record that respondent had filed said SALNs in 2006. If she did file the said two SALNs in 2006, there would have been no reason to fabricate the unsworn 2006 SALN she filed in connection with her application for the Supreme Court Associate Justice vacancy. This reinforces the conclusion that she did not accomplish and file her SALNs in 2006 as required by law and the rules.

SALN as of December 31, 2009: Respondent's SALN as of December 31, 2009 was initially executed and subscribed to by her on September 16, 2010. Respondent subsequently revised said SALN on June 22, 2012.

It is surprising why respondent had to file her SALN as of December 31, 2009, when she was still in the private sector at the time. Respondent likewise indicated therein that her position as of December 31, 2009 was already "Associate Justice" and her office was "Supreme Court of the Philippines." Respondent was appointed Supreme Court Associate Justice only on August 16, 2010.

Apparently, respondent's SALN as of December 31, 2009, executed and subscribed to by her on September 16, 2010, was intended as her compliance with the requirement under Section 8(A) of Republic Act No. 6713 and Section 1(b)(1), Rule VII of the Implementing Rules of Republic Act No. 6713 that she file a SALN within 30 days after her assumption of office. However, respondent's SALN was executed and subscribed to a day late because the 30-day period from her assumption of office on August 16, 2010 ended on September 15, 2010.

More importantly, respondent overlooked that such a SALN should be reckoned as of her first day of service, *i.e.*, August 16, 2010, as provided under Section 1(b)(1) of the Implementing Rules of Republic Act No. 6713, and not as of December 31 of the immediately preceding year, 2009. Such a SALN, reckoned as of the date of assumption of office of the public official or

employee, shall serve as the baseline for his/her assets, liabilities, and net worth in the succeeding years in government service. Respondent's SALN reckoned as of December 31, 2009, or eight months prior to her assumption of office on August 16, 2010, would be non-compliant and useless because she could have acquired assets and liabilities during the eight-month interim, which would not be reflected in the SALN that should have been filed as of the date she assumed her position.

Respondent revised her SALN as of December 31, 2009 on June 22, 2012, prior to filing her application of the Supreme Court Chief Justice vacancy, but she only adjusted the values of the real and personal properties she declared therein and she did not correct any of the above-mentioned substantial defects.

When questioned as to her defective SALN as of December 31, 2009 and her failure to comply with the law and implementing rules, respondent only offered an invalid excuse that she did not have enough time, given the pressure and workload of her new office, and I quote:

CHIEF JUSTICE SERENO

August 16… So I assumed office, I entered into the functions of my office, August, same day. How can I? We were preparing for the oral arguments, then following day was the Hacienda Luisita, I have to have bank certifications of all my bank records. I have to force my husband to compute our estimated tax liabilities, I have to make a run down of all the debts that are due me and I have not been paid. I have to, at the same time, find out if I owe anybody anything. An then if I have to find out that valuation of all my properties, how can you do that in a matter of three weeks, Justice De Castro? This is the most absurd, oppressive interpretation ever. What I am offering the government is a good database from which to assess whether I'm violating the SALN law. I have *end 2009*, I have *end 2010*, government can run after me if I have any ill-gotten wealth. In the first place, the SolGen has not made out any case that I have violated anything of any kind.[45]

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[45] TSN, April 10, 2018, p. 46.

Supreme Court E-Library

(d) Did the failure of respondent to submit her SALNs escape the scrutiny of the JBC Execom?

On July 16, 2012, the JBC *en banc* agreed that they will strictly enforce the policy not to interview applicants who failed to comply with the documentary requirements within the period set, especially with respect to applicants for the Supreme Court Chief Justice post vacated by Chief Justice Corona, thus:

> Senator Escudero said that pursuant to what was agreed upon by the JBC with respect to lower court judges that if they do not submit their requirements on time, they would not be considered for interview and nomination.
>
> Justice Lagman read the portion of the minutes during the last meeting, particularly, page 6, lines 35-38, as follows:
>
> *The Council likewise agreed to follow the policy, which was previously adopted, that the JBC would not interview applicants and considered for nomination by the Council En Banc if they fail to comply with all the requirements within a certain period.*
>
> Congressman Tupas commented that **considering that the position to be filled is Chief Justice of the Supreme Court, with more reason that the policy should be applied to the candidates**.
>
> Senator Escudero concurred with the manifestation of the Congressman.[46] (Emphasis mine.)

Thereafter, the JBC *en banc*, during its meeting on July 20, 2012, deliberated on the documentary requirements submitted by each applicant for the Supreme Court Chief Justice vacancy. Relevant portions of the Minutes of said Meeting are reproduced below:

> **III. Deliberation on Candidates with Incomplete Documentary Requirements**
>
> At the outset, the Executive Officer said that the Council was furnished with copies of the matrix of candidates regarding the

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[46] Judicial and Bar Council Minutes 10-2012, July 16, 2012, pp. 10-11.

submission of [documentary] requirements. She then mentioned that, as per instruction, this matter is in the agenda for the purpose of discussing whether those with lacking requirements would still be interviewed or would be given another deadline.

Justice Peralta suggested that the Council examine the matrix per candidate, as follows:

x x x x x x x x x

Senator Escudero said that assuming that the Council agreed to give them until Monday, July 23, 2012 before the start of the interview, it seems that there might no longer be a chance for the JBC to meet and discuss the matter. He asked for clarification whether failure of the candidates to complete the requirements until the closing of office hours on Monday would result in the exclusion of their names from the list to be interviewed and to be considered for nomination even if the lacking requirement is just laboratory results or medical certificate

x x x x x x x x x

10. **Justice Maria Lourdes P. A. Sereno**

The Executive Officer informed the Council that **she had not submitted her SALNs for a period of ten (10) years**, that is, from 1986 to 2006.

Senator Escudero mentioned that Justice Sereno was his professor at U.P. and that they were required to submit SALNs during those years.

x x x x x x x x x

Senator Escudero moved that the motion of Justice Lagman to extend the deadline on Monday be applied to all the candidates and that **the determination of whether a candidate has substantially complied with the requirements be delegated to the Execom**. He further moved that any candidate who would still fail to complete the requirements at the close of office hours on Monday, July 23, 2012 would be excluded from the list to be interviewed and considered for nomination; unless, they would be included if in the determination of the Execom he or she has substantially complied.[47] (Emphases mine.)

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[47] Judicial and Bar Council Minutes 11-2012, July 20, 2012, pp. 8-12.

Supreme Court E-Library

It would seem that after the said meeting, Atty. Pascual called respondent to follow-up on her SALNs as UP Professor. Instead of submitting additional SALNs, respondent submitted her letter dated July 23, 2012. The deadline for submission of documentary requirements for all applicants was at the close of office hours on July 23, 2012 (Monday), since interviews of the qualified candidates were already scheduled to start the following day, July 24, 2012 (Tuesday). The four regular members of the JBC, who also comprise the JBC Executive Committee (Execom), namely, Justice Regino C. Hermosisima, Jr., Justice Lagman, Atty. Mejia, and Atty. Fernan-Cayosa, were furnished copies of respondent's letter dated July 23, 2012 also on July 23, 2012. The *Ex Officio* Members of the JBC, namely, Associate Justice Diosdado M. Peralta,[48] then Undersecretary Musngi vice Secretary of Justice Leila M. De Lima,[49] Senator Escudero, and Congressman Niel C. Tupas were not furnished the said letter.

Prior to the interviews scheduled on July 24, 2012, Atty. Pascual, as ORSN Chief, prepared and submitted to the JBC Execom a Report Re: Documentary Requirements and SALN of Candidates for the Position of Chief Justice of the Philippines,[50] which already included respondent in the list of candidates with complete requirements:

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[48] Supreme Court Associate Justice Peralta was the Acting Chairperson of the JBC as the five most senior Supreme Court Associate Justices were automatically nominated for the vacant position of Chief Justice.

[49] Secretary De Lima was also a candidate for the position of Chief Justice.

[50] Annex "38" of Respondent's Memorandum *Ad Cautelam*.

Supreme Court E-Library

NAME OF APPLICANT	LACKING REQUIREMENTS
1. ABAD, ROBERTO A.	COMPLETE REQUIREMENTS
2. BAUTISTA, ANDRES D.	COMPLETE REQUIREMENTS
3. BRION, ARTURO D.	COMPLETE REQUIREMENTS
4. CAGAMPANG-DE CASTRO, SOLEDAD M.	COMPLETE REQUIREMENTS
5. CARPIO, ANTONIO T.	COMPLETE REQUIREMENTS
6. DE LIMA, LEILA M.	COMPLETE REQUIREMENTS
7. HERBOSA, TERESITA J.	COMPLETE REQUIREMENTS
8. JARDELEZA, FRANCIS H.	COMPLETE REQUIREMENTS
9. LEGARDA, MARIA CAROLINA T.	COMPLETE REQUIREMENTS
10. LEONARDO-DE CASTRO, TERESITA J.	COMPLETE REQUIREMENTS
11. MORALES, RAFAEL A.	COMPLETE REQUIREMENTS
12. PANGALANGAN, RAUL C.	COMPLETE REQUIREMENTS
13. SARMIENTO, RENE V.	COMPLETE REQUIREMENTS
14. SERENO MARIA LOURDES A.	**COMPLETE REQUIREMENTS** **Letter 7/23/12 – considering that her government records in the academe are more than 15 years old, it is reasonable to consider it infeasible to retrieve all those [files].**
15. VELASCO, PRESBITERO JR. J.	COMPLETE REQUIREMENTS
16. ZAMORA, RONALD B.	COMPLETE REQUIREMENTS
17. DIOKNO, JOSE MANUEL I. ·	**• SALN (LETTER DATED 7/21/12 REQUESTING FOR EXTENSION TO SUBMIT UNTIL JULY 27, 2012)**

Supreme Court E-Library

18. **RODRIGUEZ, RUFUS B.**	NOTE: DID NOT ARRIVE FOR [PSYCHOLOGICAL] AND PSYCHIATRIC EVALUATION DTD JULY 23, 2012 • NOTARIZED PDS • TOR • ITR-2010 • NBI CLEARANCE • LAB RESULTS & SWORN MED CERT. • POLICE CLEARANCE • **SALN-ALL PREVIOUS** • WAIVER
19. SIAYNGCO, MANUEL DJ.	• LAB RESULTS (HEMATOLOGY) • MCLE CERT. OF COMPLIANCE
20. VALDEZ, AMADO D.	MCLE CERT. OF COMPLIANCE
21. **VELASQUEZ, VICENTE R.**	• TOR • CERT. OF ADMISSION • ITR • CLEARANCES-NBI & OMB • PROOFS OF AGE AND CITIZENSHIP • LAB RESULTS & SWORN MED CERT. • POLICE CLEARANCE • **SALN AS OF DEC. 31, 2011**
22. VILLANUEVA, CESAR L.	• ITR OBC CLEARANCE LAB RESULTS & SWORN MED CERT. (Emphases mine.)

Observe how the entry on respondent was presented in the table above: (a) The first line clearly stated "Complete Requirements," only to be followed by the note on respondent's letter dated July 23, 2012; and (b) the note, lifting the words

from respondent's letter dated July 23, 2012, referred only to respondent's "government records in the academe" which were infeasible to retrieve. It is not readily apparent that respondent still lacked several SALNs and that the note actually pertained to respondent's SALNs. Yet, as for entries on other candidates, *i.e.*, Jose Manuel I. Diokno, Rufus B. Rodriguez (Rodriguez), and Vicente R. Velasquez (Velasquez), notice how clearly it was indicated that they still lacked SALNs.

During its undocumented meeting on July 24, 2012, the JBC Execom excluded from the interviews only two candidates, Rodriguez and Velasquez.

Respondent's Profile Matrix, again prepared and submitted by the ORSN, was used by the JBC *en banc* for respondent's interview on July 27, 2012 and in the *en banc* meetings on August 6, 10, and 13, 2012. The "Remarks" column of said Matrix contained, among other things, the following entries:

Name	x	x	Remarks
15. SERENO, MARIA LOURDES ARANAL	x	x	x x x x SALN 2009-2011

(Succeeding page of matrix)	x	x	Letter 7/23/2012 – Considering that her government records in the academe are more than 15 years old, it is reasonable to consider it infeasible to retrieve all those [files]. x x x x

Once more, it cannot be gathered from the afore-quoted entries that respondent still had missing SALNs. The note on respondent's letter dated July 23, 2017 made no direct reference to respondent's SALNs but only to her "government records in the academe." What's worse, the entry of "SALN 2009-

Supreme Court E-Library

2011" was on the first page and the note on respondent's letter was already printed on the next page. Thus, one would not easily derive that the two entries were connected and concerned with respondent's lacking SALNs.

As of the JBC *en banc* meeting on July 20, 2012, it was expressly noted that respondent had not submitted her SALNs for the past 10 years. In fact, after said meeting, Atty. Pascual called respondent to follow-up on her submission of SALNs. However, with the mere submission by respondent of her letter dated July 23, 2012 to the JBC – wherein she deceptively claimed that since most of her "government records in the academe are more than fifteen years old," they are infeasible to retrieve – she was already deemed to have substantially complied with the requirements and was eligible to be interviewed.

The information as regards respondent in the Report dated July 24, 2012 and respondent's Personal Matrix from the ORSN was not accurately nor clearly presented. It could not be gleaned from a cursory reading of said documents that respondent still had incomplete SALNs. To the contrary, one could be easily misled into believing that respondent had already submitted complete documentary requirements. However, since the JBC Regular Members, who also constituted the JBC Execom, were actually furnished copies of respondent's letter dated July 23, 2012, then they had first-hand knowledge of respondent's failure to submit her SALNs as a UP Professor. JBC *Ex Officio* Members, meanwhile, who were furnished only respondent's Personal Matrix and not the respondent's letter of July 23, 2012 would not have been sufficiently informed of respondent's lack of SALNs.

Ultimately, the JBC *en banc* finalized the shortlist of candidates for the vacant post of Supreme Court Chief Justice and transmitted the same to President Aquino through a letter dated August 13, 2012. The shortlisted candidates were:

1. Carpio, Antonio T.	- 7 votes
2. Abad, Roberto A.	- 6 votes
3. Brion, Arturo D.	- 6 votes

4. Jardeleza, Francis H.	- 6 votes
5. Sereno, Maria Lourdes P. A.	- 6 votes
6. Zamora, Ronaldo B.	- 6 votes
7. Leonardo-De Castro, Teresita J.	- 5 votes
8. Villanueva, Cesar L.	- 5 votes

From said shortlist, President Aquino appointed respondent Chief Justice on August 16, 2012.

Going over the events recounted above, there appears to be circumstances which ought to be looked into why respondent was allowed to be shortlisted despite non-compliance with the JBC requirements for applicants in government service to submit their SALNs for the past 10 years. This is precisely the subject of an administrative matter (A.M. No. 17-11-12-SC) pending before the Court, which is different and separate from the issue of respondent's personal liability for her non-compliance with the SALN requirements under the Constitution, laws, and implementing rules .

Respondent's pattern of deception continued in the misleading of the public on the real nature of her leave of absence from the Court.

Only very recently, respondent and her spokespersons created confusion as to the nature of respondent's leave of absence from the Court in the midst of the investigation by the House of Representatives Committee on Justice of the impeachment complaint against respondent. During the *en banc* session on February 27, 2018, respondent and 13 Supreme Court Associate Justices were present. After consultation with the two most senior Associate Justices, respondent herself announced, with the unanimous approval of all the other Justices then present that she would go on an indefinite leave beginning March 1, 2018. Yet, immediately after said *en banc* session, respondent's spokespersons publicly claimed that respondent was merely availing earlier her two-week wellness leave originally scheduled

Supreme Court E-Library

for March 12 to 26, 2018,[51] which she moved to March 1, 2018, giving the impression that respondent was merely taking a regular wellness leave of absence.

The above misleading pronouncements by respondent's spokespersons to different media outfits prompted the 13 Supreme Court Associate Justices present during the *en banc* session on February 27, 2018 to issue a statement on March 1, 2018, unequivocally describing the nature and terms of respondent's leave of absence and expressing the regret of the Court *en banc* as to the confusion that the public announcements made by respondent's spokespersons may have caused, to the detriment of the Supreme Court and the Judiciary. The statement dated March 1, 2018 of the Court *en banc* which was signed by the 13 Associate Justices present, is recited in full hereunder:

> After extended deliberations last Tuesday February 27, 2018, thirteen (13) of the Justices present arrived at a consensus that the Chief Justice should take an indefinite leave. Several reasons were mentioned by the various justices. After consulting with the two most senior justices, the Chief Justice herself announced that she was taking an indefinite leave, with the amendment that she start the leave on Thursday, March 1, 2018. The Chief Justice did not request the rescheduling of her wellness leave.
>
> **The Court *En Banc* regrets the confusion that the announcements and media releases of the spokespersons of the Chief Justice have caused, which seriously damaged the integrity of the Judiciary in general and the Supreme Court in particular**. In the ordinary course of events, **the Court expected the Chief Justice to cause the announcement only of what was really agreed upon without any modification or embellishment**. This matter shall be dealt with in a separate proceeding.

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[51] *Sereno to go on leave*, February 27, 2018 < http://news.abs-cbn.com/news/02/27/18/sereno-to-go-on-leave> (visited April 13, 2018); *Sereno to take 'wellness leave' amid impeach hearings —spokesman*, February 27, 2018 < http://www.gmanetwork.com/news/news/nation/644775/sereno-takes-indefinite-wellness-leave-amid-impeach-hearings-report/story/> (visited April 13, 2018).

In view of the foregoing, the Court *En Banc* considers Chief Justice Maria Lourdes P. A. Sereno to be on an indefinite leave starting March 1, 2018. Senior Associate Justice Antonio T. Carpio shall be the Acting Chief Justice.

The Clerk of Court and the Office of the Court Administrator will be informed and ordered to inform all courts and offices accordingly. (Emphasis mine.)

The Court has repeatedly held in numerous administrative cases that court employees, from the highest magistrate to the lowliest clerk, are held to a higher standard than most other civil servants, and that every employee of the Judiciary should be an example of integrity, uprightness, and honesty. From her applications for the vacant post of Supreme Court Associate Justice in 2010 and her subsequent application for the vacant post of Supreme Court Chief Justice in 2012, to her almost six-year stint as Supreme Court Chief Justice, respondent continuously demonstrated her proclivity to lie, mislead, bend the rules, and exploit the exemptions, in disregard of constitutional, statutory, and regulatory parameters; ethical conduct; and collegial courtesy. The evidence on record shows that respondent was unable to submit her SALNs for 2002 to 2006 to the JBC as required for applicants for the Supreme Court Chief Justice vacancy in 2012 and she deliberately deceived and misled the JBC so as to secure her inclusion in the shortlist of candidates for the vacancy in the said position, despite her non-compliance with the SALN requirement mandated by the Constitution, the law, and implementing rules.

Considering the foregoing, respondent's appointment as Chief Justice of the Supreme Court, secured through her lies and deception in the entries in her sworn PDS and regarding her non-compliance with the abovementioned SALN requirement of the JBC, is **void *ab initio***, and for such reason, I vote to **GRANT** the Petition for *Quo Warranto*.

Supreme Court E-Library

SEPARATE CONCURRING OPINION

PERALTA, *J.*:

Accountability of public officials is an essential attribute of a democratic and republican state, a necessary corollary of the recognition that sovereignty resides in the people and all government authority emanates from them.[1] And, in a government of laws and not of men, nobody is above the law, no matter how high he or she might be.

Various means and remedies are provided in the Constitution and statutes by which those in the government are held to answer for whatever may be seen as a betrayal of the people's trust, ranging from impeachment to civil, criminal and administrative sanctions. This applies to all, from the lowest to the highest officials of the land, assuming greater importance and relevance the higher the official is. This truism is further accentuated when the official sought to account for and justify his or her continued stay in office occupies the pinnacle of a branch whose members are required to be persons of proven competence, integrity, probity and independence.[2]

Further, the provisions of the Basic Law should be read in such a way as to effectuate the constitutional design of making public officials accountable to the sovereign. Impeachment should not be seen as an exclusive and preclusive process which would prevent other means of removing someone clearly undeserving of continued occupancy of a public office, otherwise the ideal would be subverted by a reading that would defeat the underlying principle, an exaltation of the literal over the

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[1] "The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them." (Article II, Section I, Constitution).

[2] "A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence." (Article VIII, Section 7(3), Constitution).

spirit. The method to exact accountability should never be allowed to become the very means to avoid it.

I concur with the *ponencia* of Honorable Associate Justice Noel Gimenez Tijam in finding that respondent Chief Justice Maria Lourdes P. A. Sereno is unlawfully holding and exercising the Office of the Chief Justice of the Supreme Court, and should be ousted and excluded therefrom.

Filing of Statement of Assets, Liabilities and Net worth (*SALN*) is a constitutional and statutory obligation of public officers and employees. Submission of SALN is a pre-requisite of the Judicial and Bar Council (*JBC*) for applicants to the Judiciary who come from government service. Its significance in determining the integrity of applicants to the Judiciary came to the fore when former Chief Justice Renato C. Corona was impeached for failure to properly declare assets in his SALNs. Based on the certifications issued by the University of the Philippines Human Resource Department Office and the Office of the Ombudsman Central Records Division, respondent failed to file her SALNs for the years 2000, 2001, 2003, 2004, 2005 and 2006. When respondent deliberately concealed from the JBC the fact that she failed to file her said SALNs while she was a Professor at the University of the Philippines College Law, she demonstrated that her integrity is dubious and questionable. Therefore, her appointment as an Associate Justice in August 16, 2010 is void *ab initio,* for she lacks the constitutional qualification of "proven integrity" in order to become a member of the Court.

Before delving into the substantive issues, I will first explain why I am not inhibiting from this case. In the *Ad Cautelam* Respectful Motion for Inhibition (Of Hon. Associate Justice Diosdado M. Peralta) in the Petition for *Quo Warranto* filed by the Republic of the Philippines, represented by Solicitor General Jose C. Calida, against respondent, it raises the following grounds for my inhibition:

A.

The Chief Justice, with due respect, has reasonable grounds to believe that Justice Peralta has professed actual

Supreme Court E-Library

bias against the Chief Justice concerning her qualification to be appointed as Chief Justice.

B.

As the Acting *Ex-Officio* Chairperson of the Judicial and Bar Council ("JBC") when the Chief Justice was nominated for appointment as Chief Justice, Justice Peralta would have personal knowledge of disputed evidentiary facts concerning the proceedings.

C.

Justice Peralta served as a material witness in the controversy.

D.

Justice Peralta's participation in these proceedings would violate the Chief Justice's constitutional right to due process.

The Motion for Inhibition must be denied for lack of merit.

The Chief Justice failed to prove by clear and convincing evidence Justice Peralta's supposed actual bias against her concerning her qualification to be appointed as a Chief Justice

Contrary to respondent's view that Section 5(a),[3] Canon 8 of the New Code of Judicial Conduct, which mandates that the inhibition of a judge who has "actual bias or prejudice against a party" is a compulsory ground for inhibition, the said ground is merely voluntary or discretionary under the Rules of Court and the Internal Rules of the Supreme Court, which are the

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[3] Section 5. Judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide a matter impartially. Such proceedings include, but are not limited to instances where:

(a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings.

Supreme Court E-Library

applicable rules governing inhibition in this petition for *quo warranto*. Thus:

Rule 137

Disqualification of Judicial Officers

Section 1. Disqualification of Judicial Officers. – No Judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity of affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

Any judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reason other than those mentioned above.

Rule 8

Inhibition and Substitute of Members of the Court

Section 1. *Grounds for Inhibition.* – A Member of the Court shall inhibit himself of herself from participating in the resolution of the case for any of these or similar reasons:

a) the Member of the Court was the ponente of the decision or participated in the proceedings before the appellate or trial court;

b) the Member of the Court was counsel, partner or member of law firm that is or was the counsel in the case subject of Section 3(c) of this rule;

c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case

d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;

Supreme Court E-Library

e) the Member of the Court was executor, administrator, guardian or trustee in the case; and

f) the Member of the Court was an official or is the spouse of an official or former official of the government agency or private agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.

A Member of the Court may in the exercise of his or her sound discretion, inhibit himself of herself for a just or valid reason other than any of those mentioned above.

The instances under the first paragraph of Section 1 of Rule 137 of the Rules of Court conclusively presume that judges cannot actively and impartially sit in a case, whereas the second paragraph, which embodies voluntary inhibition, leaves to the discretion of the judges concerned whether to sit in a case for other just and valid reasons, with only their conscience as guide.[4] Similar to Rule 137, there are also two kinds of inhibition under the Internal Rules of the Supreme Court: Section 1(a) to (f) of Rule 8 specifically enumerates the compulsory grounds for inhibition, while the second to the last paragraph provides for a catch-all ground for voluntary inhibition.

Based on the exclusive list of compulsory grounds for inhibition under the Rules of Court and the Internal Rules, it is apparent that I am not disqualified from hearing and deciding the instant petition for *quo warranto*. Verily, respondent is seeking my inhibition on voluntary or discretionary grounds of actual bias, personal knowledge of disputed evidentiary matters concerning the proceedings, and for having served purportedly as a material witness on the matter in controversy.

Citing my testimony before the Committee on Justice of the House of Representatives, respondent insists that I should inhibit from the case because I appear to have expressed the view that the Chief Justice should have been disqualified from nomination

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[4] *Pagoda Philippines v. Universal Canning*, G.R. No. 160966, October 11, 2005.

for the position of Chief Justice by virtue of her failure to submit to the JBC her Statement of Assets, Liability and Net Worth (*SALN*) for the years she was employed as a Professor of the U.P. College of Law Respondent claims that my apparent bias seems to have arisen from the belief that it was respondent who caused the exclusion of my wife, Court of Appeals (*CA*) Associate Justice Fernanda Lampas Peralta, from the list of applications for the position of CA Presiding Justice. Respondent thus concludes that I may have prejudged the merits of her petition for *quo warranto* and that I may have already formed an opinion that she should have been disqualified to be nominated as Chief Justice.

Respondent's contentions are unavailing.

It is well settled that bias and prejudice, to be considered valid reasons for the voluntary inhibition of judges, must be proved with clear and convincing evidence.[5] Bare allegations of their partiality will not suffice. It cannot be presumed, especially if weighed against the sacred oaths of office of magistrates, requiring them to administer justice fairly and equitably — both the poor and the rich, the weak and the strong, the lonely and well-connected.[6] There has to be a showing of acts or conduct clearly indicative of arbitrariness or prejudice before the Court can brand them with the stigma of bias or partiality.[7] Mere suspicion is not enough.[8] Extrinsic evidence must further be presented to establish bias, bad faith, malice or corrupt purpose.[9] Applying the foregoing principles, I maintain that respondent failed to establish that I have actual bias concerning her qualification to be appointed as Chief Justice.

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[5] *Dimo Realty & Development, Inc. v. Dimaculangan,* 469 Phil. 373 (2004).

[6] *Cruz v. Judge Iturralde*, 450 Phil. 77 (2005).

[7] *Barnes v. Reyes*, 614 Phil. 299 (2009).

[8] *Gochan v. Gochan*, 446 Phil. 433 (2003).

[9] *Barnes v. Reyes, supra.*

Supreme Court E-Library

Respondent's allegation of actual bias and impartiality has been thoroughly addressed in my testimony during the January 15, 2018 Congressional Hearing to the effect that I have been very supportive of the Judiciary reforms introduced by the Chief Justice even if she suspects that I am one of those behind her impeachment. Thus:

Deputy Speaker Ferdinand Hernandez: And follow-up question, your presence here… because before, when it was Justice De Castro, she was accused of being biased … being emotional … now I think there are more than six of you testifying before this body, I don't think you are biased against Chief Justice Sereno by coming over. So, is there like any… Do you have any grudges against the Chief Justice that's why you came here or is it because … well you've already mentioned that you respect the independence of this body. Kasi ayoko … kasi palalabasin na naman mamaya na kaya nag-appear si Justice Peralta, Justice Bersamin, Justice Martires, kasi biased sila, kasi interested sila na in the future they will be selected as a Chief Justice. I want your opinion.

Justice Diosdado M. Peralta: Alam po ninyo, kung ako po … If I will base my answer from a news item sometime October 24, lumalabas po ako biased eh at saka mayroon akong grudge kay Chief Justice. If you read … sa newspaper report sa October 24 eh. Kasi po ang nakalagay dun, mayroon daw akong grudge kay Chief Justice kasi from the beginning, nasira daw yung plano kong maging Chief Justice eh. Kasi after Justice Carpio, ako na po ang susunod. Ganun po ang nakalagay. But magandang tanong po iyan para ma-explain ko yan … so that questions will no longer be asked about me being biased or holding grudge.

Alam po ninyo, yung sa answer ni Chief Justice po, yung pinagyayabang niya na Small Claims at Continuous Trial, diyan sa Supreme Court alam po nila kung sino ang Chairman ng Committee that amended yung Small Claims. She personally chose me to chair the Committee to revise the Small Claims and personally chose my wife to head the Technical Working Group. Opo, totoo po yun. And ang masama pa dun, nung dumating siya doon, parang reluctant siyang lumapit sa amin, kasi ang dumating sa kanya, kaming mga senior eh we will not cooperate. Inaraw-araw po ako niyan. Three of her lawyers, Atty. Oliveros, Atty. Mayuga, Atty. De Dumo, to please accept some special assignments … in spite of my busy schedule po, I accepted.

Yung sa Small Claims po, hindi po sa akin nagumpisa yan. Yung Rule on Small Claims, that was introduced by former Chief Justice Reynato Puno. It was piloted in 2008 and it was applied sa whole … lahat na po sa 2010. x x x

x x x But you know, like any other rules, ang rules po ay work in progress, as they are, nag-eevolve yan … So this was the problem in 2015 … The World Bank was considering a factor in determining how a country is doing ... ease of doing business in the Philippines. Tinitingnan nila ang ginagawa ng judiciary sa ease of doing business. And therefore, one of those that they considered is sa small claims … And then my wife was sent by the Chief Justice March of 2015 to attend a seminar in South Korea precisely to … discuss yung threshold amount ng small claim. Ang suggestion po nila dun ay 5,000 dollars. If you multiply 5,000 dollars by 50, then it becomes 250,000. Ang threshold amount ng small claim was 100,000 so there is a need to increase to 200,000. Ngayon po, ang purpose ni Chief Justice Reynato Puno noon sa small claims is to afford better access of the under privileged sa small claims … But nagkakaroon po kami ng problema noon based on the data. When the Technical Working Group was created, sabi ko … before we introduce amendments, let us first determine kung ano ang problema… Most of the cases were filed in Metro Manila. So if the respondent poor fellow is from Davao, then he will have to come to Manila or to Makati to answer yung claim. So sabi ko we have to study how to resolve this problem. Eh we discover, in-introduce namin diyan, kasi po sa regular rules sa venue, ang venue po kasi sa civil cases, it's either plaintiff's residence or defendant's residence at the choice of the plaintiff or the venue as stipulated in the contract. So na discover po naming lahat ng lenders ng money, karamihan ng opisina nila sa Makati. So dun nila pina-file, but yung respondent ang layo po. Yun kaya po in-introduce namin yung venue. So what is happening now in Small Claims … sabi ng Chief Justice … you know in Small Claims, there were 27,000 filed during the first half of 2017 and there are only 9 cases pending at the time. Biro mo yun, tapos sasabihin ng Chief Justice sa akin ay may grudge daw ako sa kanya. Ang hirap po gumawa ng rules. Mas maganda gumawa ng decision, yung rules ang hirap gumawa. Iyan po isa.

Pangalawa, sinabi niya yung continuous trial has been solving the problem of congestion sa husgado. For the information of everybody, sa data namin 77% of the cases pending before the courts ay criminal cases. So what happened with the problem. Justice Dado

Supreme Court E-Library

can you help me on the continuous trial because I heard you were a former prosecutor and a former judge. Sabi ko so what's the problem. Can you come up with rules, guidelines to improve yung system. Sabi ko yes, I want to help. Ano nangyari, she appointed me as the Chairman of the Committee and appointed my wife again as Technical Working Group. Tapos for so many months, alam niyo po sa En Banc, ang hirap po makalusot ang isang rule … Ganito ginawa namin. I think sometime 2015 August pi-nilot testing po namin sa 52 trial courts sa Metro Manila. One is kung viable yung ginawa naming rules. Number two, to determine the causes of delay. Number 3 remedies. Na-determine namin, pi-nilot testing namin. Then I think August 2015 natapos na po yun. And then nagbigay ng data yung Developmental Partners, yung ABA-ROLI and Asia Foundation, they presented and showed to us, sabi nila, Justice yung pilot mo ng continuous trial ito po ang improvement, malaki po ang improvement. So I was tasked again to revise, the same technical working group, we went around visiting all courts in Metro Manila. Talaga po minsan, masakit yung sinasabi na mayroon akong grudge sa kanya. I have to disguise as a litigant so that I will know what are the causes of delay. So I submitted my work, the work of the Technical Working Group. I think before the end of 2016, and then it was deliberated upon by the Supreme Court... Basta nakalagay sa En Banc yan … naka agenda yan … you expect 14 people interpellating you. Mayroon pong point na ayaw ko na. Kasi napapabayaan ko na yung trabaho ko. But on our last session sa Baguio nung April 28, sinabi ko na pag hindi pa ma-aprubahan ng en banc, ayaw ko na. Nag-agree sila so we made it effective September 1. Mind you po before the effectivity of continuous trial September 1, starting June, I went around all over the Philippines almost weekly, Thursday and Friday. I am the only lecturer starting 8:30 in the morning up to 5:00 in the afternoon, standing. Just to explain, ang haba nun. Tapos dyinaryo nila sa akin, sabi tumanggap daw ako 500 million kay Governor Imee Marcos dun sa decision ko na allowing the burial. Kaya nasasabi ko po yan, pag sinabing biased o grudge … ako wala akong … I respect the Chief Justice kaya lahat ng in-assign sakin ay tinanggap ko.

You know there was an incident, nandun kami sa Baguio, I was summoned in the evening, pinakita sa akin yung data ... sabi sa akin, Justice Dado, ikaw pala ang top performer sa judicial at administrative ... sabi sa akin, never in the history na ang Justice ng Supreme Court na naka-decide ng more than 600 cases in a year's time, sabi sa akin. And the following day, papunta na ako sa session, hindi pa nag-

start ang session, ay ini-istorya na niya na ako. In spite of that, June next week, I will be in Laoag City, Thursday and Friday. The week after that I will be in Tuguegarao. The week after that I will go to Davao. Just to lecture on continuous trial. Ganun po yun eh. Kaya sabi niya … wala akong grudge sa kanya. All these years, binigay ko lahat todo. Misis ko nagagalit na nga sa akin … Biro mo, tumanggap ako ng 500 thousand, may grudge daw ako, ako pa at isang justice nagplano na impeach si Chief Justice. Biro mo yun. Andyan nakalagay sa news report. Ang masakit po dito, when this came out October 24, I was in Davao the following day, lecturing before more than 200 lawyers about continuous trial. Biro mo yung mukha ko dun, tinitingnan, itong nag-le-lecture, tumanggap ng 500 thousand, siya nagpa-plano i-impeach si Chief Justice. Masakit po sa akin yan. It's good that you asked that question.

Deputy Speaker Ferdinand Hernandez: In other words, you have nothing to gain personally?

Justice Diosdado M. Peralta: Susmaryosep, wala po, hindi ko po ugali yun. You ask my colleagues … Masaya ang Supreme Court kapag andiyan ako … ako minsan nagbi-break ng heated argument. Tanungin niyo po si Justice Martires … kay Justice Bersamin, pag wala po ako dun, malungkot po sila. Wala akong kaaway. Everyone is my friend. Kaya ang dami kong kaibigan …

In spite of the news report, you ask my colleagues if inaway ko si Chief Justice because of that, hindi ko po ugali yun, never na inaway ko si Chief Justice, ako inaaway marahil, ako po ang patakaran ko po if they throw stones against me, I will throw bread. Kristyano po tayo, wala akong kaaway ... Kaya po kapag sinasabi na mayroon akong grudge sa kanya, wala po. In spite of this report, wala po. Bakit? Itong October 24 na publication … I still went around the Philippines. Nagpunta pa ako sa Tacloban for two days to lecture. The following hanggang December 14, nag-lecture pa ako outside Metro Manila. Kung galit ako sa kanya … ibigay mo na sa iba yan, madami pa ang mas magaling sa akin. Ganun sana ginawa ko pero hindi. Kaya sabi ko next week I will be in Laoag for two days. The following week, I will be in Tuguegarao for two days, the week after, I will be in Davao lecturing on continuous trial. Now you ask me, ano naman nangyari sa continuous trial mo na ginagawa, nakita mo naman yung answer ni Chief Justice: ito yung isang reform programs ko, na nag-solve ng problem on congestion. Ganun lang po ang masasabi ko. Pasensiya na lang po mahaba po yung sagot ko. Para when you reach the time you will ask questions and some others that

Supreme Court E-Library

I will discuss, ay nasagot ko na po yung bias at saka grudge. Ganun lang po. Thank you very much po for asking the question.[10]

As to the supposed axe to grind against respondent for my wife's exclusion from the shortlist for the post of CA Presiding Justice, I also clarified during the February 12, 2018 Congressional Hearing that I have already moved on from the issue, and that I was testifying because I want to protect the prospective applicants to the Judiciary, and to maintain the constitutional mandate that only the best and qualified candidates should be recommended by the JBC.

In saying that "*had I been informed of this letter dated July 23, 2012, and a certificate of clearance, I could have immediately objected to the selection of the Chief Justice for voting because this is a very clear deviation from existing rules that if a member of the Judiciary would like ... or ... a candidate would like to apply for Chief Justice, then she or he is mandated to submit the SALNs,"*[11] I merely made a hypothetical statement of fact, which will not necessarily result in the disqualification of respondent from nomination, if it would be proven that she had indeed filed all her SALNs even before she became an Associate Justice in 2010.

There is nothing in the statement that manifests bias against respondent *per se* as the same was expressed in view of my function as then Acting *Ex-Officio* Chairperson of the JBC, which is tasked with determining the constitutional and statutory eligibility of applicants for the position of Chief Justice. It would have been but rational and proper for me or anyone else in such position to have objected to the inclusion of any nominee who was not known to have met all the requirements for the subject position. The significance of his responsibility as Acting *Ex-Officio* Chairperson of the JBC gave rise to the imperative to choose the nominee for Chief Justice who was best qualified

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[10] Unofficial transcript of the Congressional Hearing on January 15, 2018

[11] Unofficial transcript of the Hearing of the Committee on Justice, 12 February 2018/JEG/IV-2. Emphasis added.

for the position, *i.e.,* one who must be of proven competence, integrity, probity and independence. Be it stressed that when the hypothetical statement was made, there was no petition for *quo warranto* yet, so I cannot be faulted for pre-judging something that is not pending before the Court.

Besides, in my honest view, what is being assailed in this petition for *quo warranto* is respondent's failure to prove her integrity on the ground that she deliberately concealed from the JBC the material fact that she failed to file her SALNs for the years 2000, 2001, 2003, 2004, 2005 and 2006, among others, even before she became an Associate Justice of the Supreme Court in 2010. Thus, whether hypothetical or not, my statement that she should have been disqualified to be nominated as Chief Justice, is not relevant or material to this petition for *quo warranto.*

For one, in connection with her application for Associate Justice in July 2010, what the Office of Recruitment, Selection and Nomination (*ORSN*) received on July 28, 2010 from respondent was her un-notarized 2006 SALN dated July 2010.[12] However, in a recent letter[13] dated February 2, 2018 addressed to the ORSN, she explained that such SALN was really intended to be her SALN as of July 27, 2010. During the Oral Arguments, respondent further explained that she merely downloaded the SALN form, and forgot to erase the year "2006" printed thereon and that she was not required by the ORSN to submit a subscribed SALN. Assuming that her said SALN is for 2010, it should have been filed only in the following year (2011) as the calendar year 2010 has not yet passed, and her appointment would still be in August 16, 2010. She cannot also claim that said SALN is for 2009 because she was still in private practice that time.

For another, respondent also failed to file her SALN when she resigned from the University of the Philippines (U.P.) in

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[12] Petitioner's Memorandum, Annex "E".

[13] Attached to repondent's *Ad Cautelam* Manifestation/Submission as Annex "27".

Supreme Court E-Library

2006 in violation of R.A. No. 6713.[14] Accordingly, whatever I testified on during the Congressional Hearings has no bearing on this petition because my concern is her qualification of proven integrity before she even became an Associate Justice in 2010, and not when she applied for Chief Justice in 2012.

Moreover, I merely testified based on my personal knowledge of relevant facts and based on authentic records, as evidenced by the minutes of the JBC *En Banc* Special Meeting on July 20, 2012. The minutes of the JBC meeting indicate that respondent had not submitted her SALNs for a period of ten (10) years from 1986 to 2006, and that JBC *Ex-Officio* Member Senator Francis Joseph G. Escudero mentioned that Justice Sereno was his professor at U.P. and that they were required to submit SALNs during those years.[15] On the matter of candidates with incomplete documentary requirements, I had even suggested that the JBC could ask the nominee during the interview as to the reasons for their non-compliance.[16] However, Senator Escudero moved that the motion of JBC regular Member Justice Aurora Santiago Lagman to extend the deadline to submit the requirements be applied to all candidates and that the determination of whether a candidate has substantially complied with the requirements be delegated to the Executive Committee (*Execom*).[17] Senator Escudero further moved that any candidate who would still fail to complete the requirements at the close of office hours on Monday, July 23, 2012 would be excluded from the list to be interviewed and considered for nomination.

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[14] *AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES.*

[15] Minutes (JBC Special *En Banc* Meeting) 11-2012, July 20, 2012, Friday, *En Banc* Conference Room, New Supreme Court Building, 9:00 A.M., p. 11.

[16] *Id*. at 10.

[17] *Id*. at 11.

Nevertheless, they would be included if in the determination of the Execom he or she has substantially complied.[18]

As confirmed by JBC Regular Member Atty. Maria Milagros N. Fernan-Cayosa and then ORSN Chief Atty. Richard Pascual during the Congressional Hearings, I was never furnished a copy of respondent's July 23, 2012 letter, which was received only by the offices of the JBC Regular Members. Having in mind that the Execom is entitled to the presumption of regularity in the performance of its duty, I relied in good faith that the Execom would do its job to ensure that those candidates qualified to be nominated in the shortlist have complete documentary requirements, including the SALNs. I also relied on the ORSN Report dated July 24, 2012 on the Documentary Requirements and SALN of Candidates for the Position of Chief Justice of the Philippine, which stated that respondent's requirements were already complete when the public interview of candidates commenced on even date. Clearly, I could not have exempted respondent from complying with the requisite submission of SALNs, because the duty to determine whether a candidate has substantially complied, was delegated to the Execom due to time constraints, *i.e.*, the July 20, 2012 JBC Special Meeting and the July 23, 2012 deadline for submission of documentary requirements. This is the proper context as to why I made a hypothetical statement to the effect that I would have objected to the July 23, 2012 letter of respondent, requesting that she be exempted from the SALN requirement.

Despite being the Acting Ex-Officio Chairperson of the JBC when the Chief Justice was nominated for appointment as Chief Justice, Justice Peralta has no personal knowledge of disputed evidentiary facts concerning the proceedings

Contrary to respondent's contention, I have no personal knowledge of the disputed facts concerning the proceedings

[18] *Id*. at 10-11.

Supreme Court E-Library

(*e.g.,* the matters considered by the members of the JBC in preparing the shortlist of nominees). As can be gathered from the Minutes of the July 20, 2012 JBC *En Banc* Special Meeting, it is the ORSN and the JBC Execom which was given the duty to determine the completeness of the documentary requirements, including the SALNs, of applicants to judicial positions. Suffice it to state that because of my usual heavy judicial workload, it is inconceivable and impractical for me, as then Acting *Ex-Officio* JBC Chairperson, to examine the voluminous dossier of several applicants and determine whether they have complete documentary requirements.

Equally noteworthy is the fact that there are no disputed evidentiary facts concerning the proceedings before the Congress or the Court. In the July 24, 2012 Report of ORSN regarding the Documentary Requirements and SALNs of Candidates for the Position of the Chief Justice of the Philippines, then Associate Justice Maria Lourdes P. A. Sereno was noted to have "Complete Requirements" with notation "Letter 7/23/12 — considering her government records in the academe are more than 15 years old, it is reasonable to consider it infeasible to retrieve all those file." Despite her employment at the U.P. College of Law from November 1986 to June 1, 2006, the records of the U.P. Human Resources Department Office (*HRDO*) only contain her SALNs filed for 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997 and 2002,[19] but her SALNs for 2000, 2001, 2003, 2004, 2005 and 2006 are not on file,[20] whereas the records of the Central Records Division of the Office of the Ombudsman reveal that no SALN was filed by respondent from 2000 to 2009, except for the SALN for 1998. Respondent neither disputes the foregoing facts nor the authenticity and due execution of the foregoing documents.

Significantly, when I was Acting *Ex-Officio* Chairperson in 2012, I have had no personal knowledge that respondent had not filed her SALNs for 2000, 2001, 2003, 2004, 2005 and 2006. I may have had access to her SALNs for 2009, 2010 and

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[19] Petitioner's Memorandum, Annex "O".

[20] *Id*., Annex "B".

2011, but it was only during the Congressional Hearings that it was discovered that she failed to file her SALNs for the period between 2000-2006, as borne by the Certification issued by the Office of the Ombudsman and the U.P. HRDO, pursuant to *subpoena duces tecum* issued by the Committee on Justice.

It is likewise important to distinguish the proceedings before the Committee on Justice of the House of Representatives and the *quo warranto* petition pending before the Court. The issue in the petition for *quo warranto* is whether respondent unlawfully holds or exercises a public office in view of the contention of the Solicitor General that her failure to file SALNs, without lawful justification, underscored her inability to prove her integrity which is a constitutional qualification to become a member of the Supreme Court. In contrast, the issue in the Congressional Hearings where I was invited as a Resource Person was the determination of probable cause to impeach the respondent where her qualifications prior to her appointment as Chief Justice was never an issue nor raised as ground for impeachment.

As a mere Resource Person, Justice Peralta testified with written authority from the En Banc, and answered clarificatory questions based on his personal knowledge of facts and authentic records

It bears emphasis that I attended the Congressional Hearings not to testify against the respondent, but only as a Resource Person on account of my having been the Acting *Ex-Officio* Chairperson of the JBC at the time respondent was nominated. I responded to the invitation of the Chairperson of the Committee on Justice of the House of Representatives out of courtesy and deference to a co-equal branch of the government, which has the exclusive power to initiate all cases of impeachment.[21] In the letter dated January 8, 2017, the said Committee invited

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[21] Section 3(1), Article XI, Constitution.

Supreme Court E-Library

me to attend the hearing on January 15, 2017, at the Nograles Hall, South Wing Annex, House of Representatives, Quezon City, to answer clarificatory questions relative to the allegations in the verified complaint for impeachment that the Chief Justice:

(1) Manipulated and delayed the transfer of Maute cases outside Mindanao:
(2) Manipulated the JBC shortlist in several instances, and influenced the four (4) regular members of the JBC;
(3) Lied and made it appear that several justices requested that they do away with the voting for the recommendees to the Supreme Court; and
(4) All other allegations involving administrative matters and internal rules and procedures of the Supreme Court.

Asked regarding the foregoing issues, I replied with pertinent and relevant answers based on my personal knowledge of facts and authentic documents. I testified within the bounds of the authority given by the *En Banc* in A.M. No. 17-11-12-SC dated January 10, 2018. If indeed I harbored grudge and animosity towards respondent, then I could have easily gone beyond the scope of my authority by volunteering information on other issues subject of the impeachment hearings of which I have personal knowledge. Besides, whether or not I will be a material witness in the impeachment proceedings would be for the prosecution panel to eventually decide, and the grounds for impeachment had nothing to do with that for *quo warranto.*

Justice Peralta's participation in the quo warranto proceedings will not violate the Chief Justice's constitutional right to due process because there are no grounds proven for his compulsory and discretionary inhibition

My participation in the Congressional Hearings will not violate respondent's right to due process because it was never shown that I am disqualified on either compulsory or voluntary grounds for inhibition under the Rules of Court and the Internal Rules of the Supreme Court. Respondent's allegations of actual bias

and partiality are unsubstantiated, conjectural, and not founded on rational assessment of the factual circumstances on which the motion to inhibit is anchored. When I made the statements before the Congressional Hearings for the determination of probable cause to impeach the respondent Chief Justice, no petition for *quo warranto* was filed yet before the Court, hence, I could not have pre-judged the case. It bears stressing again that the genuine issue in this petition for *quo warranto* is not the eligibility of respondent to be appointed as Chief Justice in 2012, but her qualification of "proven integrity" when she was appointed as an Associate Justice in 2010 despite concealment of her habitual failure to file SALNs. Of utmost importance is the fact that I, like every other member of the Supreme Court, have never let personal reasons and political considerations shroud my judgment and cast doubt in the performance of my sworn duty, my only guide in deciding cases being a clear conscience in rendering justice without fear or favor in accordance with the law and the Constitution.

I will now discuss the substantive issues in the case.

An impeachable public officer may be removed through a petition for quo warranto if the invalidity of his or her appointment stems from the qualifications required by the Constitution

There is no dispute that the Supreme Court has original jurisdiction over a petition for *quo warranto* under Section 5(1) of the 1987 Constitution:

> Article VIII
>
> JUDICIAL DEPARTMENT
>
> Section 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and habeas corpus.

Supreme Court E-Library

A petition for *quo warranto* is governed by Section 1 of Rule 66 of the Rules of Court:

Section 1. *Action by Government against individuals.* – An action for usurpation of public officer or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:

(a) **A person who** usurps, intrudes into or **unlawfully holds or exercises a public office**, position or franchise;
(b) A public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office;
(c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act.[22]

The pivotal question of law is whether an official who may be removed through impeachment, may also be removed through a petition for *quo warranto*. I agree with the *ponencia* in ruling for the affirmative of the issue.

It is basic in constitutional construction that if the constitutional provision is clear and unambiguous, it is neither necessary nor permissible to resort to extrinsic aids for its interpretation, such as the records of deliberation of the constitutional convention, history or realities existing at the time of the adoption of the constitution, changes in phraseology, prior laws and judicial decisions, contemporaneous constructions, and consequences of alternative interpretations.[23] It is only when the intent of the framers does not clearly appear in the text of the provision, as when it admits of more than one interpretation, where reliance on such extrinsic aids may be made.[24] After all, the Constitution is not primarily a lawyer's document, and it does not derive its force from the convention that framed it, but from the people

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[22] Emphasis added.

[23] Statutory Construction, Ruben E. Agpalo, p. 439 (2003).

[24] *People v. Muñoz*, G.R. Nos. L-38969-70, February 9, 1989.

who ratified it.[25] Well settled is the principle of constitutional construction that the language employed in the Constitution must be given their ordinary meaning except where technical terms are employed. "As much as possible, the words of the Constitution should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say."[26]

The language of Section 2, Article XI of the 1987 Constitution is plain and clear:

> Section 2. The President, Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman **may be removed from office** on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.[27]

There is nothing in the provision that states that said public officers may be removed from office only through impeachment. As aptly pointed out by the *ponencia,* the Court has consistently held that the term "may" is indicative of a mere possibility, an opportunity or an option, and denotes discretion and cannot be construed as having a mandatory effect. The said constitutional provision being clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[28]

It is also undisputed that the President and the Vice-President may not only be removed through impeachment, but also through *quo warranto* by the Supreme Court, acting as the Presidential

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[25] *People v. Derilo,* 338 Phil. 350 (1997).

[26] *Chavez v. Judicial and Bar Council,* 691 Phil. 173 (2012).

[27] Emphasis added.

[28] *Funa v. Chairman Villar*, 686 Phil. 571, 591-592 (2012).

Supreme Court E-Library

Electoral Tribunal. The next crucial question is whether impeachable and appointive public officials like members of the Supreme Court, the Constitutional Commissions, and the Ombudsman, may be removed through a petition for *quo warranto*.

I share the view of the *ponencia* that courts should be able to inquire into the validity of appointments even of impeachable officers; otherwise, there would be an absurd situation where the appointment of an impeachable officer cannot be questioned even when he or she has been determined to be of foreign nationality or, in an office where Bar membership is a qualification, he or she fraudulently represented to be a member of the Bar. This brings to mind *Caronan v. Caronan*[29] where the Court found that respondent falsely used his brother-complainant's name, identity, and school records to gain admission to the Bar, and ruled that since complainant – the real "Patrick A. Caronan" – never took the Bar Examination, the name should be stricken-off the Roll of Attorneys. It is not farfetched that an enterprising individual, like the one in *Caronan*, would one day — in this age of advanced information and communication technology where identity theft is prevalent — would aim to be appointed to a public office, subject to impeachment. In that plausible event, a petition for *quo warranto* should be the proper remedy to assail the eligibility of the public officer. It would be detrimental to the interest and general welfare of the public to allow unqualified and ineligible public officials to continue occupying key positions, exercising sensitive sovereign functions until they are successfully removed from office through impeachment. In case of doubt in the interpretation or application of laws, it is presumed that the law-making body intended right and justice to prevail.[30]

Moreover, in *Funa v. Chairman Villar*,[31] the Court, in a petition for *certiorari* and prohibition assailing the appointment of then

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[29] A.C. No. 11316, July 12, 2016.

[30] Article 10 of the New Civil Code.

[31] 686 Phil. 571 (2012).

Commissioner Renaldo A. Villar to the position of Chairman of the Commission on Audit (*COA)* to replace Guillermo N. Carague, whose term of office as such Chairman has expired, declared Villar's appointment unconstitutional for violation of Sec. 1(2), Article IX(D) of the Constitution. The Court held that a COA Commissioner like respondent Villar who served for a period less than seven (7) years cannot be appointed as chairman when such position became vacant as a result of the expiration of the 7-year term of the predecessor (Carague), because such appointment to a full term is not valid and constitutional, as the appointee will be allowed to serve more than 7 years, in violation of the constitutional ban.

To my mind, if an impeachable public officer like the Chairperson of the COA was removed through a petition for *certiorari* and prohibition, how much more in a direct proceeding assailing the constitutional eligibility of such pubic officer to hold public office, such as the position of Chief Justice of the Supreme Court, which requires one to be of proven integrity to become its member. As held in *Frivaldo v. Commission on Elections*,[32] qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. "Once any of the required qualifications is lost, his title may be seasonably challenged."[33]

If officials like the President and the Vice-President, who were elected by the people at large, can be removed through *quo warranto* proceedings, I cannot see any substantial distinction why members of the Supreme Court and other constitutional bodies, who are merely appointed by the President, cannot be removed through a proceeding directly assailing their constitutional qualification to be appointed to public office.

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[32] 255 Phil. 934 (1989).

[33] *Id*.

Supreme Court E-Library

Respondent's reliance on *Lecaroz v. Sandiganbayan*[34] and *Cuenco v. Fernan*[35] to support her claim that she can only be removed as Chief Justice of the Supreme Court through impeachment, is misplaced.

Lecaroz involves a municipal mayor who questioned the jurisdiction of the Sandiganbayan over the charge of grave coercion, and insisted that such crime was within the jurisdiction of ordinary courts. Aside from upholding the Sandiganbayan's concurrent jurisdiction over the crime, the Court rendered an *obiter dictum* to the effect that impeachable officers may only be removed through impeachment:

> The broad power of the New Constitution vests the respondent court with jurisdiction over "public officers and employees, including those in government-owned or controlled corporations." There are exceptions, however, like constitutional officers, particularly those declared to be removed by impeachment. Section 2, Article XIII of the 1973 Constitution provides:
>
> > SEC. 2. The President, the Members of the Supreme Court, and the Members of the Constitutional Commission shall be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, other high crimes, or graft and corruption.
>
> Thus, the provision proscribes removal from office of the aforementioned constitutional officers by any other method; otherwise, to allow a public officer who may be removed solely by impeachment to be charged criminally while holding office with an offense that carries a penalty of removal from office, would be violative of the clear mandate of the law.

Cuenco involves the disbarment case against an incumbent Supreme Court Justice for unethical conduct as a lawyer committed prior to becoming a Supreme Court Justice, as well as after being appointed as such. The Court dismissed the disbarment and established the following doctrine:

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[34] 213 Phil. 288 (1984).

[35] 241 Phil. 816 (1988).

x x x Members of the Supreme Court must, under Article VIII (7) (1) of the Constitution, be members of the Philippine Bar and may be removed from office only by impeachment (Article XI [2], Constitution), To grant a complaint for disbarment of a Member of the Court during the Member's incumbency, would in effect circumvent and hence ran afoul of the constitutional mandate that **Members of the Court may be removed from office only by impeachment for and conviction of certain offenses listed in Article XI (2) of the Constitution**. Precisely the same situation exists in respect of the Ombudsman and his deputies (Article XI [8] in relation to Article XI [2], Id.) a majority of the members of the Commission on Elections (Article IX [C] [1] [1] in relation to Article XI [2], id.), and the members of the Commission on audit who are not certified public accountants (Article XI [D] [1][1], id.), all of whom are constitutionally required to be members of the Philippine Bar.[36]

The *Cuenco* doctrine was subsequently applied or invoked and enhanced in the follow-up case of *In Re: Raul M. Gonzalez*[37] as well as in cases involving the Ombudsman, Deputy Ombudsman, Members of the Commission on Elections and the President.[38] However, *Lecaroz* and *Cuenco* should be revisited because it is not supported by a plain reading of the Constitution. There is nothing in Section 2, Article XIII of the 1973 Constitution and Section 2, Article XI of the 1987 Constitution that states that the concerned public officers may **only** be removed through impeachment. The provision simply means that only the enumerated high government officials may be removed via impeachment, but it does not follow that they could not be proceeded against in any other manner, if warranted. Otherwise,

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[36] Emphasis added.

[37] 160 SCRA 661 (1998).

[38] Rene B. Gorospe, Political Law (2016), citing *Jarque v. Desierto*, 250 SCRA 11 (1995) [Disbarment of Ombudsman]; *Lastimosa-Dalawampu v. Mojica*, Adm. Case No. 4638, August 6, 1997 [Disbarment of Deputy Ombudsman]; *Office of the Ombudsman v. Court of Appeals*, 493 Phil. 63 (2005) [Criminal and Administrative Investigation of Deputy Ombudsman]; *Marcoleta v. Borra,* 601 Phil. 470 (2009) [Disbarment of COMELEC Commissioners]; and *Estrada v. Desierto*, 406 Phil. 1 (2001) [Criminal Prosecution of Former President x x x].

Supreme Court E-Library

the constitutional precept that public office is a public trust would be undermined simply because political or other improper consideration may prevent an impeachment proceeding being initiated. To recall, the term "may" is indicative of a mere possibility, an opportunity or an option, and denotes discretion and cannot be construed as having a mandatory effect. The said constitutional provisions being clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[39]

Cuenco is likewise not applicable because there is no question therein as to the constitutional qualifications of the respondent Supreme Court Justice, whereas in this petition for *quo warranto*, respondent's eligibility to become a member of the Supreme Court is being directly assailed for failure to prove her integrity, which is one of the constitutional qualifications of such public office. In *Cuenco*, the respondent, who possessed all the qualifications to be considered as an applicant and to be appointed as a member of the Supreme Court, was being sought to be removed through disbarment due to alleged unethical conduct committed before and during his incumbency as Associate Justice. In stark contrast, respondent's removal is being sought through the present *quo warranto* because she lacks the constitutional qualification of "proven integrity" in order to become a member of the Supreme Court even from the very beginning. In fact, she was only able to be considered as an applicant by deliberately concealing from the JBC her habitual failure to file SALNs in violation of the applicable laws and the Constitution.

Under American jurisprudence, which has persuasive effect in this jurisdiction, it has been held that the power to impeach executive officers, vested in the legislature, does not affect the jurisdiction of the Supreme Court to try the right to office, since such right to an office is a proper matter of judicial cognizance, and impeachment is not a remedy equivalent to, or intended to take the place of *quo warranto*.[40]

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[39] *Funa v. Chairman Villar*, 686 Phil. 571, 591-592 (2012).

[40] 74 C.J.S. *Quo Warranto* § 15.

In view of the discretionary wording of Section 2, Article XI of the 1987 Constitution on impeachment, and the nature of *quo warranto* as a separate and distinct means of removing a public officer, I submit that *quo warranto* proceedings may be instituted to question the constitutional qualifications of impeachable public officials to hold public office at the time of their appointment. As for the claim that allowing *quo warranto* as a means of removing impeachable public officers would undermine the independence of the Judiciary, I believe otherwise, for it will ensure that only those who are of proven competence, integrity, probity, and independence would be able to join the Judiciary. Such a proceeding, instead of diminishing judicial independence, would instead strengthen it as it provides a means to root out undeserving members.

The burden of proof in a petition for quo warranto rests upon respondent

Contrary to respondent's claim that the burden of proof to show unlawful holding or exercise of public office rests on the petitioner in a *quo warranto* proceeding, the general rule under American jurisprudence is that the burden of proof is on respondent when the action is brought by the attorney general, to test the right to public office, thus:

> When the state calls on an individual to show his title to an office, he must show the continued existence of every qualification necessary for its enjoyment. The state is bound to make no showing and defendant must make out an undoubted case. He must set out his title specifically and show on the face of the answer that he has a valid title. The people are not called on to show anything. The entire burden is on defendant. And the same rule applies when the proceeding is brought to test the organization of a municipality. The exception to the rule, when they occur, are generally those proceedings brought in relation to a private individual as claimant, or for a private purpose when that is authorized by statute in which case it is held, the burden is on relator.[41]

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[41] The Revised Rules of Court in the Philippines, Special Civil Actions, Vicente Francisco, Volume IV-B, Part 1, Rules 62-68, pp. 319-320 (1972), citing Ferris on Extraordinary Legal Remedies, 156.

Supreme Court E-Library

American jurisprudence compares ordinary civil actions with *quo warranto* in this wise:

> In ordinary civil actions, the burden of proof generally rests upon the plaintiff to prove his title or right to the thing in controversy. But in quo warranto, in the absence of any legislation or controlling consideration to the contrary, the burden of proof may rest upon the respondent or defendant. The burden of justifying acts of usurpation rests upon the respondent at all times, although, as stated in the following section, a prima facie showing of right to office in question may cast the burden on the relator. In some jurisdictions, however, the rule obtains that the burden of proof in a quo warranto proceeding or an action in the nature thereof is to be determined from the issues raised by the pleadings precisely as in other actions. The first stated and generally accepted rule is based upon the character of the proceeding. **By the ancient writ of quo warranto, the respondent was called upon to answer by what right he held the office or franchise under dispute. He was compelled to show his title, and, if he failed to do so, judgment was entered against him.** The same rule was applied also in cases where proceedings by information in the nature of quo warranto were resorted to as a substitute for the writ. And, in general, this rule, notwithstanding statutory changes in forms of procedure, still remains as the peculiar feature of these proceedings.[42]

Therefore, it is the respondent, not the petitioner, who bears the burden to prove that she possessed the constitutional qualification of proven integrity when she applied for the position of Associate Justice of Supreme Court in 2010, despite her failure to comply with the statutory and constitutional requisite of SALNs for the years of 2000, 2001, 2003, 2004, 2005 and 2006 while she was in government service, albeit on official leave intermittently.

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[42] 65 Am Jur 2d *Quo Warranto* §104. (Emphasis added).

One-year prescriptive period should be reckoned from discovery of the concealed cause for ouster from public office

As a rule, an action against a public officer or employee for his ouster from office – within 1 year from the date the petitioner is ousted from his position[43] or when the right of the claimant to hold office arises.[44] The reason for the rule is that it is an expression of policy on the part of the State that persons claiming a right to an office which they were illegally disposed of should immediately take steps to recover said office. And if they failed to do so within 1 year, they shall be considered as having lost their right thereto by abandonment. Besides, there must be stability in the service so that public business may not be unduly retarded, and delays, if there is a right to positions in the service, must be discouraged.[45] Too, it was held that the rationale for the 1-year prescriptive period is that the government must be immediately informed or advised if any person claims to be entitled to an office or position in the Civil Service, as against another actually holding it, so that the government may not be faced with the predicament of having to pay two salaries, one for the person actually holding the office, although illegally, and another, for one not actually rendering service, although entitled to do so.[46]

Exception to the rule is when the petitioner was constantly promised and reassured, or reinstatement, in which case *laches* may not be applied because petitioner is not guilty of inaction, and it was the continued assurance of the government, through its responsible officials, that led petitioner to wait for the government to fulfill its commitment.[47] In view thereof, I posit

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[43] *Madrigal v. Lecaroz*, 269 Phil. 20 (1990).

[44] *Unabia v. City Mayor of Cebu*, 99 Phil. 253 (1956).

[45] *Id*.

[46] *Madrid v. Auditor General*, 108 Phil. 578 (1960).

[47] *Cristobal v. Melchor*, 189 Phil. 658 (1997).

Supreme Court E-Library

that the 1-year prescriptive period to file a petition for *quo warranto* should commence from the time of discovery of the cause for the ouster from public office, especially in cases where the ground for disqualification is not apparent or is concealed.

For instance, if a person was appointed as commissioner of a constitutional body, who may be removed through impeachment, but such person had successfully concealed a lack of qualification or presence of a disqualification to be appointed from such office, said officer cannot be removed through impeachment because the concealment of disqualification was committed **prior to** appointment. The same observation holds true if a member of the Supreme Court conceals the fact that he or she is not a natural-born-citizen of the Philippines. More importantly, the grounds for impeachment under Section 2,[48] Article XI of the 1987 Constitution pertain exclusively to acts committed **after** the appointment, and they **hardly include** the failure to meet the qualifications of a public office. Thus, if the ineligibility is already present at the moment the person assumed public office, then a petition for *quo warranto* is the proper remedy to question whether the holding or exercise of office is lawful. Otherwise, there would be an absurd scenario where a person would be allowed to continue holding public office even if he or she was not even qualified to hold office in the first place, unless he or she commits an impeachable act.

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[48] Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

Respondent's deliberate concealment from the JBC of the material fact that she failed to file habitually her SALNs during her stint as a U.P. Law Professor means that her appointment as an Associate Justice of the Supreme Court in August 16, 2010 is void ab initio, for she lacks the constitutional qualification of "proven integrity" in order to become a member of the Court

In the aftermath of the controversial impeachment of former Chief Justice Renato C. Corona on May 29, 2012 for failure to properly declare his assets in his SALNs, the JBC, in a meeting on June 4, 2012, agreed and caused the publication of an Announcement that for candidates for the position of Chief Justice of the Supreme Court, applicants and nominees shall be required to submit, in addition to the usual documentary requirements: (1) "all previous SALNs (up to 31 December 2011)" for those in the government, and (2) "Waiver in favor of the JBC of the confidentiality of local and foreign bank accounts under the Bank Secrecy Law and Foreign Currency Deposit Act." The JBC's act of requiring the submission of complete SALNs, especially those candidates coming from the government, is meant to a avoid a tragedy similar to what befell no less than the Head of the Judiciary, and to emphasize the mandatory nature of SALNs as a tool to determine compliance with one of the constitutional requirements[49] to become a Supreme Justice: proven integrity.

On July 2, 2012, respondent accepted the nominations and endorsements for the position of Chief Justice, coming from

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[49] A member if the Supreme Court must be (a) natural-born citizen of the Philippines; (b) be at least forty (40) years of age but not seventy years old or more; (c) have been for fifteen (15) years or more a judge of a lower court or engaged in the practice of law in the Philippines; and (d) be of proven competence, integrity, probity and independence. (Section 7 (1 & 3), Article VII, Constitution).

Supreme Court E-Library

various persons and groups in the legal and evangelical community. In support of her nomination, respondent submitted her SALNs for the years 2009, 2010 and 2011.

On July 20, 2012, the JBC *En Banc* deliberated on the candidates with incomplete documentary requirements. Minutes of the JBC Special *En Banc* meeting show that as Acting *Ex-Officio* Chairperson, I suggested that the Council examine the matrix per candidate. Meanwhile, Undersecretary Michael Frederick L. Musngi, Representative of the Executive Branch *vice Ex-Officio* Member Department of Justice Secretary Leila M. De Lima, asked for clarification as to what would constitute a substantial compliance or whether the JBC had previously agreed on some parameters to determine the same. He expressed his view that it may be unfair for a candidate to be barred from the interview process because of some lacking requirements. It would be proper to ask the candidate, to accord them due process, for the reason of non-submission despite persistent notice or advice. For my part, I said that the JBC could ask the nominee during the interview as to the reason for their non-compliance.

Minutes of the JBC *En Banc* meeting reveal that Senator Escudero mentioned that prior to the attendance of Undersecretary Musngi, it has been agreed upon by the JBC, and quite clearly the same had been conveyed to the candidates, that should they fail to submit all requirements by July 17, 2012, they would not be interviewed or considered for nomination. He said that it would be again extended, and if by that time they would still fail to submit, then it might cause some problems; for example, submission of the waiver on the day of the interview is unacceptable, as there would not be sufficient time to check their bank accounts. In addition, if indeed they are serious with their applications, they should inform the JBC as to the reason for failing to comply with certain requirements. As to the parameters of a substantial compliance, he said that Justice Abad has substantially complied for the reason that even if he lacks SALNs for certain periods in the 80s, he submitted the rest of them. He commented that there is

at least an attempt to comply with the particular requirement and it could be a parameter. However, with respect to requirements that are stand-alone, there is no reason why they could not comply, as they are easy to secure as in the case of proof of age and citizenship.

Minutes of the JBC *En Banc* likewise show that JBC Regular Member Justice Regino C. Hermosisima, Jr. joined the motion of Justice Aurora Santiago Lagman that candidates who have incomplete requirements be given until Monday, July 23, 2012, to comply. He added that asking the candidates for the reason why they failed to comply with the lacking requirement on the day of the interview would be too late as they should have been excluded prior to that day. For her part, JBC Executive Officer Atty. Annaliza S. Ty-Capacite asked for clarification, particularly with respect to SALNs, whether five (5) SALNs would constitute a substantial compliance if the candidate has been in the government for twenty (20) years.

During the same JBC *En Banc* meeting of July 20, 2012, the JBC proceeded to examine the list with regard to the SALNs, particularly the candidates coming from the government, and identified who among them would be considered to have substantially complied. With respect to respondent, the JBC Executive Officer informed the Council that **respondent "had not submitted her SALNs for a period of ten (10) years), that is from 1986 to 2006."** Meanwhile, *Ex-Officio* Member Senator Francis Joseph G. Escudero mentioned that Justice Sereno was his Professor at U.P. and that they were required to submit SALNs during those years.

Minutes of the JBC *En Banc* meeting further reveal that after the JBC passed upon list of candidates with regard to the SALNs, and identified who among them were considered to have substantially complied, Senator Escudero moved that the motion of Justice Lagman to extend the deadline on Monday be applied to all candidates and that the determination of whether a candidate has substantially complied with the requirements be delegated to the Execom. He further moved that any candidate who would still fail to complete the requirements at the close of office

Supreme Court E-Library

hours on Monday, July 23, 2012 would be excluded from the list to be interviewed and considered for nomination; unless they would be included if in the determination of the Execom, he or she has substantially complied.

In hindsight, it is safe to assume that the ultimate test of integrity was given on July 20, 2012, insofar as respondent's submission of SALNs was concerned. The importance of SALNs cannot be belittled and underestimated. The filing of SALN by public officers and employees is a requirement under Section 17,[50] Article XI of the 1987 Constitution, Section 7[51] of Republic Act No. 3019 or the *Anti-Graft and Corrupt Practices Act*, Section 8[52] of R.A. No. 6713 or the *Code of Conduct and*

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[50] Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

[51] Section 7. *Statement of assets and liabilities*. Every public officer, within thirty days after the approval of this Act or after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: Provided, That public officers assuming office less than two months before the end of the calendar year, may file their statements in the following months of January.

[52] Section 8. *Statements and Disclosure.* — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

Ethical Standards for Public Officials and Employees, and

(A) Statements of Assets and Liabilities and Financial Disclosure. — All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The two documents shall contain information on the following:

(a) real property, its improvements, acquisition costs, assessed value and current fair market value;
(b) personal property and acquisition cost;
(c) all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;
(d) liabilities, and;

(e) all business interests and financial connections.

The documents must be filed:

(a) within thirty (30) days after assumption of office;
(b) on or before April 30, of every year thereafter; and
(c) within thirty (30) days after separation from the service.

All public officials and employees required under this section to file the aforestated documents shall also execute, within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their assets, liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible, the year when they first assumed any office in the Government. Husband and wife who are both public officials or employees may file the required statements jointly or separately.
The Statements of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections shall be filed by:
(1) Constitutional and national elective officials, with the national office of the Ombudsman;
(2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively; Justices, with the Clerk of Court of the Supreme Court; Judges, with the Court Administrator; and all national executive officials with the Office of the President.
(3) Regional and local officials and employees, with the Deputy Ombudsman in their respective regions;

Supreme Court E-Library

Section 34,[53] Chapter 9, Book I of the Administrative Code of 1987.

During the Oral Argument on April 17, 2018, respondent admitted knowledge of the importance of the SALNs in determining disparity between the declared assets of applicants and their income:

JUSTICE DE CASTRO:

Chief Justice, I have another question. There is some, a SALN readily available to you, the 2006 which you applied, which you submitted.

CHIEF JUSTICE SERENO:

Hindi ho nga iyon ang aking 2006 SALN. I used a form printed, drawn from the website of the CSC that why it was not notarized and it's dated 2010. Hindi po yon iyong SALN na sina-submit sa U.P.

JUSTICE DE CASTRO:

So, even if it's 2010, why did you not submit that to the JBC that is readily available. My question is.

CHIEF JUSTICE SERENO:

Kasi hindi nga ho iyon iyong SALN na kino-compliance sa law. Ang ginagamit po iyon at that time. Ang kinu-kwento sa akin nila ano, Justice Lagman at ni Atty. Cayosa, ginagamit nila iyon to look at the tax filings and if there is something inordinate. Kasi may mga nabibisto sila na mga lawyers na under-reporting ng income pero ang laki-laki ho ng assets. That is their basis tingnan ninyo ho, hindi ho iyong SALN na talagang required under the law.

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(4) Officers of the armed forces from the rank of colonel or naval captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and

(5) All other public officials and employees, defined in Republic Act No. 3019, as amended, with the Civil Service Commission.

[53] Sec. 34. Declaration of Assets, Liabilities and Net Worth. — A public officer or employee shall upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth.

JUSTICE DE CASTRO:

Okay. So that SALN of 2006 was not sworn to. So, and you were very careful in writing to the JBC. That that is a statement of assets and liabilities. You did not use the word sworn statement of assets and liabilities because you know that, that is not what the law required.[54]

Respondent's testimony is paradoxical. While she concedes the purpose of filing SALNs, respondent also claims that the **2006 SALN** she filed before the JBC on **July 28, 2010** in connection with her application for Associate Justice of the Supreme Court was not the SALN required by law, but was only for the purpose of determining the disparity between her declared assets and income. If respondent believes that she need not file a SALN as a candidate coming from the private sector in 2010, it is suspicious why she would file before the JBC an unsworn 2006 SALN, which is virtually a scrap of paper.

In a letter July 23, 2012, respondent replied with respect to a follow-up call by then ORSN Chief Atty. Pascual last July 20, 2012, Friday, regarding the submission of her previous SALNs from 1995-1999. Instead of coming clean on the SALN issue, respondent came up with diversionary, evasive and irrelevant answers, thus: (1) the requirements imposed upon her prior to her appointment as Associate Justice of the Supreme Court in 2010 were those imposed on nominees from the private sector; (2) that her earlier-terminated government service did not control nor dominate the kind of requirements imposed on her; (3) that considering that most of her government records in the academe are more than fifteen years old, it is reasonable to consider it infeasible to retrieve all those files; and (4) that the U.P. HRDO issued a Certificate of Clearance on September 19, 2011 that she has been cleared of all academic/ administrative responsibilities, money and property accountabilities and from administrative charges in the U.P. as of June 1, 2006. Thus, respondent requested that the requirements needed to be complied with be similarly viewed

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[54] Transcript of Stenographic Notes (TSN), April 10, 2018, pp. 75-76.

Supreme Court E-Library

as that from a private sector, before her appointment in 2010 as Associate Justice of the Supreme Court.

This July 23, 2012 letter never reached the JBC *En Banc*. Curiously, the ORSN issued a Report on July 24, 2012, the first day of the public interview, which listed respondent's name under candidates with complete requirements but with a notation: "Letter 7/23/12 — considering her government records in the academe are more than 15 years old, it is reasonable to consider it infeasible to retrieve all those file." Verily, the JBC *En Banc* was not able to rule whether respondent's submission of SALNs for 2009, 2010 and 2011 constitutes substantial compliance with the original requirement of "all previous SALN (up to December 31, 2011)."

Worst, respondent's excuse that it was infeasible to retrieve the more than 15-year-old academe records turns out to be a subterfuge to evade compliance with the telephone call of Atty. Pascual regarding her 1995-1999 SALN. In a letter dated March 6, 2018, the U.P. HRDO certified[55] that respondent's SALN for 1995, 1996 and 1997 were found in its records, thus negating the Certificate of Clearance issued in her favor on September 19, 2011. Respondent glossed over the fact that the same clearance is "*without prejudice to her liabilities for any accountabilities/charges reported to this office [HRDO] after the aforementioned date and subject to COA disallowances*." Meanwhile, the 1998 SALN could not be found because, together with the 2002 SALN, it was only about 4 years later on August 21, 2003 that she had it notarized and presumably filed it the same year, as shown in the Certification[56] dated April 17, 2018 issued by the Clerk of the Court of the Regional Trial Court of Quezon City.

In contrast, the Republic of the Philippines, represented by Solicitor General Calida, presented undisputed pieces of evidence consisting of the following documents for 2000-2009 preceding her appointment as Associate Justice of the Supreme Court:

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[55] Petitioner's Memorandum, Annex "O".

[56] *Id*., Annex "P".

Supreme Court E-Library

1. HRDO's Certification[57] and Letter,[58] both dated December 8, 2017, stating that the **201 file of respondent does not contain the SALNs** for the years 2000, 2001, 2003, 2004, 2005 and 2006.

2. Certification[59] dated December 4, 2017 issued by the Office of the Ombudsman Central Records Division states that there is **no SALN filed by respondent for calendar years 1999 to 2009** except SALN ending December 1998, which was submitted only on December 16, 2003.

In an attempt to dispute the foregoing evidence, respondent insisted that she habitually filed her SALNs, that the documents of the Ombudsman and U.P. HRDO contradicted each other, and that she also found her 1989 which was not on the file of UP. Thus, she concluded that petitioner has not proven anything at all with regard to her failure to file her SALNs.[60]

A closer look into her arguments reveals the flaws in her defense. Contrary to her claim, the only disparity between the certifications issued by the Ombudsman and the U.P. HRDO is with regard to the 2002 SALN, but the SALNs for 2000, 2001, 2003, 2004, 2005 and 2006 (both annual and exit SALNs) are not filed with the official repositories thereof:

Calendar Years	Ombudsman Certification[61] (**1999 to 2009**)	U.P. HRDO Certification and Letter[62] (**2000-2009**)
2000	No SALN filed	No SALN filed
2001	No SALN filed	No SALN filed
2002	No SALN filed	On record

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[57] *Id*., Annex "B".

[58] *Id*., Annex "D".

[59] *Id*., Annex "C".

[60] TSN, April 10, 2017, p. 127.

[61] Petitioner's Memorandum, Annex "C".

[62] *Id*., Annexes "B" and "D".

Supreme Court E-Library

2003	No SALN filed	No SALN filed
2004	No SALN filed	No SALN filed
2005	No SALN filed	No SALN filed
2006	No SALN filed	No SALN filed
2007	Resigned	
2008		
2009		

Because the official repository of the SALNs is only required to keep a record within a ten-(10) year period,[63] it is fair to expect that respondent had kept on file her SALNs, or secured copies thereof from the U.P. HRDO for a similar period **prior** to her application for the position of Associate Justice of the Supreme Court in 2010. Granted that she was unable to keep on file her SALNS because she transferred residences several times, and she was not a religious keeper of records, respondent could have easily secured certified copies thereof from the U.P. HRDO and submit them to the JBC. If petitioner was able to secure from the U.P. HRDO respondent's SALN for the years 1985, 1990, 1991, 1993, 1996, 1997 and 2002, the questions that beg to be answered by respondent in connection with her letter dated July 23, 2012 are as follows: (1) why did she not attempt to obtain certified copies with respect to the more recent ones, such as the SALNs for 2000, 2001, 2003, 2004, 2005 and 2006?; and (2) why did she claim that it is infeasible to retrieve her academe records which are more than 15 years old, when in fact the SALNs for 1997, 1998 and 1999 subject of Atty. Pascual's telephone call are not even that old? On point is the disputable presumption that evidence wilfully suppressed would be adverse if produced.[64]

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[63] Section 8, paragraph C(4) of R.A. No. 6713: (4) Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.

[64] Section 3(e) of Rule 131 of the Revised Rules on Evidence.

Respondent's excuse of lack of time between the date of the call [July 20, 2012, Friday] and day of deadline [July 23, 2012, Monday] is flimsy because even if she was very busy at work, she has a full complement of administrative and legal staff as an Associate Justice to help her secure copies of her SALNs. The fact that former Chief Justice Corona was impeached for improper declarations in his SALNs less than a month from the July 20, 2012 call of the ORSN regarding her SALNs, should have made her realize the significance of such requirement. Knowing that the extended deadline for submission of the SALNs is on July 23, 2012, she ought to have someone call the U.P. HRDO, which is expected to extend courtesy to a former faculty member who is no less than an Associate Justice of the Supreme Court of the Philippines. Unfortunately, she found it more convenient to come up with an excuse letter rather than exerting diligent efforts to substantially comply with the SALN requirement.

At this point, it is not amiss to stress that even if respondent was on official leave for intermittent periods from June 1, 2000 until she resigned on June 1, 2006, she is not exempt, but still required to file SALNs during those periods, pursuant to Civil Service Commission (*CSC*) Resolution No. 060231 dated February 1, 2006. Under Section 1 of the CSC Resolution, "all public officials and employees, except those who [a] serve in an official honorary capacity, without service credit or pay, [b] temporary laborers and [c] casual or temporary and [d] contractual workers, shall file under oath their SALNs and Disclosure of Business Interests and Financial Connections with their respective Chief or Head of Personnel/Administrative Division or Unit/Human Resource Management Office (HRMO), to wit:

1. Within thirty (30) days after assumption of office, statements of which must be reckoned as of his/her first day of service;

2. On or before April 30 of every year thereafter, statements of which must be reckoned as of the end of the preceding year; and

3. Within thirty (30) days after separation from service, statements of which must be reckoned as of his/her last day of office."

Supreme Court E-Library

Certifications[65] of the Ombudsman and the U.P. HRDO show that despite the fact that respondent was a public employee, albeit on extended leave as a U.P. Law Professor, she failed to file her annual SALNs for 2000, 2001, 2003, 2004, 2005, 2006, as well as her separation SALN for 2006, in violation of CSC Resolution No. 060231, R.A. Nos. 6713 and 3019, and the Constitution. These violations were only discovered during the Congressional Hearings of the Committee on Justice to determine probable cause to impeach the respondent Chief Justice. When she accepted on July 2, 2012 the nomination for the position of Chief Justice as a candidate coming from government service, which required all her SALNs, respondent filed only SALNs for 2009, 2010 and 2011.

In an attempt to be considered as candidate coming from the private sector, respondent concealed that she failed to file SALNs for the years stated above, and misrepresented in a letter dated July 23, 2012 that it is infeasible to produce her more than 15-year academe records, in order to be considered as a candidate coming from the private sector. Because of that letter, the ORSN reported to the JBC *En Banc* that she had complete documentary requirements, but the latter never really had the opportunity to determine her substantial compliance with the SALN requirements because the letter was never deliberated upon in time for the public interview on July 24, 2012. Members of the Execom, which was delegated the duty to determine compliance with the SALN requirement, also denied knowledge of respondent's letter. During the Congressional Hearing on February 27, 2018, then ORSN Chief Atty. Pascual stopped short of admitting that he was the one responsible for including the name of respondent in the list of candidates, who submitted complete requirements, per ORSN Report dated July 24, 2017.

There is no merit in respondent's invocation of *Concerned Taxpayer v. Doblada*[66] which is not on all fours with her case.

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[65] Petitioner's Memorandum, Annexes "B" and "C".

[66] 498 Phil. 395 (2005).

In *Doblada*, the Court found no sufficient evidence to prove that the court sheriff failed to file his SAL [Statement of Assets and Liabilities] for the years 1975, 1977 to 1988, 1990, 1992, 1994, 1997, 1999 and 2000. It held that one cannot readily conclude that the court sheriff failed to file his sworn SAL for said years based on the following premises: (1) the court sheriff maintained that he has consistently filed his SAL for said years; (2) he submitted a copy of a letter of the Acting Branch Clerk of Court of his station, stating that attached therewith are the sworn SAL of the staff of said Branch, including his 2000 SAL; (3) said letter was duly received by the Office of the Court Administrator (OCA), but said 2000 SAL is one of those missing in the files of OCA; and (4) the OCA report simply stated that it does not have on its file the subject SAL, but there was no categorical statement that he failed to file his SAL for the said years. In this case, as correctly noted by the OSG, respondent failed to support her bare allegation of habitual filing of SALNs with clear and convincing evidence to dispute the Certifications issued by the U.P. HRDO and the Central Records Division of the Office of the Ombudsman, categorically stating that there is no record on file of her 2000, 2001, 2003, 2005 and 2006 SALNs. Note also that there is no missing SALNs involved here, but only missing file copies thereof of respondent.

Weighed against the documentary evidence proffered by the OSG, respondent's unsubstantiated assertion of filing all her SALNs to the best of her recollection and reliance on the *Doblada* case fail to persuade. I, therefore, find that respondent failed to discharge the burden of proving that she filed her SALNs for the calendar years of 2000, 2001, 2003, 2004, 2005 and 2006 in violation of the laws and the Constitution. For deliberately concealing from the JBC *En Banc* her failure to file her SALNs, especially in the wake of the impeachment of a former Chief Justice on the ground of failure to properly declare assets in his SALNs, I posit that respondent did not possess the qualification of proven integrity at the time she was appointed as Associate Justice of the Supreme Court in 2010.

The filing of SALNs cannot be brushed aside as mere formality required of every public officer and employee, for it is mandated

Supreme Court E-Library

by laws and the Constitution. During the Oral Arguments, I emphasized the nature and consequence of the violation of the SALN law:

JUSTICE PERALTA:

Just for Solicitor General Calida. I just want to ask questions from Solicitor General Calida, just few questions. Now, let's go to the SALN law. We all understand that the SALN law is *malum prohibitum?*

SOLICITOR GENERAL CALIDA:

Yes, your Honor.

JUSTICE PERALTA:

And that failure to file SALN, makes the public official administratively liable and criminally liable.

SOLICITOR GENERAL CALIDA:

Yes, your Honor.

JUSTICE PERALTA:

Good faith is not a defense in violation of SALN law?

SOLICITOR GENERAL CALIDA:

Yes, your Honor, because it is *mala prohibita.*

JUSTICE PERALTA:

I remember, when I was a Justice at the Sandiganbayan, there were many government officials who were charged with violation of SALN law. And I could not recall an instance where the public official proceeded to trial because all of them pleaded guilty for violation of the SALN law. The latest was a former ex or retired general, where he pleaded guilty for violation of the SALN law for three (3) years. In other words, it's not only administrative liability, insofar as the SALN law, it is also criminal, there is also a criminal liability in SALN law?

SOLICITOR GENERAL CALIDA:

Yes, you Honor.

JUSTICE PERALTA:

Do you agree?

Supreme Court E-Library

SOLICITOR GENERAL CALIDA:

I agree, your Honor.

JUSTICE PERALTA:

Because of the questions of Justice Leonen, I am forced to ask this question. He claims that the, I mean in his question, he says that the Chief Justice did not file her SALNs from 2002 to 2006 because she was on leave from the College of Law? Would that excuse a government official from filing her SALN just because she's on leave?

SOLICITOR GENERAL CALIDA:

No, it won't your, Honor.

JUSTICE PERALTA:

Because she's still a government official?

SOLICITOR GENERAL CALIDA:

That's correct, your Honor.[67]

The fact that respondent was on leave from the U.P. does not preclude her from committing bribery because such crime may also be committed by private individuals in cahoots with public officers. Article 212 of the Revised Penal Code provides that the same penalties imposed upon the officer corrupted, except those of disqualification and suspension, shall be imposed upon any person who shall have made the offers or promises or given the gifts or presents as described in the provisions on direct, indirect and qualified bribery under Articles 210, 211 and 211-A of the RPC, respectively.

At any rate, the petitioner aptly pointed out that the filing of respondent's SALNs especially for 2005 and 2006 is crucial because it was during this period that she was deriving income from the Philippine Government as counsel in the Philippine International Airlines Terminal Company, Inc. (PIATCO) case. Pertinent portions of the Oral Arguments are as follows:

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[67] TSN, Oral Arguments, April 10, 2018, pp. 92-93.

Supreme Court E-Library

JUSTICE PERALTA:

Alright. Now, in you comment, or anyway. I will not ask the question… Do you know when the Chief Justice started earning income as a lawyer in the PIATCO cases?

SOLICITOR GENERAL CALIDA:

I was not yet the Solicitor General but…

JUSTICE PERALTA:

But based on records, when did she start receiving fees from PIATCO cases?

SOLICITOR GENERAL CALIDA:

Okay.

JUSTICE PERALTA:

Will you please check your records.

(SolGen Calida conferring with his co-counsel)

SOLICITOR GENERAL CALIDA:

Your Honor, I think the person who can answer that is respondent, Your Honor, because she was the one who received millions.

JUSTICE PERALTA:

Yeah, but based on your records because hearing, in the impeachment I can recall years but you confirm. I thing she started as consultant of PIATCO sometime in 2003? Or late 2003 and then she started receiving payments, millions of pesos in 2004, just your records.

SOLICITOR GENERAL CALIDA:

In her Personal Data Sheet, your Honor, PDS…

JUSTICE PERALTA:

It's not in the Personal Data Sheet.

SOLICITOR GENERAL CALIDA:

The amounts, your Honor?

JUSTICE PERALTA:

… I am asking you the documents that would show that she received income or fees from PIATCO staring in 2004. You cannot recall?

SOLICITOR GENERAL CALIDA:

I'm sorry, your Honor, we did not bring the copy.

JUSTICE PERALTA:

Anyway, anyway, can you confirm that she was a counsel of the government?

SOLICITOR GENERAL CALIDA:

Yes, your Honor.

JUSTICE PERALTA:

To represent the government in PIATCO cases?

SOLICITOR GENERAL CALIDA:

Yes, your Honor.

JUSTICE PERALTA:

And that she received millions of pesos, dollars but converted into million of pesos?

SOLICITOR GENERAL CALIDA:

That's correct your Honor.

JUSTICE PERALTA:

And she started receiving all these fees, 2004, 2005 and 2006?

SOLICITOR GENERAL CALIDA:

Yes, your Honor.

JUSTICE PERALTA:

I will now go back to my first question, if she was on leave and still a government official and she earned millions of pesos in 2004, 2005 and 2006 was she mandated under the law and in the Constitution to declare her income in the SALN and therefore it was important for her to file the SALN?

Supreme Court E-Library

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE PERALTA:

That the income derived from PIATCO and those declared in the SALN would show how much taxes she should have paid?

SOLICITOR GENERAL CALIDA:

Yes, your Honor.

JUSTICE PERALTA:

It is not? So she was mandated after all?

SOLICITOR GENERAL CALIDA:

Yes, your Honor.

JUSTICE PERALTA:

… to file her SALN and to submit her SALN in 2004, 2005 and 2006?

SOLICITOR GENERAL CALIDA:

That's correct, your Honor. [68]

Even assuming that respondent's name was included in the shortlist of nominees for the position of Chief Justice submitted by the JBC to the Office of the President who later appointed her to such public office, there is a difference between determining her qualifications and the violation of the SALN law. Assuming for the sake of argument that there was a waiver on the part of the JBC with regard to respondent's incomplete SALNs, the fact remains that there were violations of the statutory and constitutional laws for failure to file SALNs, which not only cast doubt on her integrity, but also constitute culpable violation of the Constitution, and violation of R.A. Nos. 6713 and 3019 for as many years that she failed to file her SALNs. Because the said violations were committed even prior to

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[68] *Id*. at 94-96.

Supreme Court E-Library

respondent's appointment as Associate Justice of the Supreme Court in 2010, then they are proper subject of *quo warranto* proceedings instead of impeachment.

One last word. Only when this Court itself could lead the way in giving life to the principle of public accountability in a meaningful manner could it gain and retain the people's trust and confidence. This is one such landmark and historic instance.

WHEREFORE, I vote to **GRANT** the Petition for *Quo Warranto.*

CONCURRING OPINION

BERSAMIN, *J.*:

The thorough and scholarly Majority Opinion ably written for the Court by Justice Tijam frontally addresses and resolves the issues that have been raised and joined in this unprecedented case.

I **CONCUR**.

I would not need to write anything more in order to add to the resolution. Yet, I have to tender this separate opinion to support my concurrence for two compelling reasons. The first is that the respondent has directly challenged my neutrality as a judge to sit and decide on the basis that I have a bias against her. I deplore her challenge, and reject her bases for the challenge. I maintain my ability to sit in her case and decide as a fair-minded and objective judge. This separate opinion states my reasons for so maintaining. The second is that the issue of whether or not an original action for *quo warranto* may be brought by the Republic of the Philippines, through the Office of the Solicitor General, to seek the ouster of the respondent from the position of Chief Justice of the Philippines because she did not possess the integrity qualification required by the 1987 Constitution despite her being among the officials of the State who may be removed from office only through impeachment is a novel one.

Supreme Court E-Library

I.

The motion for my voluntary inhibition utterly lacks merit and deserves denial

Before going to the merits of the petition for *quo warranto*, I hereby state and announce the reasons for denying the respondent's request for my voluntary inhibition.

The respondent manifested in her *Ad Cautelam Respectful Motion for Inhibition (Of Hon. Associate Justice Lucas P. Bersamin)* filed on April 4, 2018 that she had reasonable ground to believe that I "exhibited bias against and animosity towards her" such that my participation herein "would violate [her] constitutional right to due process." She submitted that she was entitled to have her defenses heard by a judge who was not only capable of viewing her arguments impartially and with an open mind but who could also be perceived as capable of doing so; and that any judge with actual bias or prejudice concerning a party should not sit in any case. She believed that I could not objectively and impartially decide the petition for *quo warranto* against her considering that I was against her continued stay in office, which would tend to cloud judgment in weighing the parties' arguments herein.

The respondent cited the testimony I gave on January 15, 2018 during the inquiry to determine probable cause against her conducted by the Committee on Justice of the House of Representatives alluding to her as a dictator, and expressing a personal resentment over her manner of leadership that violated the collegial nature of the Supreme Court. She recalled that I also testified therein that I had resented the withdrawal of the "privilege" previously enjoyed by the Members of the Supreme Court to recommend nominees to vacant positions in the judiciary; and that I was also among the Members of the Supreme Court who "wore a touch of red as the so-called "Red Monday" protest on 12 March 2018 was ongoing." She insisted that my remarks were not mere innocuous ones but were expressions of my personal animosity towards her.

I vehemently deny the respondent's unwarranted and unfair imputations of bias against and animosity towards her.

Supreme Court E-Library

My appearance at the inquiry conducted by the Committee on Justice was upon the invitation of the House of Representatives. I appeared thereat only out of deference to the House of Representatives whose constitutional duty to investigate the impeachment complaint filed against the respondent could not be doubted. I harbored no ill will or malice towards her in appearing at the inquiry because my doing so had been priorly approved by the Court *En Banc*.

The queries posed to me by some of the Members of the Committee on Justice were varied but I faithfully observed the parameters prescribed by the Court for the purpose.

I deny alluding to the respondent as a "**dictator**." My answers in this regard were grossly taken out of context by her. In answering the question of Cong. Rodante Marcoleta on the loss of collegiality in the Supreme Court under the respondent as the Chief Justice, I forthrightly stated: "**Ang Supreme Court ay hindi po maaring mag-function kung isa ay diktador.**" My statement was clearly **hypothetical** about what the Court *would become* if any of its Members, including her as the Chief Justice, *was to act dictatorially*. In point of law and fact, my answer to the question of Cong. Marcoleta was very cogent and neutral, and devoid of any bias against or animosity towards her.

The true and actual context of my answer was actually easily apparent from what I said immediately thereafter, to wit: "**Kaila[ng]an po lahat ng 15 members, maliit na samahan iyan, kaniya-kaniyang boses, kaniya-kaniyang boto. Kaya nagkaroon diyan ng possibility of a majority and a minority**." I was thereby dutifully explaining the *democratic regime* being adhered to by the Court in conducting its institutional affairs, including its deliberations and other actions. How could such answer be misunderstood in the sad light she complained about?

It is true that I further commented in relation to the same query of Cong. Marcoleta that I had been *offended* by the respondent's attitude of ignoring collegiality in the Court. My comment ran as follows:

Supreme Court E-Library

Now, sa premise ng ano niyo, you summed up very well what transpired here. The testimonies that were given. If that is the premise, my answer is, definitely, nawala na po, nabura na po iyong batas ng samahan na sinasabi niyo. **Hindi ko po puwedeng itanggi na ako po ay offended by those kinds of attitude on the part of a leader who would deprive her colleagues, *primus inter pares* lang po siya eh. Hindi naman siya po reyna na titingnan, titingalain at susundin.** That's all I can say, Sir.

Yet, equating my *feeling offended* to harboring a *personal resentment* towards the respondent's "manner of leadership" reflected too much presumptuousness on her part. Among mature individuals, of which she and I were presumed to be, *feeling offended* and *personally resenting* were not the same. In the context of the functioning of the Court, they were widely different because all its Members have then and now exhibited the highest degree of professionalism in our official and personal dealings with each other. A particular colleague's acts or actuations could at times be offensive to another but such offensiveness never became the cause of personal resentment towards the latter. We always easily moved on. This high degree professionalism is a fact of daily life in the Court. As far as I am concerned, therefore, I, despite having felt offended by her attitudes as Chief Justice, still have the professional objectivity and detachment necessary to deal with the issues embroiling her under the petition for *quo warranto*.

The respondent ought to know that my taking offense did not deter me from actually defending her actuations before the Committee on Justice by characterizing her withdrawal of the "privilege" to recommend nominees to fill vacancies in the Supreme Court as not necessarily amounting to "a misrepresentation of the will of the Supreme Court en banc." I also clarified then that she had "her own mind about this."

Nonetheless, I need to insist that my comment that "**I resented [this] personally because this was contrary to the collegiality of the Court**" reflected a very natural and legitimate sentiment. It would have been pure hypocrisy on my part to suppress or conceal such sentiment. Although I was aware that most of the other Members of the Court who did not waive the "privilege"

to recommend nominees to fill vacancies in the Court shared it, I believed nonetheless that the professionalism of the Members of the Court would easily overcome the resentment towards her as a person or even as the Chief Justice in this matter.

I cannot fathom why the respondent would read bias and animosity in my "reportedly" wearing "a touch of red" on March 12, 2018 on the supposed occasion of the so-called "Red Monday" protest during which "judges and court employees" called on her to make the "supreme sacrifice" to resign. In the first place, I now hardly remember if my formal attire then had "a touch of red." And, even if I wore something with "a touch of red" on that day, why would there be anything to it?

The occasion the respondent was referring to was the Flag Raising Ceremony held on March 12, 2018, a Monday. The ceremony was a weekly ritual mandated by law and practice. My attendance thereat, and the attendance of other Members of the Supreme Court and of its officials and personnel were plainly to discharge the patriotic and civic obligation to honor the flag of the Philippines. Consequently, I deny having taken part in any so-called "Red Monday" protest to call for her resignation on that or on any other day. Protesting or acting in that manner would have been beneath my dignity and prestige as an incumbent Member of the Court.

Section 1, Rule 137 of the *Rules of Court* sets forth the rule on the inhibition and disqualification of judges, to wit:

> Section 1. *Disqualification of judges*. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
>
> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

Supreme Court E-Library

Under the second paragraph of the aforequoted rule, which is relevant to the call for my inhibition, a judge may decide, "*in the exercise of his sound discretion*," to recuse himself from a case for *just or valid reasons*. The phrase *just or valid reasons*, as the second requisite for voluntary inhibition, must be taken to mean –

> x x x causes which, though not strictly falling within those enumerated in the first paragraph, are akin or analogous thereto. In determining what causes are just, judges must keep in mind that next to importance to the duty of rendering a righteous judgment is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge. For it is an accepted axiom that every litigant, including the state, in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge, and the law intends that no judge shall preside in any case in which he is not wholly free, disinterested, impartial, and independent.[1]

In my humble view, the respondent's call for my inhibition has been based on nothing but twisted speculations, or on deliberate distortions of the language, context and meaning of the answers I gave as a sworn witness in the proceedings of the Committee on Justice of the House of Representatives. But speculations and distortions cannot justify my inhibition from taking part on a judicial matter. For, as the Court has pointedly observed in *Pimentel v. Salanga*:[2]

> Efforts to attain fair, just and impartial trial and decision have a natural and alluring appeal. But, we are not licensed to indulge in unjustified assumptions, or make a speculative approach to this ideal. **It ill behooves this Court to tar and feather a judge as biased or prejudiced, simply because counsel for a party litigant happens to complain against him. As applied here, respondent judge has not as yet crossed the line that divides partiality and impartiality. He has not thus far stepped to one side of the fulcrum. No act or conduct of his would show arbitrariness or prejudice. Therefore, we are not to assume what respondent judge, not otherwise legally**

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[1] 30 Am. Jur. 767.

[2] No. L-27934, September 18, 1967, 21 SCRA 160, 166-167.

disqualified, will do in a case before him. We have had occasion to rule in a criminal case that a charge made before trial that a party "will not be given a fair, impartial and just hearing" is "premature." Prejudice is not to be presumed. Especially if weighed against a judge's legal obligation under his oath to administer justice "without respect to person and do equal right to the poor and the rich." To disqualify or not to disqualify himself then, as far as respondent judge is concerned, *is a matter of conscience*. (Bold underscoring supplied for emphasis)

The Court has constantly counseled that no Judge or Justice who is not legally disqualified should evade the duty and responsibility to sit in the adjudication of any controversy without committing a dereliction of duty for which he or she may be held accountable. Towards that end, the Court has also aptly reminded:

To take or not to take cognizance of a case does not depend upon the discretion of a judge not legally disqualified to sit in a given case. **It is his duty not to sit in its trial and decision if legally disqualified; but if the judge is not disqualified, it is a matter of official duty for him to proceed with the trial and decision of the case. He cannot shirk the responsibility without the risk of being called upon to account for his dereliction**.[3] (Bold underscoring supplied for emphasis)

It is timely to remind, too, that the Court is a collegial judicial body whose every Member has solemnly and individually sworn to dispense and administer justice to every litigant. As a collegial body, the Court adjudicates without fear or favor. The only things that the Court collectively focuses its attention to in every case are the merits thereof, and the arguments of the parties on the issues submitted for consideration and deliberation. Only thereby may the solemn individual oath of the Members to do justice be obeyed.

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[3] *People v. Moreno,* 83 Phil. 286, 294 (1949); *Perfecto v. Contreras*, 28 Phil. 538, 543 (1914); *Joaquin v. Barretto*, 25 Phil. 281, 287 (1913).

Supreme Court E-Library

II.

Quo warranto is a proper remedy to oust the respondent as an ineligible impeachable public officer

The respondent served as a member of the faculty of the University of the Philippines-College of Law (U.P. College of Law) from November 1986 to June 1, 2006. According to the U.P. Human Resources Development Office (U.P. HRDO), she was on official leave without pay in the following periods, to wit: (*a*) June 1, 2000 – May 31, 2001; (*b*) June 1, 2001 – May 31, 2002; (*c*) November 1, 2003 – May 31, 2004; (*d*) June 1, 2004 – October 31, 2004; (*e*) November 1, 2004 – February 10, 2005; (*f*) February 11, 2005 – October 31, 2005; and (*g*) November 14, 2005 – May 31, 2006.

In July 2010, the respondent applied for the position of Associate Justice of the Court. Based on the records of the Judicial and Bar Council (JBC), she submitted her statement of assets, liabilities and net worth (SALN) ending December 31, 2006 in support of her application. Upon nomination by the JBC, she was appointed Associate Justice by President Benigno C. Aquino III. She took her oath of office on August 16, 2010 and assumed the position.

With the position of Chief Justice becoming vacant following the removal by impeachment of Chief Justice Corona in 2012, the JBC announced the opening for application for the position, and directed the candidates to submit specific requirements, in addition to the usual documentary requirements, as follows:

1. Sworn Statements of Assets, Liabilities, and Networth (SALN)
   a. For those in the government: all previous SALNs (up to 31 December 2011)
   b. For those from the private sector: SALN as of 31 December 2011

Supreme Court E-Library

2. Waiver in favor of the JBC of the confidentiality of local and foreign bank accounts under the Bank Secrecy Law and Foreign Currency Deposits Act.[4]

Being among the applicants for the vacancy, the respondent submitted to the JBC her SALNs for 2009, 2010 and 2011, and the waiver of confidentiality of her local and foreign bank accounts.[5] On July 20, 2012, the JBC inquired about her SALNs for 1995, 1996, 1997 and 1999. In reply, she transmitted a letter-response dated July 23, 2012,[6] wherein she explained why she could not submit her SALNs for said periods when she was still a professor at the U.P. College of Law; stated that it should be reasonable to consider it "infeasible" for her to still retrieve all of her SALNs considering that most of her government records in the academe were more than 15 years old; and pointed out that the clearance from all administrative responsibilities and administrative charges issued to her by the U.P. was an assurance that the U.P. had considered her SALN requirements met.

Upon being nominated by the JBC, President Aquino III appointed the respondent as Chief Justice on August 24, 2012. Five years thereafter, on August 30, 2017, Atty. Larry Gadon filed an impeachment complaint against her in the House of Representatives for culpable violation of the Constitution, corruption, high crimes, and betrayal of public trust. The complaint, which also alleged that she had failed to make truthful declarations in her SALNs, was referred to the Committee on Justice in accordance with the rules of the House of Representatives. After finding the complaint sufficient in form and substance, the Committee on Justice conducted several hearings to determine probable cause. It was revealed in the course of the proceedings to determine probable cause that she had not filed her SALNs when she was still employed as a faculty member of the U.P. College of Law.

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[4] Petition, Annex G.

[5] Memorandum of Respondent, pp. 16-17.

[6] Memorandum of Respondent, Annex 11.

Supreme Court E-Library

On the basis of the testimonies and other evidence submitted to the Committee on Justice relevant to the respondent's failure to submit the required SALNs to comply with the requirements of the JBC for applicants to the vacancy of the position of Chief Justice, Atty. Eligio Mallari requested the Office of the Solicitor General (OSG) through his letter dated February 21, 2018[7] to initiate a *quo warranto* proceedings in the name of the Republic of the Philippines against her. Acting on the request of Atty. Mallari, the OSG communicated to U.P. HRDO, through its Director Angela D. Escoto, a request for copies of the respondent's SALN in its possession.[8]

By her letter-response on March 6, 2018,[9] Director Escoto furnished to the OSG copies of the respondent's SALNs found in the records of the U.P. HRDO for the years 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997 and 2002.

In the meanwhile, on March 2, 2018, the Republic of the Philippines, as represented by Solicitor General Jose C. Calida, commenced these *quo warranto* against the respondent, praying for her ouster as Chief Justice due to her ineligibility for the position.

Is the remedy of *quo warranto* proper to oust the respondent as the sitting Chief Justice?

In the Majority Opinion, Justice Tijam answers this query in the affirmative. He asserts that the Court is empowered by Section 5, Article VIII of the 1987 Constitution to entertain a petition for *quo warranto* and to issue in a worthy suit the writ of *quo warranto* to oust from office an unqualified public officer; that although impeachment and *quo warranto* have the same result, which is the removal of a public officer, the two are really different from each other based on their nature, purpose, function, and grounds; that impeachment and *quo warranto*

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[7] Petition, Annex M.

[8] Memorandum of Petitioner, Annex O, p. 51.

[9] *Id*.

can proceed independently and simultaneously; hence, impeachment does not bar the Court from taking cognizance of the OSG's petition for *quo warranto* brought against the respondents, an impeachable official; that the OSG's petition for *quo warranto* is not time-barred because prescription does not lie against the State; that the time-bar under the *Rules of Court* is a limitation applicable only to private individuals challenging the title of an incumbent official, but not to the Solicitor General who represents the public interest in pursuing the action; and that, in any event, several circumstances that would require the relaxation of the application of the time-bar are present.

On the substantive issues, Justice Tijam rules that the respondent did not meet the integrity qualification under the 1987 Constitution by failing to file her SALNs for several years despite the same being a constitutional and legal requirement, and by consequently not meeting the requirement of her service in government. As such, she was ineligible for the position, and could not continue holding the office.

As I earlier declared, I fully agree with the Majority Opinion. Let me tender my explanations for the concurrence.

The respondent argues that the Court has no jurisdiction to entertain the petition for *quo warranto* considering that the only procedure to remove her as an impeachable officer is by impeachment.

The respondent's argument is unacceptable.

Section 5(1), Article VIII of the 1987 Constitution vests in the Court original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*. In particular reference to *quo warranto*, the Court can delve into the validity of a public official's title to her office. That this jurisdiction is shared with the Regional Trial Court and the Court of Appeals does not dilute or lessen the Court's jurisdiction. The fear expressed by the respondent emanating from the sharing of the jurisdiction with the lower courts arises from her propensity for speculation. Nonetheless, her fear is unfounded.

Supreme Court E-Library

The respondent contends that impeachment precludes *quo warranto* as a remedy against her due to her being an impeachable official.

The contention is absurd. I submit that the remedies of *quo warranto* and impeachment are not mutually exclusive by virtue of their having different natures, different grounds and different coverages.

Quo warranto – literally, *by what warrant*, or *by what authority* – is a remedy to try disputes with respect to the title to a public office or franchise or privilege appertaining to the State. It is, therefore, a demand by the State upon the individual or corporation to show by what right she holds the office, or by what right it exercises some franchise or privilege appertaining to the State which, under the Constitution and the laws of the land, neither can legally exercise except by virtue of grant or authority from the State.[10] Generally, therefore, a *quo warranto* proceeding is commenced by the Government as the proper party-plaintiff.[11] It is an extraordinary remedy, a prerogative writ, and as such is administered cautiously and in accordance with certain well-defined principles.[12]

In his seminal work on extraordinary legal remedies,[13] James Lambert High has rendered the following concise backgrounder on the common law origin and nature of the writ of *quo warranto* as "a writ of right for the king," or sovereign that sheds enlightenment on the remedy, thus:

§ 592. The ancient writ of quo warranto was a high prerogative writ, in the nature of a writ of right for the king, against one who

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[10] Francisco, V. *The Revised Rules of Court in the Philippines, Special Civil Actions*, Vol. IV-B., Part 1, East Publishing, Quezon City, 1972, p. 281.

[11] *General v. Urro*, G.R. No. 191560, March 29, 2011, 646 SCRA 567, 591.

[12] *Id*., citing *Castro v. Del Rosario*, G.R. No. L-17915, January 31, 1967.

[13] *Treatise on Extraorindary Legal Remedies, embracing Mandamus, Quo Warranto and Prohibition*, Chicago, 1874, pp. 424-426.

usurped or claimed any office, franchise or liberty of the crown, to inquire by what authority he supported his claim, in order to determine the right. It was also granted as a corrective of the mis-user, or non-user of a franchise, and commanded the respondent to show by what right, "*quo warranto,*" he exercised the franchise, having never had any grant of it, or having forfeited it by neglect or abuse. Being an original writ, it issued out of chancery, and was directed to the sheriff, commanding him to summon the respondent to appear before the king's justices at Westminster. Afterwards, by virtue of the statutes of quo warranto, the writ was made returnable before the king's justices in eyre, and the respondent was commanded to appear before the king or these justices when they should come into the county, to show by what warrant the office or franchise in question was exercised. The justices in eyre having been displaced by the judges on the several circuits, the proceedings were again remanded to the king's justices at Westminster, and the original writ gradually fell into disuse.

§ 593. The origin of the writ may be traced to a very early date in the history of common law. The earliest case upon record is said to have been in the ninth year of Richard I., A.D. 1198, and was against the incumbent of a church, calling upon him to show quo warranto he held the church. It was frequently employed during the feudal period, and especially in the reign of Edward I., to strengthen the power of the crown at the expense of the barons. Indeed, to such an extent had the encroachments of the crown been carried, that , prior to the statutes of quo warranto, the king had been accustomed to send commissions over the kingdom to inquire into the title to all franchises, *quo jure et quove nomine illi retinerent*, and the franchises being grants from the crown if no sufficient authority could be shown for their exercise, they were seized into the king's hands, often without any judicial process. These encroachments of the royal prerogative having been limited and checked by statute, resort was then had to the original writ of quo warranto. Indeed, both the original writ of quo warranto and the information in the nature thereof were crown remedies, and though often unreasonably narrowed in the hands of weak princes, they were always recognized as of most salutary effect in correcting the abuse or usurpation of franchises.

Where the public officer is ineligible for public office at the start, impeachment is not a proper remedy to oust her. Conversely, *quo warranto* is not the correct remedy to oust a public officer for misconduct committed while in office. Both

Supreme Court E-Library

can stand independently of each other despite the fact that both remedies will achieve the same result – the removal of the occupant of a public office. They do not exclude each other. As High has further noted:

> § 618. Since the remedy of quo warranto, or information in the nature thereof, is only employed to test the actual right to an office or franchise, it follows that it can afford no relief for official misconduct and can not be employed to test the legality of the official action of public or corporate officers. x x x[14]
>
> § 619. Where, however, the right to an office or franchise is the sole point in controversy, the specific legal remedy afforded by proceedings in quo warranto is held to oust all equitable jurisdiction of the case…[15]
>
> § 640. In Alabama, a somewhat novel doctrine is maintained, with regard to the use of a quo warranto information as a means of testing the title to an office, and ousting an incumbent unlawfully exercising its franchises, and the propriety of the remedy in that state would seem to be dependent upon the ineligibility of the officer, or his illegal election in the first instance. And while the information will lie against one who was originally ineligible, or was never duly and legally elected, and whose tenure of office was therefore, illegal from the first, yet if the incumbent was lawfully elected in the first instance, and was eligible to the office, he can not be ousted by information, but resort must be had to the means afforded by the laws of the state for the punishment of officers by impeachment or otherwise.[16]

III.

The Republic's petition is not time barred

The next issue that I want to weigh in on concerns the insistence of the respondent that even if the petition for *quo*

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[14] *Id*. at 448, citing *People v. Whitcomb*, 55, Ill. 172; *Dart v. Houston*, 22 Geo. 506.

[15] *Id*. at 449, citing *Updegraff v. Crans*, 47 Pa. St. 108; *Hullman v. Honcomp*, 5 Ohio St. 237.

[16] *Id*. at 467, citing *State v. Gardner*, 43 Ala. 234. 103.

warranto is the proper remedy to test her eligibility to the position of Chief Justice, the petition is already time-barred for not being brought within one year after the cause for the ouster arose. She cites in support of her insistence Section 11, Rule 66 of the *Rules of Court*, to wit:

> Sec. 11. *Limitations*. — Nothing contained in this Rule shall be construed to authorize an action against a public officer or employee for his ouster from office **unless the same be commenced within one (1) year after the cause of such ouster, or the right of the petitioner to hold such office or position, arose**; nor to authorize an action for damages in accordance with the provisions of the next preceding section unless the same be commenced within one (1) year after the entry of the judgment establishing the petitioner's right to the office in question. (16a)

In contrast, the Republic fends off the respondent's insistence by asserting that the time-bar of one year does not apply against the State conformably with the principle that acts of limitation do not bind the State (*nullum tempus occurrit regi* or *nullum tempus occurrit reipublicae* or time does not run against the crown or the state). It states that the time-bar applies only to private individuals initiating the *quo warranto* proceeding. Nonetheless, it argues that the time-bar, assuming that it applies against the State, has not yet expired.

The assertion of the Republic is correct.

That statutes of limitation do not apply against the State in *quo warranto* suits is now settled. The reason is that the State is thereby enforcing a public right.

In *Agcaoili v. Suguitan*,[17] the Court held that –

> With reference to the second question above suggested, in *re* prescription or limitation of the action, it may be said that originally there was no limitation or prescription of action in an action for *quo warranto*, neither could there be, for the reason that it was an action by the Government and prescription could not be plead as a defense to an action by the Government. The ancient writ of *quo warranto*

[17] 48 Phil. 676, 692 (1926).

Supreme Court E-Library

was a high prerogative writ in the nature of a writ of right by the King against any one who usurped or claimed any office, franchise or liberty of the crown, to inquire by what authority the usurper supported his claim, in order to determine the right. Even at the present time in many of the civilized countries of the world the action is still regarded as a prerogative writ and no limitation or prescription is permitted to bar the action. **As a general principle it may be stated that ordinary statutes of limitation, civil or penal, have no application to quo warranto proceeding brought to enforce a public right.** (McPhail vs. People *ex rel*. Lambert, 160 Ill., 77; 52 Am. St. Rep., 306; People *ex rel*. Moloney vs. Pullman's Palace Car Co., 175 Ill., 125; 64 L. R. A., 366.)

In all public matters a writ of *quo warranto* is a writ of right at the suit of the state, and issues as a matter of course upon demand of the proper officer (State ex rel. Washington County vs. Stone, 25 Mo., 555; Commonwealth vs. Allen, 128 Mass., 308), and the court has no authority to withhold leave to file a petition therefor. [Bold emphasis supplied]

Still, even assuming that the time-bar is applicable to *quo warranto* proceedings instituted by the State, I believe that the filing of the petition herein by the Republic was still made within the one-year period for bringing the suit under Section 11, *supra*.

The one-year period stated in Section 11 is in the nature of a statute of limitation, a law that restricts the time within which legal proceedings may be brought. But a statute of limitation is generally considered as procedural, not substantive, in nature;[18] hence, the Court has never been shy in relaxing its procedural rules whenever the circumstances so warrant. Verily, it is always the better course for the courts, under the principle of equity, not to be guided or be bound strictly by the statute of limitations or the doctrine of laches when by doing so, manifest wrong or injustice would result.[19]

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[18] See *Hatcher v. State Farm Mutual Automobile Insurance, Co*., 269 Mich. App. 596, 605, 712 N.W. 2d 744, 750 (2005).

[19] *Heirs of Anacleto B. Nieto v. Municipality of Meycauayan, Bulacan*, G.R. No. 150654, December 13, 2007, 540 SCRA 100, 109.

In my view, the Republic timely brought its petition for *quo warranto*. There is no need to liberalize the application of the time-bar under Section 11, which should be reckoned from the discovery of the cause when it was revealed for the first time in the course of the recent hearings of the Committee on Justice that the respondent had not submitted the SALNs required of her by the JBC. The Solicitor General and the public in general could not be subjected to the time-bar counted from the assumption to the office because they were not informed of her ineligibility and lack of qualifications at the time of her application or assumption into office. Her letter dated July 23, 2012 to the JBC objectively misrepresented her eligibility by asking the JBC to accept her three SALNs as substantial compliance by claiming that for her to still secure copies of her 15-year old SALNs was already "infeasible." She thereby implied that she had filed the SALNs, but she had not filed the non-produced SALNs in reality. To bar the State's *quo warranto* suit despite her resorting to strategy amd stealth to cover up her ineligibility would surely defeat the public policy of not rewarding deceptions prejudicial to the public interest.

Jurisprudence on the time-bars in other actions can be applied by analogy to firm up the position of the State on reckoning the time-bar in *quo warranto* from discovery. An action for forcible entry had to be filed within a year from the deprivation of possession, but *Vda. De Prieto v. Reyes*,[20] reckoned from the period from discovery of the *clandestine* dispossession, thus:

> It is insisted now that both trial courts lacked jurisdiction to entertain the illegal detainer suit, because defendant-appellant had been in possession since December, 1948, and the action was started only in 1952; and that it was error to consider that the year for the summary action should be counted only from the time the owner learned of defendant's encroachment.
>
> The contention is unmeritorious. There is a natural difference between an entry secured by force or violence and one obtained by stealth, as in the case before us. The owner or possession of the land

[20] No. L-21470, June 23, 1965, 14 SCRA 430, 432.

Supreme Court E-Library

could not be expected to enforce his right to its possession against the illegal occupant and sue the latter before learning of the clandestine intrusion. **And to deprive the lawful possessor of the benefit of the summary action, under Rule 70 of the Revised Rules, simply because the stealthy intruder manages to conceal the trespass for more than a year would be to reward clandestine usurpations even if they are unlawful**. [Bold emphasis supplied]

The respondent's non-filing of some of her SALNs would not have been found out without the thorough hearings by the Committee on Justice. Applying *Vda. De Prieto v. Reyes* by analogy, the one-year period could be justifiably reckoned from the discovery of the cause for ouster because she had misrepresented her filing of the SALNs.

In *Frivaldo v. Commission on Elections*,[21] the Court refused to declare that the *quo warranto* suit brought against the petitioner was time-barred despite its being commenced more than eight months after his proclamation as the winning candidate, *which was way beyond the 10-day limit under the law.* The Court explained why:–

The argument that the petition filed with the Commission on Elections should be dismissed for tardiness is not well-taken. The herein private respondents are seeking to prevent Frivaldo from continuing to discharge his office of governor because he is disqualified from doing so as a foreigner. Qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure**. Once any of the required qualifications is lost, his title may be seasonably challenged. If, say, a female legislator were to marry a foreigner during her term and by her act or omission acquires his nationality, would she have a right to remain in office simply because the challenge to her title may no longer be made within ten days from her proclamation? It has been established, and not even denied, that the evidence of Frivaldo's naturalization was discovered only eight months after his proclamation and his title was challenged shortly thereafter**.

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[21] G.R. No. 87193, June 23, 1989, 174 SCRA 245, 255.

This Court will not permit the anomaly of a person sitting as provincial governor in this country while owing exclusive allegiance to another country. The fact that he was elected by the people of Sorsogon does not excuse this patent violation of the salutary rule limiting public office and employment only to the citizens of this country. The qualifications prescribed for elective office cannot be erased by the electorate alone. The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified. Obviously, this rule requires strict application when the deficiency is lack of citizenship. If a person seeks to serve in the Republic of the Philippines, he must owe his total loyalty to this country only, abjuring and renouncing all fealty and fidelity to any other state. [Bold emphasis supplied]

Under the *baseless ignorance* doctrine, the one-year period should be counted from the date of discovery. This doctrine was expounded on in *Romualdez v. Marcelo*,[22] thusly:

x x x For the *general rule* is that the mere fact that a person entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises, does not prevent the running of the statute. This stringent rule, however, admits of an *exception*. Under the "*blameless ignorance*" doctrine, the statute of limitations runs *only* upon discovery of the fact of the invasion of a right which will support a cause of action. **In other words, courts decline to apply the statute of limitations where the plaintiff neither knew nor had reasonable means of knowing the existence of a cause of action**. [Bold emphasis supplied]

Considering that the Republic did not know if the respondent had complied with the law requiring the filing of her SALNs during her stint in government service, it would be inequitable to strictly enforce the time-bar under Section 11, *supra*, against the State.

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[22] G.R. Nos. 165510-33, September 23, 2005, 470 SCRA 754, 768.

Supreme Court E-Library

IV.

The respondent is ineligible to hold the position of Chief Justice due to her lack of proven integrity as required by the Constitution

Section 7, Article VIII of the 1987 Constitution provides:

> Section 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.
>
> (2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.
>
> (3) A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.

The Republic reiterates that the respondent lacked the required integrity for appointment to the Judiciary by virtue of her deliberate and constant failure to file her SALNs. The records do not show her SALNs corresponding to 1986, 1987, 1988, 1989, 1992, 1999, 2000, 2001, 2003, 2004, 2005 and 2006. However, she states that her integrity should not be based solely on the fact of filing or non-filing of the SALNs; that the Republic has utterly failed to prove her being ineligible for the position of Chief Justice; and that it was the Republic, not her, that had the burden of proof in this case.

The burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.[23] Generally, in civil litigations, the party who alleges has the burden to prove his affirmative allegations. The burden of proof should not be

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[23] Rule 131, Section 1, the *Rules of Court*.

confused with burden of evidence, the latter being that logical necessity that rests on a party at any particular time during the trial to create a *prima facie* case in his favor or to overthrow one when created against him. A *prima facie* case arises when the party having the burden of proof has produced evidence sufficient to support a finding and adjudication for him of the issue in litigation.[24]

The burden of proof in *quo warranto* proceedings fell on the shoulders of the respondent. The Republic, albeit the petitioner, did not have to discharge the burden of proof. Indeed, High has pointed out:

> § 629. An important feature of the law governing quo warranto informations, and one which most distinguishes this remedy from ordinary civil actions at law, is that the prosecutor is not obliged to show title in himself to sustain the action or to put the respondent upon the necessity of proving his title. **And the principle is well established that the burden rests upon the respondent of showing good title to the office whose functions he claims to exercise, the state being only obliged to answer the particular claim of title asserted**. The principle has been carried even further, and it has been held that it is incumbent upon the respondent to show, not only his title, but also the continued existence of every qualification necessary to the enjoyment of the office ad that it is not sufficient for him to state the qualifications necessary to the appointment, and rely on the presumption of their continuance. And while it is true, that as to officers *de facto* the courts will not inquire into their title in collateral proceedings, yet in proceedings in the nature of quo warranto, the object being to test the actual right to the office and not merely a use under color of right, **it is incumbent upon the respondent to show a good legal right, and not merely a colorable one, since he must rely wholly on the strength of his own title. If he fails in this requirement judgment of ouster will be given**.[25]

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[24] *People v. Court of Appeals*, G.R. No. 183652, February 25, 2015, 751 SCRA 675, 706.

[25] High, *supra*, note, at 458.

Supreme Court E-Library

§ 712. Allusion has been made to an important distinction between pleadings upon quo warranto informations, and in civil actions, as to the title necessary to be asserted by the prosecutor. That distinction is, that while ordinary civil actions the burden rests upon the plaintiff to allege and prove the title to the thing in controversy, the rule is reversed in cases of quo warranto informations, and the respondent is required to disclose his title to the office or franchise in controversy, and if he fails in any particular complete title, judgment must go against him. **In other words, in civil actions, plaintiff recovers upon his own title, but in proceedings quo warranto respondent must show that he has good title against the government. The sole issue in proceedings in this nature, instituted to test the right of an incumbent to an office or franchise, being as to the right of the respondent, he cannot controvert the right or title of the person alleged in the information to be entitled to the office nor can the court adjudicate upon such right, unless it is necessarily involved in the determination of the issue between the people and the respondent…**[26]

x x x x x x x x x

§ 716. **Where the proceedings are instituted for the purpose of testing the title to an office, the proper course for the respondent is either to disclaim or to justify. If he disclaims all right to the office, the people are at once entitled tot judgment as of course. If, upon the other hand, the respondent seeks to justify, he must set out his title specially and distinctly, and it will not suffice that he alleges generally that he was duly elected or appointed to the office, but he must state specifically how he was appointed, and if appointed to fill a vacancy caused by the removal of the former incumbent, the particulars of the dismissal as well as of the appointment must appear. The people are not bound to show anything, and the respondent must show on the face of his plea that he has a valid and sufficient title, and if he fails to exhibit sufficient authority for exercising the functions of the office, the people are entitled to judgment of ouster. Unless, therefore, the respondent disclaims all right to the office and denies that he has assumed to exercise its functions, he should allege such facts, if true , invest him fully with the legal title; otherwise he is considered as a mere usurper**.[27] [Bold emphasis supplied]

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[26] *Id*. at 519-520.

[27] *Id*. at 521-523.

Francisco shared the same view, opining thusly:

> **The general rule is that the burden of proof is on the respondent when the action is brought by the attorney general to test right to a public office**. When the state calls on an individual to show his title to an office he must show the continued existence of every qualification necessary of its enjoyment. **The state is bound to make no showing and defendant must make out an undoubted case. He must set out his title specifically and show on the face of the answer that he has a valid title. The people are not called on to show anything. The entire burden is on defendant.**[28] [Bold emphasis supplied]

Such uniqueness of the treatment of the burden of proof in *quo warranto* actions is not hard to understand. The thrust of the State's demand comes from its negative allegations of the respondent lacking the title to the office, as contrasted from the respondent's position of having title, which is based on affirmative allegations. In our system of judicial proof, the affirmative allegations, not the negative ones, need to be established.

In this case, therefore, the respondent must discharge the burden of proof by showing that she was eligible for the position of Chief Justice through the production of all the SALNs required of her by the JBC, among others, and only thereafter, not before, may the State assume the discharge of its own burden of evidence.

This brings us to the matter of *proven integrity* as an indispensable qualification for the position of Chief Justice. My understanding of thre respondent's position is that she has taken qualification too lightly. She should not.

Integrity as a qualification in the context of the vetting of candidates to judicial positions by the JBC, according to *Jardeleza v. Sereno,*[29] is closely related to, or, if not, approximately equated to an applicant's *good reputation for*

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[28] Francisco, *supra*, note 10, at 319-320.

[29] G.R. No. 213181, August 19, 2014, 733 SCRA 279, 332-333.

Supreme Court E-Library

honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards. This understanding of the qualification accounts for why every candidate's reputation may be shown through certifications and testimonials given by reputable government officials, non-governmental organizations, and clearances issued by the courts, the National Bureau of Investigation, and the police, among others. In fact, the JBC may even conduct a discreet background check and receive feedback from the public on the integrity, reputation and character of the judicial candidates, the merits of which are to be verified and checked.

While a general averment of integrity normally suffices as qualification for court employees, the same is not true for the officials of the Judiciary. For the latter, the 1987 Constitution expressly requires integrity *to be proven*. This means, simply, that every candidate for a judicial position must be present proof of their integrity, among others. In that regard, presumptions and assumptions would not satisfy the requirement.

The SALNs required in the selection for the vacancy of Chief Justice would gauge whether or not the respondent and the other aspirants had proven integrity. This is because the SALNs, if truthful and accurate, were good indicators of integrity for being quantifiable as declarations of assets and liabilities.

The records disclose that the respondent did not present sufficient proof of her integrity because she did not dutifully file the constitutionally-mandated SALNs, as required of her by the JBC. She presented her SALNs only for the years ending in 1985, 1989, 1990, 1991, 1993, 1994, 1995, 1996, 1997, 1998, and 2002 despite having worked at the U.P. College of Law in the period from 1985 to 2006.

Nonetheless, the respondent alleges having filed *all* her SALNs *as required by law*, and boldly calls on the State to prove that she had not. In seeming self-contradiction of her allegation, however, she surprisingly invokes the presumption of regularity indulged in by the Court in *Concerned Taxpayer v. Doblada, Jr.*[30]

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[30] A.M. No. P-99-1342, June 8, 2005, 459 SCRA 356.

The respondent apparently trivializes the constitutional qualification of *proven integrity*. The presumption would be unneeded by her if, as she alleged, she really filed all the SALNs. She has not been sincere and forthright about her qualifications, particularly that of her *proven integrity*. I openly wonder why she would even invoke the presumption of regularity in respect of the filing of her SALNs if it was true that she had filed *all* her SALNs *as required by law*.

We are dealing here with the State's petition for *quo warranto* that seeks to test the respondent's title to the office of Chief Justice. As such, the burden of proof belonged to her as the respondent, that she, not the State, must be the party to come forward with evidence to show her title to the office. The reality frontally facing her now is that she did not discharge her burden of proof. To me, therefore, her insistence on the State still discharging the burden of proof was her abject admission of not successfully discharging her burden of proof.

Moreover, it is fundamental that the presumption of regularity, being a presumption *juris* that the law directs to be made from particular facts, may not be indulged in if there is a demonstration of irregularity. Here, the very certification by the U.P. HRDO about her too many *missing* SALNs demonstrated patent irregularity, and consequently removed the factual basis for presuming regularity in her favor.

A presumption is an inference on the existence of a fact not actually known, and arises from its usual connection with another that is known, or a conjecture based on past experience as to what course of human affairs ordinarily takes.[31] The role of presumption is to relieve the party enjoying the same of the evidential burden to prove the proposition that he contends for, and to shift the burden of evidence to the adverse party.[32] In general, presumptions are resorted to for either of two reasons.

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[31] Agpalo, *Handbook on Evidence*, Rex Book Store, 2003, p. 255.

[32] *Id*.

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The first is to enable the courts to determine the party who should discharge the burden of proof and the burden of evidence. Illustrative of this is the constitutional presumption of innocence, which immediately requires the State to discharge the burden to prove the guilt beyond reasonable doubt. The other is necessity and convenience. There are many situations in which proof of facts may not be available or accessible, or are too expensive to access or impossible to produce. To prevent a miscarriage or denial of justice, or to serve a public need, the presumption may be resorted to. An example, of which there are many, is the disputable presumption that prior rents or installments had been paid when a receipt for the later ones is produced.[33] The presumption relieves the tenant or buyer of the duty to prove payment, and burdens the landlord or seller to show non-payment. Proof to the contrary bursts the presumption, which is merely disputable.

Finally, let me simply stress that the respondent cannot rely on *Concerned Taxpayer v. Doblada, Jr.* because said ruling had no bearing or relevance to her situation. The Court presumed that the respondent in that case had filed his SALN in view of the records of the OCA being unreliable. Such presumption would shield the respondent from probable criminal and administrative liabilities. In short, *Concerned Taxpayer v. Doblada, Jr.* concerned the respondent's liability under the SALN law, not his eligibility. In contrast, the issue herein relates to the respondent's eligibility, which she had the duty to prove in the first place.

IN VIEW OF THE FOREGOING, I **VOTE TO GRANT** the petition for *quo warranto*, and **CONCUR** with the reliefs stated in the dispositive portion of the Majority Opinion written by Justice Tijam.

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[33] Section 3(i), Rule 131 of the *Rules of Court*.

R E S O L U T I O N

JARDELEZA, *J.*:

> *On some positions cowardice asks the question, is it safe? Expediency asks the question, is it politic? Vanity asks the question, is it popular? But conscience asks the question, is it right? And there comes a time when one must take a position that is neither safe, nor politic, nor popular but he must take it because conscience tells him it is right.* –
> Martin Luther King[1]

Respondent Chief Justice Maria Lourdes P. A. Sereno (respondent) in her *Ad Cautelam Respectful Motion for Inhibition* (Motion) seeks to prevent me from participating in this special civil action for quo warranto. She invokes the New Code of Judicial Conduct, which enjoins judges to disqualify themselves from participating in a matter in which it may appear, to a reasonable observer, that they are unable to decide a matter impartially, and where the judge has actual bias or prejudice concerning a party. She further invokes the due process clause of the Constitution.

Determining whether a sitting justice of the Supreme Court should recuse in a case is an exercise fraught with constitutional difficulty. This is due in no small measure to the absence of a clear litmus test by which a jurist's partiality is measured. Walking the tightrope between a judge's duty to decide and inhibition being a matter of conscience, the Court has made largely *ad hoc* decisions that turn on the factual subtleties of each case. This has prevented the development of a bright line rule on inhibition. In the Philippines, this tightrope walk between judicial accountability and judicial independence is made more problematic by the very paucity of formal mechanisms that

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[1] A PROPER SENSE OF PRIORITIES, February 6, 1968, Washington, D.C. Taken from http://www.aavw.org/special_features/speeches_speech_king04.html, last accessed May 8, 2018.

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institutionalize the reconciliation of these two concepts.[2] This gap in the law is complicated by the history, practice and tradition of the Court respecting recusal from within its ranks: the individual justices of the Court decide for themselves whether to inhibit from a case, and whether to explain their decision or remain silent. Finally, because the Court itself abides by the Justice's judgment, and because there is no appeal, a Justice's decision on the matter of his recusal is final.

Fully conscious of these sensitivities, I have thus endeavored to: (I) provide, in the interest of transparency and fuller context, the specific charges made against me, as set forth in respondent's Motion, as well as other relevant events which led up to these charges, including my testimony before the Committee on Justice of the House of Representatives (House Committee on Justice); (II) survey the relevant rules and statutes on inhibitions and recusals; (III) study applicable jurisprudence, both local and American, on the subject, including where they seemingly implicate issues of due process; and (IV) consider the practice of the Court with respect to the inhibition and recusal of its own members. I submit this Resolution to show how I have decided, in good conscience, to participate in this case.

I

A

The Motion cites three charges that allegedly evidence my bias or prejudice against respondent, namely that: (1) I have stated that she committed treason; (2) I described her actions during my nomination to the Court as "inhumane" and "not those of a normal person;" and (3) my negative characterization of her persists to this day.

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[2] See *Establishing a Legal Framework for the Development of a Mechanism for the Judicial Responsibility of an Incumbent Supreme Court Justice: Judicial Independence and Judicial Accountability in Light of Recent Jurisprudence and Legal Developments* by Maria Luisa Isabel L. Rosales, Ateneo Law Journal, Vol. 56. pp. 558-640.

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In the interest of full disclosure and to enable the reader to appreciate the context of these charges, I quote respondents' allegation in full.

The first charge cites my statement before the House Committee on Justice that respondent committed "treason:"

On 11 December 2017, Justice Jardeleza testified before the Committee on Justice of the House of Representatives in relation to the charge that the Chief Justice allegedly "manipulated the shortlist of the Judicial and Bar Council (JBC) to exclude then Solicitor General Francis H. Jardeleza, for personal and political reasons, thereby disgracing then Sol. Gen. Jardeleza and curtailing the President's power to appoint him." There is reasonable basis to conclude from Justice Jardeleza's testimony, that he harboured ill feelings towards the Chief Justice as a consequence of the latter's challenge to his integrity during the nomination process for the Associate Justice position (vice Hon. Justice Roberto A. Abad) in 2014. Justice Jardeleza apparently asserted that the Chief Justice has committed "treason," to wit:

[JUSTICE] JARDELEZA. x x x

So, ngayon mabalik po tayo. Ano po ang paratang sa akin? Ang paratang po at dito nakasaad sa supplemental comment ng Chief Justice. Sinabi na po ni Attorney Capacite, ito pong supplemental comment and reply pirmado ni Attorney Capacite, hindi po ito verified. Subalit iyong part two po nito, naka-all caps, it's page 13, statement of the Chief Justice on the integrity objection. Ang first sentence po, basahin ko, "This portion is solely attributable to the Chief Justice." Ano pong sinasaad nito? Na iyong diskarte ko na pumanig ako na huwag isama, **ako ay to quote her words, "disloyal to the republic." Iyong disloyalty to the republic, if you check the Pilipino-English dictionary ay naghudas sa ating Inang Bayan. Napakabigat po.**

Direct quote again, iyong diskarte ko na iyon ay is an act of treason. Treason. Sa madaling salita po sa Tagalog ako po ay traydor sa Inang Bayan. x x x

x x x x x x x x x

So, sa punto na iyon ay ibabalik ko po ang tanong. Hindi ko po ikaila na may diskarte itong American lawyers, may diskarte ang Foreign Affairs, may diskarte rin kami. Eh bakit naman kung nasa kabilang panig ako disloyal sa bayan natin? This is a difference of

Supreme Court E-Library

opinion. And, in fact, on an executive matter, so iyong po ang unang tanong. Ako ay pinaratangan na disloyal o ang hudas sa bayan natin, Eh sa pananaw ko po it is the Chief Justice who acted disloyally, naghudas sa bayan natin. Bakit? Eh bakit niya gagamitin itong classified, top secret or secret document? Para sa anong gamit? Hindi siya kasama sa arbitration. Ang ginamit niya du'ng [sic] dokumento ay illegally secured document. **So binabalik ko po sa kanya ang paratang na disloyal to the government.** At noong panahon na iyon hindi pa tapos ang kaso. That was a continuing case. Nagkadesisyon lang po kasi 2016 na. So, sino po ang disloyal sa bansa natin. Sa palagay kop o hindi ako, hindi ang Office of the President, hindi si Chief PLC.

x x x x x x x x x

[JUSTICE] JARDELEZA. (Continuing) ... largest island in the Spratlys. Salita niya yun, hindi ko salita yun. Ayun nga ang pinag-aawayan. Ang statement na Itu Aba is the largest island in the Spratlys ay taliwas, contradictory sa posisyon ng gobyerno na ang itu Aba ay rock lang. **So ngayon, ang paratang sa akin na ang ginawa ko, ang diskarte ko ay treason, maitanong ko po sa inyo sino ngayon [sic] ang committed an act of treason sa pananalita nya na Itu Aba is an island?** Bagkus, ang posisyon ng gobyerno Itu Aba is a rock. At saka sinabi niya ito na Itu Aba is an island not once but twice. Sinabi niya ulit, inulit niya pa sa paragraph 68, "It must be emphasized that the categorical legal position that characterizes Itu Aba is an island ... as an island," inulit pa. **So, ngayon binabalik ko iyung paratang, sino sa amin ang nag-commit ng act of treason? Hindi po ako.** Hirap na hirap iyung team na mabigyan ng pruweba na iyung Itu Aba ay rock at hindi island. Bakit po? Bagk us kasi kahit na hindi ... kahit na minensiyon (*mention*) natin, ang mga hukom ng tribunal ay, at a certain point, ay kusang nagbigay ng order na Pilipinas, isama mo sa diskusyon mo iyung dalawampu, 20 features kung ano ito, island or rock. Kahit hindi natin minensiyon, and arbitral tribunal mismo nagsabi isama ninyo, kasama doon ang Itu Aba. So napilitan tayo na i-discuss na itong Itu Aba up front and center. Now, itanong ninyo sa amin. itanong ninyo sa akin, hanggang sa madesisyunan ba kampante kami na mananalo tayo sa issue na ito? Hindi po. lyun ang biggest nightmare natin because kapag na-declare ang itu Aba na island, magkakaroon ng 200 miles. But, as they say, the rest is history. Mabuti na lang, mabuti na lang nanalo tayo.

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Magbalik ako, habang pending pa ito, **habang pending pa iyung kaso, eh, bakit naman tawagin akong traydor sa Inang Bayan? binabalik ko sa Chief Justice. Sa palagay ko you were the one who committed treason.** While the case was pending, walang pakundangan na ginamit mo ang isang dokumento na top secret, classified secret, nilagay mo sa publiko ang isang pangyayari na mayroong disagreement sa legal team. At saka contrary sa pinaghihirapan ng Pilipinas na iyan ay rock, eh, dalawang beses mo sinabi in writing iyun po ay island. **So sa palagay ko po, kapag kayo ang hukom dito ay kung hindi po iyun treason, hindi ko na alam. And I am not asking for anything that she did not do unto me.** Alam ko po iyung treason may view na there can be no treason without war. At binabalik ko sa Punong Mahistrado. eh, wala naming digmaan noong 2014, ti nawag mo akong traydor, tinawag mo ang diskarte ko ay treason so ibabalik ko sa iyo. So, ang ibig sabihin sa mind ni Chief Justice, ang treason can be committed even kung walang digmaan.

So Honorable Members of the House, I will leave that to you, kayo po ang hukom dito. Ang sinasabi ko ay pananaw ko, **iyung sinasabi ko na ang Chief Justice ang nag-commit ng acts of disloyalty and acts of treason against the Republic is not a plain opinion. Iyun po ay bati sa... batay sa facts**. Number one, ginamit niya, pinalabas niya sa publiko ang classified document; number two, tinawag niya na island iyung feature na hirap na hirap ang gobyerno naming i-pruweba na rock.

Maraming salamat po.

x x x x x x x x x

REP. HERNANDEZ. Thank you, Mr. Chairman.

Let me just clarify it, Justice Jardeleza, are you saying that you are accusing the Chief Justice of committing treason? Can you just clarify that?

[JUSTICE] JARDELEZA. Ayaw ko po na maakusahan ni Congressman Marcoleta na ano iyun, ewan, ewan. (*Laughter*). **So, ang straight po na sagot, iyun na po.** Because sa pananaw ko, eh, bakit mo... bakit mo ilantad ang classified document? Ano ang pakialam ng hudikatura? O? Alam mo, ang pinag-aawayan ay ang kahulugan ng island. The category of Itu Aba making it an island is a conclusion based on facts. So, kung ang posisiyon ng gobyerno ay that is a

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rock, iyung tano na magsabi, "Ay, hindi, island yan," **again, if that is not treason, I do not know what is treason**.[3]

The second charge involves my characterization of respondent's actions relevant to my nomination as a "personal slight,"[4] "inhumane" and "not those of a normal person." As evidence, respondent quotes the following portions of my testimony before the House Committee on Justice, to wit:

REP. G.F. GARCIA. And so, she did not conduct herself as would have been expected of a chief justice, head of a separate branch of government? Would that be a fair statement[?]

[JUSTICE] JARDELEZA. I think that is a fair statement, Mr. Chairman.

REP. G.F. GARCIA. And yet as Chief Justice and assumed to be knowledgeable about the law, it would have struck her or at least, it could have crossed her mind that precisely attacking your integrity on the grounds of your legal strategy on the West Philippine Sea would not hold water if we are to question integrity per se because integrity would now delve on morality, on...what else...well, precisely morality, in this case, this purely involved a professional position or a professional judgment, do you think the Chief Justice could not have foreseen that?

[JUSTICE] JARDELEZA. Mr. Chairman, hindi ko po talaga alam. Ang katotohanan po hanggang sa ngayon...kasi wala...wala po kaming history, wala kaming...sabi ko nga tinuturing naming siya na pamilya ko, na kaibigan, wala akong maisip na away propesyunal or personal. So, **hanggang ngayon hindi ko talaga po maintindihan bakit nagawa niya iyun...nagawa sa akin iyung isang bagay na napakatindi. Napakatindi po iyun, mahirap. So, I am sorry, up to now, I cannot understand why that was done to me.**

x x x x x x x x x

REP. G.F. GARCIA. So, we are left to conclude that the Chief Justice's opposition to your good self was purely out of an...what cannot be comprehended, incomprehensible quirk of her personality?

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[3] *Ad Cautelam* Respectful Motion for Inhibition (Motion), pp. 2-5; emphasis and underscoring retained.

[4] Motion, p. 6.

[JUSTICE] JARDELEZA. Because I cannot understand because I cannot get into her mind, as I cannot understand, I can only say. Mr. Chairman, talagang, in my view, **what was done to me was inhuman**.

REP. G.F. GARCIA. That no decent humane and human person much less a Chief justice of a country would do?

[JUSTICE] JARDELEZA. Mr. Chairman, that...that...you know, when dealing with a fellow human being, we should afford each other some measure of decency. Kung ayaw po sa akin, kasi alam ko naman may nagsasabi, "Ay, hindi ikaw ang manok ni Chief Justice." Eh, Mr. Chairman, lahat...iyung karamihan ng mga abugado dito, iyung maluklok sa Korte Suprema, siguro iyun ang isa sa mga pinaka-minimithi. Sa kadulu-dulo ng isang career ng isang tao, minsan man lang maka-apply ka. Masabi mo sa mga apo mo, "Aba, nag-apply ako, na-nominate ako." Eh, iyun lang naman ako eh, bakit...and I was...I was minding my own business, I came from the private sector, akala ko tapos na iyung mga anak ko puwede na akong tumulong. So, littled did I know that I will get into all of these. As I said to the UP graduates, **ito po iyung ginawa sa akin were the most difficult two months of my life**. Hindi ko alam kung bakit ginawa but iyung...iyung ordeal na you would go through two months hindi mo alam kung ano mangyayari. Bagkus, Mr. Chairman, one week to go nagpaalam na ako sa Executive Secretary at saka kay CPLC then Ben, sinabi ko naintindihan ninyo ba ang ginawa ko? Kinalaban ko iyung Chief Justice. Kung hindi ako manalo sa Supreme Court, I will not be an effective SolGen. At saka hindi lang iyun, eh, wala na ho, ang term na ginamit ni Justice Brion **it is a...is a career killer. Ang term na ginamit ko sa UP College of Law, it was a near-death experience** sapagkat mabuti na lang sinuportahan ako ng Supreme Court. Kung hindi po, I will live the rest of my life tagged na tao, abogadong walang integridad. Integrity is a requirement before you can become a member of the Board of Directors of a publicly-listed company. Under the fit and proper rule of the Central Bank, integrity is a requirement. So, ano po ang mangyayari kung... **kung hindi ako nagdulog sa Supreme Court, ay, talagang wala na ho akong professional life, para na ring na-itsupuwera. So, I can agree po with...with you**.

REP. G.F. GARCIA.In other words, iyung nangyari po sa inyo, sinabi po ninyo those were the worst two months of your life kung saan kunuwestiyon (*question*) ang integridad ninyo on the basis of what was purely a professional legal strategy and belatedly nagdagdag pa

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ng dalawa na allegations which were totally unsubstantiated. Ibig sabihin po, eh, talagang the Chief Justice was out to discredit you, was out to destroy your reputation, was out to kill you career-wise, is this a normal act of a Chief Justice and would you say that the Chief Justice in this instance committed a great and grave injustice to yourself po?

MR. JARDELEZA. **I believe po that that is not the act of a normal person**.[5]

The third charge asserts that my negative assessment of respondent's character is the very issue raised in the present petition, and that this negative characterization persists to this day. She cites a portion of my testimony before the Committee on Justice as illustrative:

It appears that Justice Jardeleza's apparent bias or prejudice against the Chief Justice continues until present. With due respect, this is evident from the following testimony:

REP. J.C.Y. BELMONTE. (Continuing)... nag-oath taking po kayo. Sir, as justice, congratulations po and dapat lang talaga; you deserved it. Pero that's an aside, noong nag-oath po kayo, kanino po kayo nag-oath?

[JUSTICE] JARDELEZA.Ganito po and kuwento, Mr. Chairman. I think I went to Malacanang almost four-five o'clock na. Noong nandoon na po ako sa Malacanang, I asked Secretary Ochoa, "Puwede mag-oath before President Aquino?" then ang sagot ay "Sige titingnan natin kung ma-schedule, kung maka-schedule pa tayo." So, nag-antay po ako doon. After a while, sabi, Baka masikip. Then, one of the aides, one of the political aides of Secretary Ochoa said, "Alam mo, mabuti siguro kung doon ka mag-oath before the CJ para naman anon a, to repair things." Eh talaga pong nag-o-object ako. Sabi ko, "Puwede ba si President? Siya naman ang nagnombra sa akin eh?" Kaya lang I don't know how many minutes passed, hindi ... sabi, "Hindi ka pa rin mapagbigyan. The schedule is full."

Ang hindi alam nu'ng lahat eh mahirap na iyon masingitan, nag-oath na ako sa notary, I think mga bandang two -o'clock para just in case may mangyari may oath na ako, so may hawak-hawak na

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[5] Motion. pp. 6-8; emphasis and underscoring retained.

akong oath. After a while, wala pa rin, hindi pa rin maano. And then, well, **to my eternal regret pumayag ako**. And why do I say to my eternal regret because, katulad ni Justice Brion, the next morning I think and he is here, I sought out Justice Brion to apologize because there were several people first who said, "Eh mali naman ang ginawa mo. People went out on a limb for you to help you, eh ba't doon ka naman nag-take oath?" So, iyon po ang katotohanan. I had to apologize to Justice Brion why I allowed ... I took my oath before the CJ. And again binalikan ko si Secretary Ochoa, "paki-arrange naman na mag-take oath ako kay Pangulong Aquino." Kaya pag mabisita mo ako, ang picture ko po, I'm taking my oath before President Aquino.

REP. J.C.Y. BELMONTE. I'm...thank you very much for that, Justice. I'm sorry I had to ask that question.

[JUSTICE' JARDELEZA. It's all right but what I'm trying to say is iyong ginawa po sa akin hindi makatao. Hindi po iyon nabura noong ako ay nagte-take oath and she was smiling and everything is okay. **Of course, everything was not okay and up to today everything is not okay.**[6]

B

In the interest of full transparency and to provide a more complete context, I shall also narrate the relevant events which preceded my testimony before the House Committee on Justice:

1. In June 2014, respondent attempted to block my nomination to the Court on the ground that I lacked integrity, as shown by my handling of the West Philippine Sea arbitration case which the Philippines filed before the Petmanent Court of Arbitration at The Hague. I was then Solicitor General and led the Philippine legal team that worked on the crafting of the arbitration case. I would later be appointed the Philippine Agent for purposes of the arbitration.

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[6] Motion, p. 9; emphasis and underscoring retained.

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> In public filings made in *Jardeleza v. Sereno*,[7] respondent accused me of committing "treason," being a "traitor," and being disloyal to the country through my alleged "deliberate refusal to promote the remedies available to the Philippines, and deliberately weakening the country's arguments."[8] She also faulted me for allegedly demonstrating "weakness of character" when I was supposedly "not willing to protect the interest" of the Republic, even inferring that I "may have been listening to extraneous factors or may have been promised something", thereby imputing that I may have compromised national interests because of personal agenda.[9]

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[7] G.R. No. 213181, August 19, 2014, *J.* Leonen's dissent, citing Judicial and Bar Council Supplementary Reply, pp. 1-7, pp. 170-176 of the Records.

[8] *Id*.

[9] *Id.*, more fully, the pertinent portion of the dissent read "She was asked whether the integrity objection would hold considering that there was no proof that the Petitioner obtained money for his actuation in the West Philippine Sea case. She explained her point of view that one's capacity and willingness to uphold the Constitution determines integrity. An objection to integrity does not necessarily require proof of unlawful receipt of money in exchange for a decision or an action. She stressed that one does not have integrity when one is not willing to protect the interest of one's client to the utmost, especially in this case when the client happens to be the Republic. She said that through his actuations, Petitioner has demonstrated weakness of character. She inferred that he may have been listening to extraneous factors or may have been promised something. She also said she had seen many instances where national interests had been compromised because of personal agendas. She cited her experiences as the Director of the Institute of International Legal Studies in the University of the Philippines, when she observed the actuations of certain government officials. She saw how the country's ability to protect Scarborough Shoal was compromised by a foreign affairs official in exchange for a possible United Nations position. She also observed how public officials were willing to see the country lose its defense in the two international arbitration cases brought against it by the companies Fraport and Philippine International Air Terminals Co., Inc., all for something other than duty to the Republic."

On August 19, 2014, the Court ordered my inclusion in the JBC shortlist. President Benigno S. Aquino III appointed me to the Court the following day.

2. On June 29, 2015, a little over a year before the final award on the West Philippine Sea arbitration case was issued,[10] I gave the commencement address at the occasion of the graduation of the University of the Philippines College of Law Class of 2015. In my address, I spoke about the value of hard work and integrity in one's success and shared my harrowing experience in aspiring for a seat in the Court. I recalled then how painful it was to spend a whole lifetime building a reputation worthy of my parents and my family, only for my integrity to be disparaged at the peak of a legal career. I told the graduates that in life, when faced with a shark or a bully, they should stand their ground and push back. Admittedly, I referred to respondent's viciously false accusations as those consistent of a "bully" and a "shark."[11] My address reads, in pertinent part:

x x x x x x x x x

My third story is about my near death experience.

When I became Solicitor General in 2012, I thought I had reached the pinnacle of my career. Former United States Solicitor General Rex Lee described the position as "probably the creamiest lawyering job in the country." But, as former United States Supreme Court Justice Potter Stewart said, while the Solicitor General's office provides "the best lawyer's jobs," a seat on the Supreme Court may be "the best job in American law." Thus, after two and a half years as Solicitor General, I aspired for a seat in our Supreme Court.

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[10] Said final award was issued by the Permanent Court of Arbitration at The Hague on July 12, 2016.

[11] See Tarra Quismundo's "Jardeleza lashes out at 2 SC colleagues," *Philippine Daily Inquirer*, July 1, 2015; "Sereno: It's not helpful to comment on Jardeleza attack," *Philippine Daily Inquirer*, July 3, 2015.

Supreme Court E-Library

And then, Wham! The Chief Justice and the Senior Associate Justice of the Supreme Court objected to my nomination, on grounds that I lack integrity in my handling of the West Philippine Sea arbitration. Wow. It came as a complete surprise; I did not know what hit me. This was the start of the most difficult two months of my life, and that of [my wife], and of my children.

You will read most about what happened in *Jardeleza v. Sereno*. What the case will not tell you, though, is how much pain the vicious untruths thrown my way caused me and my family.

You spend a whole lifetime building a reputation worthy of your parents. My father finished law in a school in Iloilo, and he passed the bar on the second try. He practiced solo until he had to take a government job for its steady income. This was when my siblings and I were entering high school. My mother was a pharmacist and a college teacher who taught piano in the evenings to supplement her income. They both worked very hard and saved. They borrowed to build a house and paid the debt in twenty years. All of one thousand pesos per year. They never owned a car in their lifetime. They only dreamt to send all of us to UP, which they did.

You also spend a whole lifetime building a reputation worthy of your family. [My wife] and I have raised our three children in the same way our own parents reared us: education is the great equalizer, work hard, and the only legacy we can bequeath them is a good name. We come from humble beginnings, and we live a modest life. Name and reputation are most important for us.

Thus, when my integrity was attacked, I knew I had to fight back, if only to clear my name.

I had a most difficult defense because, *first*, as a lawyer, I had to keep the confidences of my client, the Republic of the Philippines. Under our code of ethics, we carry the secrets of the client to the grave. These secrets include litigation strategy and tactics. You do not telegraph these to the adversary. That

would be treason. *Second*, I could not even confirm or deny the existence of a leaked memorandum purporting to show the judgment calls being debated in the highest levels of the Executive Department of Government. As you can imagine, there are laws and administrative orders prohibiting public officers charged with the custody of confidential and secret documents from revealing their contents.[12] My accusers violated these laws with impunity. Criminal wrongdoing was piled upon brazen disregard for the safekeeping of state secrets. Laws were broken when persons who had custody of official documents leaked them to persons not members of the legal team, and when the latter recklessly placed them in the public domain. Read again *Jardeleza v. Sereno*. Read carefully between the lines.

Fortunately for me, the Supreme Court decided to allow my name to be placed in nomination, and the President appointed me to the Court.

I was so close to professional death, an inglorious end to a career I worked so hard to nurture. It is an experience I would not wish on anybody, not even to those who made those vile accusations against me.

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"Don't back down from the sharks." "Face down the bullies." These are among the life lessons given by Naval Admiral William H. McRaven to the graduates of the University of Texas, in his commencement address last May 2014. According to Admiral

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[12] See Memorandum Circular No. 78, Promulgating Rules Governing Security of Classified Matter in Government Offices, August 14, 1964. See also Memorandum Circular No. 196, amending MC No. 78, July 19, 1968; Letter of Instruction No. 1420. Prohibiting disclosure to unauthorized persons, the media or general public, top secret, secret, confidential or restricted matters; Executive Order No. 608, Establishing a National Security Clearance System for Government Personnel with Access to Classified Matters and For Other Purposes, March 30, 2007; Republic Act No. 6713, Code of Conduct and Ethical Standards for Public Officials and Employees; Civil Service Commission Resolution No. 1101502, Revised Rules on Administrative Cases in the Civil Service (RRACCS), November 18, 2011.

Supreme Court E-Library

McRaven: "There are a lot of sharks in the world. If you hope to complete the swim, you will have to deal with them." You see, part of basic Navy SEAL training involves swimming in the shark- infested waters off Clemente Island in San Diego. His advice? When a shark circles your position, you must stand your ground. Do not swim away. If it attacks, you must summon all your strength and punch that shark in the snout.

Admiral McCraven, with the bravado of a true Navy SEAL, assumes that the sharks and bullies will swim away when you punch them. I do not know about that. Sharks and bullies can be mindlessly brutal. And relentless. I cannot guarantee that you will triumph over the bullies and the sharks when they circle you. Like I told you, in my case, I almost perished. To this day, I am still searching for answers as to why that had to be done to me and to my family. I still don't have the answers, but I knew then what I had to do. I stood my ground. I pushed back.

In life, when faced with a shark or a bully, my advice to you: push back. Use all your might, use your UP Law training. Push back for your parents. For yourself. For your spouse. For your children. For your loved ones. For your class. For your block mates.

Class of 2015, as you push back the bully, as you punch the shark, use all your might and pray that you punched hard enough. It worked for me.

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3. On July 12, 2016, the Arbitral Tribunal in The Hague promulgated its ruling, which was an astounding decision in favor of the Philippines. With this, I was free at last to talk about the arbitration and, more importantly for me, the treatment of Itu Aba.

   The first opportunity presented itself within three months from the date of the issuance of the arbitral decision. On October 21, 2016, I was invited to deliver the keynote speech before the Integrated Bar of the Philippines (IBP) – Western Visayas Regional Convention, which had

for its theme, "Ensuring a legal system based on respect for the Rule of Law."

In my remarks, I shared the complete story behind the Itu Aba issue[13] There, I recounted how the Philippine legal team, composed of lawyers from different offices within the Executive Department, and in coordination with our international legal team, unanimously and purposively embarked on a low-risk strategy involving the question of which features to include in the Philippine submission. Specifically, only features that (in our estimation and based on evidence known or available to us) could, at worst, be declared only as rocks were included in our January 2013 submission to the Arbitral Tribunal. Relatedly, the team made a deliberate decision *not* to include Itu Aba, the largest feature in the Spratly Islands, as it was reputed to have sources of potable water which, arguably, could qualify it as an island, to the detriment of the entire Philippine case.

In brief, the risk posed by including Itu Aba was this: if declared by the arbitral tribunal to be an island, Itu Aba would generate a 200 Nautical Mile (NM) Exclusive Economic Zone (EEZ) that would cover large parts of the Philippine EEZ in the west, including Reed Bank and extending almost up to Palawan. This was a risk none of the members of the Philippine legal team was willing to take.

Towards the end of the year, however, foreign counsel recommended the amendment of the Philippine statement of claim, with the addition of other features, among them, Itu Aba. Considering the gravity and sensitivity of the proposal, we asked counsel to visit Manila to personally discuss the matter with the rest of the

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[13] With the full transcript of the Keynote Address attached hereto as "Annex A".

Supreme Court E-Library

Philippine legal team. In a meeting held in Malacanan in January 2014, the advantages and disadvantages of the proposal were discussed. In the end, the team *unanimously* affirmed the low-risk strategy initially agreed upon and decided against amending the Philippine submission to include Itu Aba.

Despite this, foreign counsel *again* proposed, during the preparation of the Philippine Memorial, to include therein fourteen (14) paragraphs *mentioning* Itu Aba. These additional paragraphs would argue that although Itu Aba is the largest high-tide feature in the Spratly Islands, it is still incapable of sustaining human habitation or economic life of its own, and thus cannot be held to be an island. After reminding counsel that the matter has already been decided in the January 2014 Manila meeting, I proposed that the recommendation be placed in a formal memorandum[14] addressed to the Secretary of Foreign Affairs and myself, for purposes of elevating the matter to then President Aquino for his decision. After discussion, President Aquino decided to go with the foreign counsel's recommendation and the additional paragraphs mentioning Itu Aba were included in the Memorial.[15]

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[14] In this Memorandum, lead counsel for the Republic, Paul Reichler, argued that ignoring the issue of Itu Aba would damage the Philippines's credibility before the Tribunal and undermine the entire case. Executive Secretary Paquito Ochoa Jr, then Chief Presidential Legal Counsel (now Associate Justice of the Court) Alfredo Benjamin Caguioa, and I, for our part, crafted our own memorandum where we argued that the legal and political risks of "mentioning" Itu Aba were no different from the risks of amending the submission to "include" Itu Aba.

[15] As fate and the vagaries of litigation would have it, the Arbitral Tribunal itself later on directed the Philippines to make submissions on the status of more than twenty features in the Spratly Islands, including Itu Aba, and made the determination of their status part of the proceeding.

Supreme Court E-Library

> Respondent would later on use this same confidential Memorandum to block my nomination and impugn my integrity before the JBC. I emphasize that neither respondent nor her informant, Senior Associate Justice Antonio T. Carpio, were part of the Philippine legal team. They did not participate in the discussions that led to the initial adoption of the low-risk strategy, nor in the decision not to amend the Philippine submission. In fact, I did not furnish respondent or Justice Carpio a copy of this confidential Memorandum in view of its highly sensitive content.

4. On December 11, 2017, I appeared and testified before the House Committee on Justice.

II

This part shall cover my survey of the relevant rules on inhibition or disqualification of judges.

First, there is Section 5, Canon 3 of the New Code of Judicial Conduct, cited by respondent, which provides as follows:

> Sec. 5. Judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide a matter impartially. Such proceedings include, but are not limited to instances where:
>
> a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
>
> b) The judge previously served as a lawyer or was a material witness in the matter in controversy;
>
> c) The judge, or a member of his or her family, has an economic interest in the outcome of the matter in controversy;
>
> d) The judge served as executor, administrator, guardian, trustee or lawyer in the case or matter in controversy, or a former associate of the judge served as counsel during their association, or the judge or lawyer was a material witness therein;

Supreme Court E-Library

e) The judge's ruling in a lower court is the subject of review;

f) The judge is related by consanguinity or affinity to a party litigant within the sixth civil degree or to counsel within the fourth civil degree; or

g) The judge knows that his or her spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceedings.

A.M. No. 03-05-01-SC, or the Adoption of the New Code of the Philippine Judiciary, was promulgated on May 15, 2004. It was touted as the Philippines' acceptance and implementation of the Bangalore Draft of the Code of Judicial Conduct which was, in turn, intended to be the Universal Declaration of Judicial Standards applicable in all judiciaries of member countries.[16] Somewhat similarly with the New Code of Judicial Conduct, Bangalore Draft Value 2.5 provides:

2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:

2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or

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[16] The Bangalore Draft was deliberated upon and approved at the Round Table Meeting of Chief Justices by the Judicial Group on Strengthening Judicial Integrity at the Peace Palace, The Hague, on November 25-26, 2002. For further analysis of the history of the Bangalore draft as the precursor of the Philippine New Code of Judicial Conduct, *see* Commentary on the Bangalore Principles of Judicial Conduct, by the United Nations Office on Drugs and Crime, September 2007.

2.5.3 the judge or a member of the judge's family, has an economic interest in the outcome of the matter in controversy: Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Rule 137 of the Rules of Court also enumerates grounds for either the disqualification or inhibition of a judge, to wit:

Sec. 1. *Disqualification of judges*. – No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has been presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.[17]

Finally, Rule 8 of A.M. No. 10-4-20-SC, or the Internal Rules of the Supreme Court,[18] also provides the following grounds for inhibition:

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[17] Rule 137, in turn, had its origins in Section 8 of Act 190, or the 1901 Code of Civil Procedure. In *People v. Lopez* (G.R. No. L-1243, April 14, 1947), the Court interpreted the determination of the question of a Justice's disqualification and competency under Section 8 of said Act to lie on the Justice's power alone, with the intervention of the Court as merely advisory in nature. Later on, the Supreme Court promulgated the Rules of Court where Rule 126, covering the rule on disqualification of judges, which appears to have merely reproduced Section 8 and Section 608 of the Code of Civil Procedure (*Vargas v. Rilloraza*, G.R. No. L-1612, February 26, 1948; *People v. Lopez*, G.R. No. L-1243, April 14, 1947).

[18] Published on May 7, 2010 in the *Manila Bulletin*; as amended in the Resolutions dated July 6, 2010, August 3, 2010, January 17, 2012, July 31, 2012, September 18, 2012, March 12, 2013, June 18, 2013 and September 10, 2013.

Supreme Court E-Library

> Sec. 1. *Grounds for inhibition*. – A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:
>
> (a) the Member of the Court was the *ponente* of the decision or participated in the proceedings in the appellate or trial court;
>
> (b) the Member of the Court was counsel, partner or member of law firm that is or was the counsel in the case subject to Section 3(c) of this rule;
>
> (c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;
>
> (d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;
>
> (e) the Member of the Court was executor, administrator, guardian or trustee in the case; and
>
> (f) the Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.
>
> A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.
>
> The inhibiting Member must state the precise reason for the inhibition.

In comparison, the applicable United States federal statute on the inhibition of justices and judges, which is broadly governed by Section 455 of the Ethical Standard Act of 1988, provides that:

> (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding or an officer, director or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is, to the judge's knowledge, likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

Relatedly, and upon study of the foregoing rules, there seems to me an established dichotomy between grounds calling for mandatory disqualifications and voluntary inhibitions.

Grounds calling for the mandatory disqualification of judges from sitting in, and deciding, cases are those set forth in paragraphs (b) to (g), Section 5 Canon 3 of the New Code of Judicial Conduct, the first paragraph of Section 1, Rule 137 of the Rules of Court, and the first paragraph of Section 1, Rule 8 of the Internal Rules of the Supreme Court. These provisions similarly provide for objectively verifiable bases upon which to support a judge's disqualification. On the other hand, the

Supreme Court E-Library

second paragraphs of both Section 1, Rule 137 of the Rules of Court and Rule 8 of the Internal Rules similarly provide that a judge may, *in the exercise of his discretion*, inhibit himself or herself for a just or valid reason other than any of those calling for mandatory disqualification. To me, the decision of whether to participate in a case is left to the judge's sound discretion because it acknowledges the possibility of other grounds for inhibition which, by nature, may not be objectively verifiable, as compared to the previous grounds so listed.

While paragraph (a), Section 5, Canon 3 of the New Code of Judicial Conduct can arguably be construed to call for the mandatory disqualification of a judge due to the use of the word "shall," it is my view that a careful (and reconciliatory) reading of this Section would show that it is more akin to the grounds provided under the second paragraph of Section 1, Rule 137 of the Rules of Court and the penultimate paragraph of Section 1, Rule 8 of the Internal Rules. Unlike the prophylactic grounds enumerated in the first paragraphs of the aforementioned sections of the Rules, which include verifiable relations of consanguinity or affinity and pecuniary interests, bias and prejudice do not submit themselves to mathematically precise determination and are therefore included in the grounds that are to be decided based on the challenged judge's discretion.

III

A

The dichotomy between mandatory and voluntary inhibitions, I find, has been validated by jurisprudence, at least insofar as to the manner by which such disqualification or inhibition shall be made. This Court has consistently pronounced that the first paragraphs of Section 1, Rule 137 of the Rules of Court and Section 1, Rule 8 of the Internal Rules of the Supreme Court, by virtue of their objective verifiability, warrant prompt compulsory disqualification, regardless of the will of the judge.[19]

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[19] *Santos v. Lacurom*, A.M. No. RTJ-04-1823 (Resolution), August 28, 2006, 531 Phil. 239-253; *Ong v. Spouses Basco*, G.R. No. 167899, August 6, 2008, 583 Phil. 248-256; *Chin v. Court of Appeals*, G.R. No. 144618, August 15, 2003, 409 SCRA 206, 212.

However, when the prayer for inhibition is triggered by grounds that are not objectively verifiable, such as bias or prejudice, the Court generally leaves the inhibition discretionary, and submits it to the sole discernment of the judge sought to be inhibited.[20]

Furthermore, I find from my review of Philippine jurisprudence that cases involving the recusal of judges and justices below the level of this Court have generally been approached following this methodology: First, the Court decides whether the facts trigger the application of mandatory disqualification or discretionary inhibition; *Second*, if the grounds raised on the motion call for mandatory disqualification, the Court involves itself and ensures disqualification of the challenged judge; If, however, it finds that the grounds raised are discretionary, the Court leaves the decision of inhibition to the best judgment and careful self-examination of the judge concerned, save for instances where grave abuse of discretion is shown.

Unfortunately, the Court has not laid down a clear litmus test by which a case of *voluntary* recusal by lower court judges and justices should be decided. As it stands, it seems to me that the body of law on discretionary recusal turns on eight (8) identifiable, but not internally consistent, principles: (1) partiality of a judge or justice is not presumed;[21] (2) bare allegations of

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[20] There have been a few cases wherein the Court has seen fit to intervene effectively reverse the Justice's offer/decision on the question of recusal (See *People v. Ong*, G.R. Nos. 162130-39, May 5, 2006, and *Veterans Federation Party v. COMELEC*, G.R. Nos. 136781, 136786 and 136795, October 6, 2000).

[21] See *Pimentel v. Salanga*, G.R. No. L-27934, September 18, 1967, 21 SCRA 160; *People v. Court of Appeals*, G.R. No. 129120, July 2, 1999, 369 Phil. 150-160; *Saylo v. Rojo*, A.M. No. MTJ-99-1225, April 12, 2000, 386 Phil. 446-452; *Soriano v. Angeles*, G.R. No. 109920, August 31, 2000, 393 Phil. 769-784; *Gohu v. Spouses Gohu*, G.R. No. 128230, October 13, 2000, 397 Phil. 126-136; *Gochan v. Gochan*, G.R. No. 143089, February 27, 2003, 446 Phil. 433-461; *Talag v. Reyes*, A.M. No. RTJ-04-1852, OCA-IPI No. 03-1759-RTJ, June 3, 2004, 474 Phil. 481-491; *Planas v. Reyes*, A.M. No. RTJ-05-1905, OCA-IPI No. 03-1712-RTJ, February 23, 2005, 492 Phil. 288-302; *Republic v. Evangelista*, G.R. No. 156015, August 11, 2005, 504 Phil. 115-125.

Supreme Court E-Library

partiality are not sufficient;[22] (3) clear and convincing extrinsic evidence is required to prove partiality;[23] (4) voluntary inhibition applies only to conduct or statements made from extrajudicial sources, *i.e.*, not in the court proceedings in question;[24] (5) the

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[22] See *People v. Kho*; *Go v. Court of Appeals*, G.R. No. 106087, April 7, 1993, 221 SCRA 397; *Abad v. Belen*, A.M. No. RTJ-92-813, January 30, 1995, 240 SCRA 733; *People v. Tabarno*, G.R. No. 101338, March 20, 1995, 242 SCRA 456; *People v. Court of Appeals and Pacificador*, G.R. No. 129120, July 2, 1999, 309 SCRA 705; *People v. Court of Appeals*, G.R. No. 129120, July 2, 1999, 369 Phil. 150-160; *Gohu v. Spouses Gohu*, G.R. No. 128230, October 13, 2000, 397 Phil. 126-136; *Pagoda Philippines, Inc. v. Universal Canning, Inc.*, G.R. No. 160966, October 11, 2005, 509 Phil. 339-347; *Spouses Abrajano v. Heirs of Salas, Jr.*, G.R. No. 158895, February 16, 2006, 517 Phil. 663-676; *Kilosbayan Foundation v. Janolo, Jr.*, G.R. No. 180543, July 27, 2010, 640 Phil. 33-61; *Aguinaldo v. Aquino III*, G.R. No. 224302, February 21, 2017.

[23] *Supra* note 20; See also *Aleria v. Velez*, G.R. No. 127400, November 16, 1998; *Gahol v. Riodique*, G.R. No. L-40415, June 27, 1975, 65 SCRA 505; *Dimo Realty & Development Inc. v. Dimaculangan*, G.R. No. 130991, March 11, 2004; *Castillo v. Juan*, G.R. Nos. 1-39516-17, January 28, 1975, 159 Phil. 143-149; *Cruz v. Iturralde*, A.M. No. RTJ-03-1775, April 30, 2003. 450 Phil. 77-88; *Dimo Realty and Development Inc. v. Dimaculangan*, G.R. No. 130991, March 11, 2004, 469 Phil. 373-385; *Planas v. Reyes*, A.M. No. RTJ-05-1905, OCA-IPI No. 03-1712-RTJ, February 23, 2005, 492 Phil. 288-302; *Spouses Abrajano v. Heirs of Salas, Jr.*, G.R. No. 158895, February 16, 2006, 517 Phil. 663-676; *Villamor, Jr. v. Manalastas*, G.R. No. 171247, July 22, 2015; *Castro v. Mangrobang*, A.M. No. RTJ-16-2455, Resolution, April 11, 2016.

[24] *Supra* note 20 and 21; *Webb v. People*, G.R. No. 127262, July 24, 1997, 276 SCRA 243, 253-254, citing *People v. Massarella*, 400 N.E. 2d, 436; *Aleria, Jr. v. Velez*, G.R. No. 127400, November 16, 1998, 359 Phil. 141-150; *People v. Court of Appeals*, G.R. No. 129120, July 2, 1999, 369 Phil. 150-160; *De Vera v. Dames II*, A.M. No. RTJ-99-1455, July 13, 1999, 369 Phil. 470-486; *Seveses v. Court of Appeals*, G.R. No. 102675, October 13, 1999, 375 Phil. 64-74; *Viewmaster Construction Corp. v. Roxas*, G.R. No. 133576, July 13, 2000, 390 Phil. 872-884; *Soriano v. Angeles*, G.R. No. 109920, August 31, 2000, 393 Phil. 769-784; *Estrada v. Desierto*, G.R. Nos. 146710-15, 146738, March 2, 2001, 406 Phil. 1-142; *Gochan v. Gochan*, G.R. No. 143089, February 27, 2003, 446 Phil. 433-461; *Cruz v. Iturralde*, A.M. No. RTJ-03-1775, April 30, 2003, 450 Phil. 77-88; *Chin v. Court of Appeals*, G.R. No. 144618, August 15, 2003, 456 Phil. 440-453; *Spouses Hizon v. Spouses Mangahas*, G.R. No. 152328, March 23, 2004, 469 Phil. 1076-1076; *Tan v. Estoconing*, A.M. Nos. MTJ-04-1554

judge must do a careful self-examination before deciding;[25] (6) the judge or justice has a duty to decide and to sit;[26] (7) judges and justices must act "like Caesar's wife - above suspicion";[27]

& MTJ-04-1562, June 29, 2005, 500 Phil. 392-407; *Republic v. Evangelista*, G.R. No. 156015, August 11, 2005, 504 Phil. 115-125; *Republic v. Gingoyon*, G.R. No. 166429, December 19, 2005, 514 Phil. 657-782; *Spouses Dumo v. Espinas*, G.R. No. 141962, January 25, 2006, 515 Phil. 685-701; *Deutsche Bank Manila v. Spouses Chua Yok See*, G.R. No. 165606, February 6, 2006. 517 Phil. 212-235; *People v. Ong*, G.R. Nos. 162130-39, May 5, 2006, 523 Phil. 347-359; *Pasricha v. Don Luis Dison Realty, Inc.*, G.R. No. 136409, March 14, 2008, 572 Phil. 52-71; *Reyes v. Paderanga*, A.M. No. RTJ-06-1973, March 14, 2008, 572 Phil. 27-44; *Heirs of Juaban v. Bancale*, G.R. No. 156011, July 3, 2008, 579 Phil. 285-297; *Law Firm of Tungol & Tibayan v. Court of Appeals*, G.R. No. 169298, July 9, 2008, 579 Phil. 717-730; *Ong v. Spouses Basco*, G.R. No. 167899, August 6, 2008, 583 Phil. 248-256; *Dipatuan v. Mangotara*, A.M. No. RTJ-09-2190, April 23, 2010, 633 Phil. 67-79; *Kilosbayan Foundation v. Janolo, Jr.*, G.R. No. 180543, July 27, 2010, 640 Phil. 33-61; *City Government of Butuan v. Consolidated Broadcasting System, Inc.*, G.R. No. 157315, December 1, 2010, 651 Phil. 37-56; *Melendres v. Presidential Anti Graft Commission*, G.R. No. 163859, August 15, 2012, 692 Phil. 546-565; *Sison-Barias v. Rubia*, A.M. No. RTJ-14-2388, June 10, 2014, 736 Phil. 81-123; *Jimenez, Jr. v. People*, G.R. Nos. 209195, 209215, September 17, 2014; *Umali, Jr. v. Hernandez*, IPI No. 15-35-SB-J, February 23, 2016; *Aranjuez v. Magno*, A.C. No. 10526, July 19, 2017.

[25] *Gacayan v. Pamintuan*, A.M. No. RTJ-99-1483, September 17, 1999, 314 SCRA 682; *Mateo, Jr. v. Villaluz*, G.R. Nos. L-34756-59, March 31, 1973, 151-A Phil. 21-34; *Bautista v. Rebueno*, G.R. No. L-46117, February 22, 1978, 171 Phil. 472-480; *Paderanga v. Azura*, G.R. No. 69640-45, April 30, 1985, 220 Phil. 644-647; *Intestate Estate of the Late Borromeo v. Borromeo*, G.R. No. L-41171, 55000. 62895, 63818, 65995, July 23, 1987, 236 Phil. 184-212; *Gutang v. Court of Appeals*, G.R. No. 124760, July 8, 1998, 354 Phil. 77-90; *Garcia v. Burgos*, G.R. No. 124130, June 29, 1998, 353 Phil. 740-775; *Republic v. Gingoyon*, G.R. No. 166429, December 19, 2005, 514 Phil. 657-782; *Castro v. Mangrobang*, A.M. No. RTJ-16-2455, April 11, 2016.

[26] See *People v. Ong* and *Webb v. People*; *People v. Kho*, G.R. No. 139381, April 20, 2001, 409 Phil. 326-337; *Chin v. Court of Appeals*, G.R. No. 144618, August 15, 2003, 456 Phil. 440-453; *Pagoda Philippines, Inc. v. Universal Canning, Inc.*, G.R. No. 160966, October 11, 2005, 509 Phil. 339-347.

[27] *People v. Ong, supra* note 19; *Palang v. Zosa*, G.R. No. L-38229, August 30, 1974, 157 Phil. 761-764; *Villapando v. Quitain*, G.R. Nos.

Supreme Court E-Library

and (8) the judge's or justice's decision must affirm the public's faith in the judiciary, for "any act which would give the appearance of impropriety becomes, of itself, reprehensible."[28]

Demonstrably, court decisions on recusal use one or more of these principles to arrive at conclusions that are widely varied and which decidedly turn on the peculiar facts of each case. My review of jurisprudence produced two cases, *Pimentel v. Salanga*[29] and *People v. Ong*,[30] which to me illustrate the stark unpredictability of applications of these eight principles in *theorem* vis-a-vis *praxis*.

In *Pimentel*, the judge was being inhibited by the litigant by virtue of an earlier extraneous administrative case filed by the litigant against the same sitting judge. There, the Court held that "[i]t ill behooves this Court to tar and feather a judge as biased or prejudiced, *simply because counsel for a party litigant happens to complain against him*." It thereafter laid the following guideposts for voluntary inhibition:

> But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstance reasonably capable of inciting such a state of mind, he should conduct a *careful self-examination*. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflects on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him.[31]

L-41333, L-41738, L-41739, L-41740, L-41741, January 20, 1977, 166 Phil. 26-33; *Bautista v. Rebueno*, G.R. No. L-46117, February 22, 1978, 171 Phil. 472-480; *Rosauro v. Villanueva, Jr.*, A.M. No. RTJ-99-1433, June 26, 2000, 389 Phil. 699-707.

[28] *Supra* note 20; *Aguas v. Court of Appeals*, G.R. No. 120107, January 20, 1998, 348 Phil. 417-427; *People v. Ong*, G.R. Nos. 162130-39, May 5, 2006, 523 Phil. 347-359; *Calayag v. Sulpicio Lines, Inc.*, G.R. No. 221864, September 14, 2016.

[29] *Supra* note 21.

[30] *Supra* note 20

[31] Emphasis supplied.

In the end, the Court in *Pimentel* upheld the judge's refusal to inhibit, thus:

> As applied here, respondent judge has not as yet crossed the line that divides partiality and impartiality. He has not thus far stepped to one side of the fulcrum. No act or conduct of his would show arbitrariness or prejudice. Therefore, we are not to assume what respondent judge, not otherwise legally disqualified, will do in a case before him.

The case of *Ong*, on the other hand, involved the move for the disqualification of Justice Gregory S. Ong, then an associate justice and chairperson of the Fourth Division of the Sandiganbayan, from presiding over the trial and sitting in judgment in ten consolidated cases against former First Lady Imelda R. Marcos. It was alleged, as grounds for his inhibition, that he made, on separate occasions, remarks that were allegedly prejudicial and revealing of his predisposition to dismiss the cases.[32] Justice Ong denied the motion to inhibit him. Upon appeal to the Court, we held that his remark as imputed should have been sufficient ground for Justice Ong to voluntarily inhibit himself, for "judges must be like Caesar's wife — above suspicion." This, despite the pronouncement by the Court in the *same* decision that two important requirements were not met: first, petitioner was unable to adduce clear and convincing evidence as required, and second, the potentially prejudicial remark, apart from being contested, triggered only voluntary inhibition which, pursuant to other cases that preceded and succeeded it, should have been left to the conclusive assessment of the judge concerned.

Although both cases involved *discretionary* inhibition, in *Pimentel*, the Court considered the judge's decision *not* to recuse to be conclusive upon itself. In *Ong*, however, the Court effectively reviewed the decision of the challenged justice not to inhibit from the case, and ultimately reversed it and directed his recusal.

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[32] *Supra* note 20.

Supreme Court E-Library

To compare, in American jurisprudence, the issue of recusal is governed by Section 455 of the Ethical Standard Act of 1988, which prescribes that a judge must disqualify himself whenever his impartiality "might reasonably be questioned." In applying Section 455, the U.S. Supreme Court has consistently employed the uniform "test of reasonableness" in examining a judge's actual bias or prejudice or an appearance thereof, pursuant to the statutory shift[33] from a harder evaluative trigger (judge's opinion) to Section 455's softer question of reasonability (appearance of partiality).[34]

Considering how similar Section 5, Canon 3 of our New Code of Judicial Conduct is to Section 455 of the U.S. Federal Ethical Standard Act of 1988, I find it useful to examine how the United States Supreme Court and lower federal courts have interpreted Section 455.

In 1994, the American Supreme Court in *Liteky et al. v. United States*[35] ruled that Section 455 disqualifications applied exclusively to extrajudicial sources, thus settling divergent interpretations made by federal circuit courts of appeals. In the process, the U.S. Supreme Court explained the origins, meaning and boundaries of the words "bias and prejudice" and "impartiality" as used under Section 455.

Speaking through Associate Justice Antonin Scalia, the Court explained that not all unfavourable disposition towards an individual is properly described in the pejorative terms "bias" or "prejudice" as to merit recusal.[36] Laying down three tests, Justice Scalia wrote that for a conduct or utterance to be of the nature as to give rise to the propriety of inhibition, apart from

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[33] After the 1974 amendment.

[34] James Sample, *Supreme Court Recusal from Marbury to the Modern Day*, 26 Geo. J. Legal Ethics 95 (2013); citing Debra Lyn Bassett, *Judicial Disqualification in the Federal Courts*, 87 Iowa L. Rev. 1213, 1225 (2002) at 603.

[35] 510 U.S. 540 (1994).

[36] *Id*. at 550.

being extrajudicial, they must be: (1) undeserved, or one that (2) rests upon the knowledge that the subject ought not to possess,[37] or one that is (3) excessive in degree.[38] The U.S. Supreme Court opined that unless an extrajudicial conduct or utterance is any or all of these three characterizations, it is not a bias or prejudice that may be reasonably perceived to warrant the judge's inhibition. Elucidating on the term "extrajudicial source" and the pejorative characterization of the term "personal bias or prejudice," the Court held:

> In our view, the proper (though unexpressed) rationale for Grinnell, and the basis of the modern "extrajudicial source" doctrine, is not the statutory term "personal" for several reasons. First and foremost, that explanation is simply not the semantic success it pretends to be. Bias and prejudice seem to us not divided into the "personal" kind, which is offensive, and the official kind, which is perfectly all right. As generally used, these are pejorative terms, describing dispositions that are *never* appropriate. It is common to speak of "personal bias" or "personal prejudice" without meaning the adjective to do anything except emphasize the idiosyncratic nature of bias and prejudice, and certainly without implying that there is some other "non-personal," benign category of those mental states. In a similar vein, one speaks of an individual's "personal preference," without implying that he could also have a "non-personal preference." Secondly, interpreting the term "personal" to create a complete dichotomy between court-acquired and extrinsically acquired bias produces results so intolerable as to be absurd. Imagine, for example, a lengthy trial in which the presiding judge for the first time learns of an obscure religious sect and acquires a passionate hatred for all its adherents. This would be "official" rather than "personal" bias and would provide no basis for the judge's recusing himself.
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> It seems to us that the origin of the "extrajudicial source" doctrine, and the key to understanding its flexible scope (or the so-called "exceptions" to it), is simply the pejorative connotation of the words

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[37] "For example, a criminal juror who has been biased or prejudiced by receipt of inadmissible evidence concerning the defendant's prior criminal activities."

[38] "For example, a criminal juror who is so inflamed by properly admitted evidence of defendant's prior criminal activities that he will vote guilty regardless of the facts."

Supreme Court E-Library

"bias or prejudice." Not *all* unfavorable disposition towards an individual (or his case) is properly described by those terms. One would not say, for example, that world opinion is biased or prejudiced against Adolf Hitler. The words connote a favorable or unfavorable disposition or opinion that is somehow *wrongful* or *inappropriate*, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess (for example, a criminal juror who has been biased or prejudiced by receipt of inadmissible evidence concerning the defendant's prior criminal activities), or because it is excessive in degree (for example, a criminal juror who is so inflamed by properly admitted evidence of a defendant's prior criminal activities that he will vote guilty regardless of the facts). The "extrajudicial source" doctrine is one application of this pejorativeness requirement to the terms "bias" and "prejudice" as they are used in §§ 144 and 455(b)(l) with specific reference to the work of judges.

The judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant, who has been shown to be a thoroughly reprehensible person. But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, and are indeed sometimes (as in a bench trial) necessary to completion of the judge's task. As Judge Jerome Frank pithily put it: "Impartiality is not gullibility. Disinterestedness does not mean child-like innocence. If the judge did not form judgments of the actors in those court-house dramas called trials, he could never render decisions." *In re J. P. Linahan, Inc.*, 138 F.2d 650, 654 (CA2 1943). Also not subject to deprecatory characterization as "bias" or "prejudice" are opinions held by judges as a result of what they learned in earlier proceedings. It has long been regarded as normal and proper for a judge to sit in the same case upon its remand, and to sit in successive trials involving the same defendant.[39]

Stated differently, *Liteky* drew the narrowly sharp distinction in extrajudicial sources, discriminating against those extrajudicial

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[39] *Supra* note 34, pp. 549-551. See also Shawn P. Flaherty, *Liteky v. United States*: The Entrenchment of an Extrajudicial Source Factor in the Recusal of federal Judges under 28 U.S.C. 455 (a). 15 N. III. U. L. Rev. 411 (1995); Jeremy S. Brumbelow, *Liteky v. United States*: The Extrajudicial Source Doctrine and Its Implications for Judicial Disqualification, 48 Ark. L. Rev. 1059 (1995).

sources that do not necessarily trigger a question of recusal, and those extrajudicial sources that are wholly pejorative or "*wrongful or inappropriate*" as to become a valid impetus for disqualification.

In 2000, in *Microsoft v. United States*,[40] Chief Justice William H. Rehnquist would interpret the words "in which his (judge's) impartially might reasonably be questioned," as used by Section 455, to refer to the "perspective of a reasonable observer who is informed of all the surrounding facts and circumstances."[41]

Justice Scalia, in his Memorandum explaining his non-recusal in the 2004 case of *Cheney v. United States, District Court for the District of Columbia*,[42] would add that "the decision whether a judge's impartiality can reasonably be questioned is to be made in light of the facts as they existed, and not as they were sunnised or reported."

The Ninth Circuit Court of Appeals, in *United States v. Holland*,[43] explained the concept of the reasonable third-party observer in the following wise:

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[40] Nos. 00-139 and 00-261. Decided September 26, 2000; In this case, Justice William Rehnquist's inhibition was being sought by virtue of the fact that Microsoft retained the services of the law firm for which Justice Rehnquist's son was a partner. In refusing to inhibit himself despite imputations of actual and apparent bias, Rehnquist opined that for a reasonable observation to be one that determines his recusal, such observation must be informed of all the facts and circumstances of the imputed bias, otherwise, such misappreciation of the facts cannot hold sway. Rehnquist additionally noted the negative impact of the unnecessary disqualification of even one irreplaceable Justice may have on the Supreme Court.

[41] *Id*.

[42] No. 03-475. Decided March 18, 2004; Justice Scalia was being asked to inhibit by virtue of one duck hunting trip during which he rode the same government aircraft with then Vice Present Richard Cheney. Scalia rejected the suggestion of recusal by pounding on the misperception of the public through the pervasive inaccuracies of facts as told by the media, echoing Rehnquist in saying that a "blast of largely inaccurate and uninformed opinion cannot determine the recusal question". He cautioned against the danger of erroneously considering just any perception of bias, even an unapprised one, as reasonable perception of bias that calls for recusal.

[43] 519 F.3d 909, 914 (2007).

Supreme Court E-Library

First, under Section 455(a), the judge must apply the "objective" standard articulated in Liljeberg, 486 U.S. at 860, 108 S.Ct. 2194. That standard requires recusal if a reasonable third-party observer would perceive that there is a "significant risk." that the judge will be influenced by the threat and resolve the case on a basis other than the merits. **The reasonable third-party observer is not a "partly informed man-in-the-street," but rather someone who "understand[s] all the relevant facts" and has examined the record and law.** LoCascio v. United States. 473 F.3d 493, 496 (2d Cir.2007); see also Clemens, 428 F.3d at 1178 ("The reasonable person in this context means a well-informed, thoughtful observer, as opposed to a hypersensitive or unduly suspicious person." (internal quotation marks and citation omitted)); but see In re Nettles, 394 F.3d 1001, 1002 (7th Cir.2005) ("We must bear in mind that these outside observers are less inclined to credit judges' impartiality and mental discipline than the judiciary itself will be." (internal quotation marks and citation omitted)). The "objective" standard is a check to avoid even the "appearance of partiality," Liljeberg, 486 U.S. at 860, 108 S.Ct. 2194, and ensure that the judge's decision is reasonable to an informed observer.[44]

B

Beyond the specific prescriptions of statutes or court rules regulating the disqualification or recusal of judges for cause, which I have covered above, there lies the overarching due process guarantee of the Constitution. This guarantee has given rise to, among others, the stricture that due process of law requires a hearing before an impartial and disinterested tribunal, and that every litigant is entitled to nothing less than the cold neutrality of an impartial judge.[45]

As the Court has recognized in *Mateo Jr. v. Villaluz*,[46] there may be, in addition to the causes for disqualification identified

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[44] *Id*. Emphasis supplied. See Joey Kavanagh, "Judicial Impartiality in Recent Civil Rights Victories: An Analysis of the Disqualification of Judge Shira Scheindlin in *Floyd v. New York City*," American University Journal of Gender Social Policy and Law 23, No. 1 (2014); 197-229.

[45] *Gutierrez v. Santos*, L-15824, May 30, 1961, 2 SCRA 249.

[46] G.R. Nos. L-34756-59, March 31, 1973, 50 SCRA 18.

by Section 1, Rule 137 of the Rules of Court, *other* causes that could conceivably erode the trait of objectivity, as to call for inhibition as a matter of constitutional law.[47] These causes, however, would be rare, and the specific issue in each case would be whether the acts of the judge complained of would negate the degree of objectivity required by the Constitution.[48] Thus, the rule would be that where a claim for the disqualification of a judge can be resolved under the narrower grounds provided for in the Rules of Court, the Court will not lightly tread on constitutional grounds. Plainly, not all grounds for disqualification or recusal implicate the great due process clause of the Constitution.

In *Mateo, Jr.*, the Court held that a trial judge before whom a witness executed an extrajudicial statement, which the witness later recanted for having been made under duress, cannot be expected to rule fairly on the question on whether the witness executed his statement freely, for indeed to admit that there was government intimidation would be hardly flattering to the judge.

I read the same judicial attitude of severely limiting the applicability of the due process clause to the matter of judicial disqualification to obtain in the United States. The leading case is *Caperton v. A. T. Massey Coal Co*.[49] where the U.S. Supreme Court reiterated that a fair trial in a fair tribunal is a basic requirement of due process. It recognized, however, that most matters relating to judicial disqualification do not rise to a constitutional level. Consequently, the U.S. Supreme Court has limited the application of the due process clause, with respect to judicial disqualification, to only two instances.

The first involves judges with a financial interest in the outcome of the case, although the interest was less than what would have been considered personal or direct at common law.

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[47] *Id*. at 24.

[48] *Id*. at 28.

[49] 556 U.S. 886 (2009).

Supreme Court E-Library

In *Tumey v. Ohio*,[50] involving the case of a village mayor with authority to sit as judge to try those accused of violating a liquor ban and receive a salary supplement each time he convicts and levies a fine on an offender (and none in cases of acquittal), the U.S. Supreme Court held this procedure to violate the due process clause.

The second instance involved cases where a judge was challenged because of a conflict arising from his participation in an earlier proceeding. In *In re Murchison*,[51] a judge examined witnesses to determine whether criminal charges would be brought against them. Both witnesses appeared before the judge. The first witness answered questions, which the judge found untruthful and consequently charged him with perjury. The second witness, who declined to answer, was charged by the judge with contempt. The same judge thereafter proceeded to try and convict both witnesses. The Court set aside their convictions on grounds of conflict of interest, stating that "no man can be a judge in his own case," and "no man is permitted to try cases where he has an interest in the outcome."[52]

There stood jurisprudence until 2009 when the U.S. Supreme Court crafted a *third* instance, though one (it was quick to caution) available only under "extraordinarily extreme facts." In *Caperton*,[53] a West Virginia jury found respondent coal company guilty of fraud and awarded petitioner $50Million in damages. West Virginia then held judicial elections. Knowing that the State Supreme Court of Appeals would be considering the appeal, respondent's chairman supported Benjamin, against the incumbent justice seeking reelection, with $3Million in contributions, an amount exceeding the total spent by all other supporters. Benjamin would go on to win the election by fewer than 50,000 votes. When petitioner moved to disqualify now

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[50] 273 U.S. 510 (1927).

[51] 349 U.S. 133 (1955).

[52] *Id*. at 136

[53] 556 U.S. 886 (2009).

– Justice Benjamin under the due process clause and the State's Code of Judicial Conduct, the latter refused to recuse himself and still participated in making judgment on the appeal. The U.S. Supreme Court ultimately vacated the judgment of the State Supreme Court of Appeals and held that Justice Benjamin's participation in the case violated the due process clause of the Constitution: "Just as no man is allowed to be a judge in his own cause, similar fears of bias can arise when — without the consent of the other parties — a man chooses the judge in his own case." It went on to hold that respondent chairman's significant and disproportionate influence offers a possible temptation to the average judge to lead him not to hold the balance nice, clear and true, and that "[o]n these extreme facts, the probability of actual bias rises to an unconstitutional level."[54]

IV

While the Internal Rules of the Supreme Court enumerate grounds for inhibition, it does not specify *how* the Court should treat a Member's inhibition beyond stating that the inhibiting member must state, typically in abbreviated language, the precise reason for the inhibition. The *practice* of the Court in this respect, on the other hand, is mixed as it is instructive. This part shall deal with the practice of the Court with respect to the recusal of its own members.

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[54] See sharp dissent from Chief Justice Roberts, joined by Justices Scalia, Thomas and Alito, criticizing the "probability of bias" analysis used by the Court. "Until today, we have recognized exactly two situations in which the Federal Due Process Clause requires disqualification of a judge: when the judge has a financial interest in the outcome of the case, and when the judge is trying a defendant for certain criminal contempts. Vaguer notions of bias or the appearance of bias were never a basis for disqualification, either at common law or under our constitutional precedents. Those issues were instead addressed by legislation or court rules." See also Lynne H. Rambo, High Court Pretense, Lower Court Candor: Judicial Impartiality after *Caperton v. Massey Coal Co.*, 13 Cardozo Pub. L. Pol'y & Ethics J. 441 (2015); Raymond J. McKoski, Judicial Disqualification after *Caperton v. A.T. Massey Coal Company*: What's Due Process Got to Do With It, 63 Baylor L. Rev. 368 (2011).

Supreme Court E-Library

In *Estrada v. Desierto*,[55] then Associate Justice Artemio Panganiban offered to inhibit himself (despite absence of proof of any of the grounds for inhibition) so as not to give any person excuse to cast doubt on the integrity of the proceeding. The Court accepted the inhibition. Justice Panganiban then wrote an extended opinion on the subject, discussing at length the distinction between mandatory and voluntary inhibition.

In contrast, in *Veterans Federation Party v. Comelec*,[56] the Court denied (then already Chief) Justice Panganiban's offer to inhibit on grounds that he had been general counsel of one of the respondents. The Court considered, among others, the fact that the case involved important constitutional questions which should, as much as possible, be decided by a complete Court.[57]

In *Commission of Internal Revenue v. Court of Appeals*,[58] Justice Santiago M. Kapunan denied by way of a resolution a motion for his inhibition. The Court *En Banc* upheld Justice Kapunan's decision, declaring thus:

> On the motion to disqualify Justice Kapunan from participating in this case, the Court took note of the old doctrine that when a Justice of the Court of Appeals or the Supreme Court is challenged "the magistrate sits with the court and the question is decided by it as a body." It will be observed. however, that the basis of the challenge there was that the Justice had previously acted as the fiscal in an earlier proceeding in the case, a ground for *compulsory* inhibition, and that the matter was dealt with under Article 8 of the Code of Civil Procedure the provisions of which differ from those under the first paragraph of Rule 137 of the Rules of Court.
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[55] G.R. Nos. 146710-15; G.R. No. 146738, March 2, 2001.

[56] *Supra* note 20.

[57] Chief Justice Panganiban would go on to write the opinion for the Court in this case.

[58] G.R. No. 119322, February 6, 1997.

In the present case, the so-called grounds relied upon for the disqualification of Justice Kapunan, i.e., his having served under Atty. Estelito Mendoza when the latter was the Solicitor General, and their having had business relations in connection with the operation of a small restaurant, even if true, could not constitute compulsory grounds for Justice Kapunan's recusation. It is for him alone, therefore, to determine his qualification.[59]

I have compared the above Philippine experience with the practice in the U.S. Supreme Court, which does not have formal rules governing recusal by its Members. In the US, individual Members of the Court have expressed their views on recusal as contained in extended Memoranda explaining their non-recusal in specific cases. Chief Justice John G. Roberts, Jr. has also expressed this view on recusal at the level of the Supreme Court.

Prior to the 1974 amendment to Section 455, *Laird v. Tatum*[60] was the guiding decision on the question of recusal. The case involved a group of anti-war activists who brought a challenge to the constitutionality of the U.S. Army's domestic surveillance program, then perceived as the Nixon administration's attempt at monitoring the activities of American dissidents. Then Associate Justice Rehnquist was being disqualified due to his leadership position as an Assistant Attorney General in the Justice Department's office of Legal Counsel to the White House at the time the surveillance program was instituted.[61] Breaking the U.S. Supreme Court's perceived ritual of silence to explain his non-recusal,[62] Justice Rehnquist denied the motion to recuse based in part on a reading of the governing disqualification

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[59] *Id*.

[60] *Memorandum of Mr. Justice Rehnquist*, October 10, 1972, 409 U.S. 824-25.

[61] Jeffrey W. Stempel, *Rehnquist, Recusal and Reform*, 53 Brook.L.Rev., 589, 602 (1987).

[62] Robert Nagel, *Partiality and Disclosure in the Supreme Court Opinions*, 7 Nw.J.L. & Soc. Pol'y.116 (2012).

Supreme Court E-Library

statute,[63] as well as on his consistent observations that "a federal judge has a duty to sit where not disqualified which is equally as strong as the duty to not sit where disqualified."[64] He explained:

> I think that the policy in favor of the "equal duty" concept is even stronger in the case of a Justice of the Supreme Court of the United States. There is no way of substituting Justices on this Court as on judge may be substituted for another in the district courts. There is no higher court of appeal which may review an equally divided decision of this Court and thereby establish the law for our jurisdiction.
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> While it can seldom be predicted with confidence at the time that a Justice addresses himself to the issue of disqualification whether or not the Court in a particular case will be closely divided, the disqualification of one Justice of this Court raises the possibility of an affirmance of the judgment below by an equally divided Court. The consequence attending such a result is, of course, that the principle of law presented by the case is left unsettled. The undesirability of such a disposition is obviously not a reason for refusing to disqualify oneself where in fact one deems himself disqualified, but I believe it is a reason for not "bending over backwards" in order to deem one's self disqualified.[65]

In 2000, (at the time, already Chief) Justice Rehnquist was again asked to inhibit from participating, this time in the case of *Microsoft v. United States*[66] on the ground that Microsoft

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[63] *Supra* note 34; Before its amendment two years after *Laird*, the disqualification statute required only that a justice disqualify himself when "he has a substantial interest, has been of counsel, is or has been a material witness, or is so related ... as to render it improper, in his opinion, for him to sit..."

[64] *Supra* note 60; citing *Edwards v. United States*, 334 F.2d 360, 362 (CA5 1964); *Tynan v. United States*, 126 U.S.App.D.C. 206, 376 F.2d. 761(1967); *In re Union Leader Corporation*, 292 F.2d 381 (CAl 1961); *iWolfson v. Palmieri,* 396 F.2d 121 (CA2 1968); *Simmons v. United States*, 302 F 2d. 71 (CA3 1962); *United States v. Hoffa*, 382 F.2d 856 (CA6 1967); *Tucker v. Tucker*, 186 F.2d 79 (CA7 1950); *Walker v. Bishop*, 408 2d 1378 (CA 1969).

[65] *Id*.

[66] *Supra* note 41.

had retained the services of the law firm for which Chief Justice Rehnquist's son was a partner. In a Memorandum explaining his non-recusal, Chief Justice Rehnquist said:

> Finally, it is important to note the negative impact that the unnecessary disqualification of even one Justice may have upon our Court. Here — unlike the situation in a District Court or a Court of Appeals — there is no way to replace a recused Justice. Not only is the Court deprived of the participation of one of its nine members, but the even number of those remaining creates a risk of affirmance of a lower court decision by an equally divided court.

In 2004, Justice Scalia refused to inhibit from the case of *Cheney v. United States District Court for District of Columbia*.[67] One of the parties to the case sought to inhibit Justice Scalia because he previously rode on the same government aircraft and joined a duck hunting trip with Vice President Richard Cheney, a respondent to the case. In his Memorandum explaining his non-recusal, Justice Scalia said:

> Let me respond, at the outset, to Sierra Club's suggestion that I should "resolve any doubts in favor of recusal." Motion to Recuse 8. That might be sound advice if I were sitting on a Court of Appeals. But see In re Aguinda, 241 F. 3d 194, 201 (CA2 2000). There, my place would be taken by another judge, and the case would proceed normally. On the Supreme Court, however, the consequence is different: The court proceeds with eight justices, raising the possibility that, by reason of a tie vote, it will find itself unable to resolve the significant legal issue presented by the case. x x x Moreover, granting the motion is (insofar as the outcome of the particular case is concerned) effectively the same as casting a vote against the petitioner. The petitioner needs five votes to overturn the judgment below, and it makes no difference whether the needed fifth vote is missing because it hs been cast for the other side, or because it has not been cast at all.[68]

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[67] *Supra* note 42.

[68] *Id*. See also Monroe H. Freedman, *Duck-Blind Justice*: Justice Scalia's Memorandum in the Cheney Case, 18 Geo. J. Legal Ethics 229 (2004); David Feldman, *Duck Hunting, Deliberating, and Disqualification*: *Cheney v. U.S. District Court* and the Flaws of 28 U.S.C. Sec 455(A), 15 B.U. Pub. Int. L.J. 319 (2006); Luke Mcfarland, *Is Anyone Listening – The Duty to*

Supreme Court E-Library

In more recent high-profile cases, issues of non-recusal were settled with the challenged Justices refusing to recuse without an extended explanation for such choice. This silent non-recusal is perhaps best illustrated by the denial of the motions to disqualify Justices Clarence Thomas and Elena Kagan from participating in the cases posing legal challenges to the constitutionality of the Patient Protection and Affordable Care Act (PPACA) of 2010[69] of then President Barrack Obama. Justice Thomas's impartiality was questioned by vittue of the fact that his wife, Virginia Thomas, was actively engaged with a conservative policy group that challenged the constitutionality of the Obama health care law.[70] and herself a highly visible voice in a nationwide campaign against the Obama administration and its health-care reform law.[71] Justice Kagan, for her part, was sought to be disqualified from participating in the case on the ground that she was Solicitor General when the Obama administration was building the defense for the health care law's legality.[72] In the end, both Justices Thomas and Kagan refused

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Sit Still Matters Because the Justices Say it Does, 24 Geo. J. Legal Ethics 677 (2011).

[69] *Florida ex ref. Atty. Gen. v. U.S. Dep't of Health & Human Servs.*, 648 F.3d 1235, 1241 (11th Cir. 2011), cert. granted sub nom. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 603(2011), cert. granted, 132 S. Ct. 604 (2011), and cert. granted in part, 132 S. Ct. 604 (2011).

[70] Carrie Johnson, *Health Care Rulings Reignite Judicial Bias Debate*, NPR. December 16, 2010.

[71] Jeffrey Toobin, *Partners; Will Clarence and Virginia Thomas Succeed in Killing Obama's Health-Care Plan?* The New Yorker, August 29, 2011, at p. 40.

[72] Robert Barnes, *Recusals Could Force Newest Justice to Miss Many Cases*, Washington Post, October 4, 2010 at A15; further stating "Elena Kagan begins hearing cases as the Supreme Court's 112th Justice Monday morning. But anyone who wants to see her in action needs to be sharp. x x x Her chair will be empty when the Court returns next Tuesday and she'll put in a half-day the next day. Kagan's old job as solicitor general – the "tenth justice" – is initially making it hard to do her new job as the ninth justice"; See Suzanne Levy, Your Honor, Please Explain: Why Congress Can, and Should, Require Justices to Publish Reasons for Their Recusal Decisions, 16 U. Pa. J. Const. L. 1161 (2014).

to recuse from the case, and neither issued a written official explanation for the same.

It is generally held that the Thomas and Kagan non-recusals led Chief Justice Roberts to discuss the American Supreme Court practice on recusals in his 2011 Year-End Report:

> Congress has directed that federal judicial officers must disqualify themselves from hearing cases in specified circumstances. As in the case of financial reporting and gift requirements, the limits of Congress's power to require recusal have never been tested. **The Justices follow the same general principles respecting recusal as other federal judges, but the application of those principles can differ due to the unique circumstances of the Supreme Court.** The governing statute, which is set out in Title 28, Section 455, of the United States Code, states, as a general principle, that a judge shall recuse in any case in which the judge's impartiality might reasonably be questioned. That objective standard focuses the recusal inquiry on the perspective of a reasonable person who is knowledgeable about the legal process and familiar with the relevant facts. Section 455 also identifies a number of more specific circumstances when a judge must recuse. All of the federal courts follow essentially the same process in resolving recusal questions. In the lower courts, individual judges decide for themselves whether recusal is warranted, sometimes in response to a formal written motion from a party, and sometimes at the judge's own initiative. In applying the Section 455 standard, the judge may consult precedent, consider treatises and scholarly publications, and seek advice from other sources, including judicial colleagues and the Judicial Conference's Committee on Codes of Conduct. A trial judge's decision not to recuse is reviewable by a court of appeals, and a court of appeals judge's decision not to recuse is reviewable by the Supreme Court. **A court normally does not sit in judgment of one of its own members' recusal decision in the course of deciding a case. The process within the Supreme Court is similar. Like lower court judges, the individual Justices decide for themselves whether recusal is warranted under Section 455. They may consider recusal in response to a request from a party in a pending case, or on their own initiative. They may also examine precedent and scholarly publications, seek advice from the Court's Legal Office, consult colleagues, and even seek counsel from the Committee on Codes of Conduct. There is only one major difference in the recusal process: There is no higher**

Supreme Court E-Library

court to review a Justice's decision not to recuse in a particular case. This is a consequence of the Constitution's command that there be only one Supreme Court. The Justices serve on the Nation's court of last resort. As in the case of the lower courts, the Supreme Court does not sit in judgment of one of its own Members decision whether to recuse in the course of deciding a case. Indeed, if the Supreme Court reviewed those decisions, it would create an undesirable situation in which the Court could affect the outcome of a case by selecting who among its Members may participate. Although a Justice's process for considering recusal is similar to that of the lower court judges, the Justice must consider an important factor that is not present in the lower courts. **Lower court judges can freely substitute for one another. If an appeals court or district court judge withdraws from a case, there is another federal judge who can serve in that recused judge's place. But the Supreme Court consists of nine Members who always sit together, and if a Justice withdraws from a case, the Court must sit without its full membership.** A Justice accordingly cannot withdraw from a case as a matter of convenience or simply to avoid controversy. Rather, each Justice has an obligation to the Court to be sure of the need to recuse before deciding to withdraw from a case.[73]

This acknowledgment of a heightened, if not heavier, sense of responsibility when it comes to recusals within its ranks echoes the sentiment earlier articulated by the Court in its 1993 *Statement of Recusal Policy* regarding cases when a covered relative-lawyer "has participated in the case at an earlier stage of the litigation," or when [he] is "a partner in a firm appearing before [the Court.]" There, the U.S. Supreme Court, in carefully delineating the specific instances wherein recusal by its members on the above grounds wou ld be warranted, explained:

Even one unnecessary recusal impairs the functioning of the Court. x x x In this Court, where the absence of one Justice cannot be made up by another, needless recusal deprives litigants of the nine Justices to which they are entitled, produces the possibility of an even division on the merits of the case, and has a distorting effect upon the certiorari process, requiring the petitioner to obtain (under our current practice) four votes out of eight instead of four votes out of nine. x x x

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[73] Published on December 31, 2011; James Sample, *Supreme Court Recusal from Marbury to the Modern Day*, 26 Geo. 1. Legal Ethics 95 (2013).

Conclusion

In wrestling with the present issue of recusal, I have taken to heart the process suggested by Chief Justice Roberts and exerted my utmost to identify and explain the legal reasoning behind my decision on this very divisive issue.[74] Marrying the best insights from our laws and experience and those from our American counterparts, I have resolved to participate in this case.

First, I resolved to sit in this case by tilting the balance in favor of giving full weight to the value of a judge's duty to sit and decide a case. I am convinced that the grave importance of this case, its far-reaching doctrinal value and its permanent implications to the Court as an institution and an equal branch of Government call for no less than a decision made by a full court. Consistent with *Veterans Federation Party*, a decision handed down by any less than that would, in my view, only fall short of affirming the public's faith in our country's administration of justice.[75]

Second, and after careful reflection, I have come to the view that questions of inhibition should, as a principle, be solely addressed to, and answered by, the good judgment and conscience of the individual Justice/s concerned. To permit otherwise would only contribute to the arguably attractive temptation of "strategizing recusals."[76] As in this case, respondent should not be allowed to affect (or worse, impair) the ability of the

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[74] As Lincoln Caplan, in "The Tenth Justice" (1987) posited, since the meaning of the Constitution is neither fixed nor self-explanatory, it has been vital that legal reasoning be marked by its own integrity.

[75] *Supra* note 20.

[76] U.S. Supreme Court Statement of Recusal Policy. See also *Jurado & Co. v. Hongkong and Shanghai Banking Corporation* (G.R. No. L-1061, October 10, 1902) where the Court rejected a construction which would allow questions of inhibitions of its members to be decided by it, to the exclusion of the challenged member/s, as it would "put it in the power of a party to stop all proceedings in the cause by challenging [a sufficient number] of the justices."

Supreme Court E-Library

Court to decide significant legal issues with its full membership through the simple expedient of fashioning a colorable ground for inhibition on the part of one (or some) of its members.

Third, on analysis, my acts complained of, under all the circumstances, do not negate the degree of objectivity required of me by the due process clause of the Constitution as to disqualify me. Far from it, I am convinced that respondent's factual bases, when measured against the three tests in *Liteky*, all fail to prove my alleged bias and prejudice against her. My conduct and utterances of which she complains were not undeserved, as they were not done or said by me to merely vex her reputation. They were all founded on fact. They were also only done and said in self-defense, as measures to restore whatever I could salvage or restore of my name, in the face of respondent's unprovoked assaults on my integrity. This is the reason why I have endeavored to include in this Resolution a full narration of the facts that led to her attacks on me, and my acts and words done subsequent to the issuance by the Arbitral Tribunal in The Hague of its ruling, which release allowed me to air my full side.

Specifically, my act of calling her "treasonous" was merely in reference to the lexical equivalent of the label she herself used to pertain to me and my actions. In fact, I find that the use of said term was not undeserved as it was merely semantically descriptive, and was merited, even necessary, in the instance that I employed it. As I earlier recounted, respondent recklessly placed into the public domain sensitive issues of legal strategy[77] and characterized Itu Aba in her public filings as an island,[78] contrary to national interest, in general, and the Republic's official submission before the UNCLOS arbitral tribunal, in particular. My use of the word "inhumane" to depict her manner and means of objecting to my nomination was also not undeserved, as it was, in fact, how I personally perceived such

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[77] *Supra* note 7, in the Judicial and Bar Council Supplementary Reply, pp. 14-17, pp. 183-186 of the Records.

[78] *Id*. at 17-18, 186-187 of the Records.

an affront. Such perception is personal, the effect of which is not measured by the doer of the act, but by its receiver. Furthermore, the suggestion that my characterizations of respondent persists to this day cannot be conceived as undeserved, for it is wholly an opinion, based on facts, one which she and maybe those sympathetic to her are completely free to disagree with.

My conduct and utterances were also not based on evidence or information illegally received, as all the facts upon which I anchored my actions were culled from my personal experience and knowledge. All the bases for my actions, whether it be the "treasonous" description attributed to her, or the "inhumane" depiction of her actions, or the negative characterization of herself, are borne of my personal knowledge, and not obtained through other means. Finally, I do not believe my conduct or utterances were excessive, as they were not made with blind fury, but only with righteous indignation and merely as a means to the vindication of a right.

Finally, and maybe most importantly, my actions and words complained of are wholly extraneous and immaterial to the facts and issues raised in this Quo Warranto petition which specifically relates to respondent's alleged deficient submissions of her Statement of Assets, Liabilities and Net Worth (SALN). That I cannot be impartial and decide this case on the merits based on the facts and evidence on record cannot be presumed simply on account of my unpleasant "history" with respondent.

This Resolution is intended to serve as a record upon which all well-informed and reasonable observers who care to know the facts can make their own judgment on whether my acts and words rise to the level of a disqualifying bias or prejudice. To borrow from Chief Justice Rehnquist, I imagine that other reasonable observers may arrive at a legal conclusion contrary to mine, and that there may be sound arguments[79] that plausibly

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[79] See *Gutang v. Court Appeals*, G .R. No. 124760, July 8, 1998; *Orola v. Alovera*, G.R. No. 111074, July 14, 2000; *Luque v. Kayanan*, G.R. No. L-26826, August 29, 1969.

Supreme Court E-Library

lean towards my recusal. Perhaps if I were preoccupied with avoiding controversy and would like to act in favor of simple convenience,[80] I may as well recuse. My conscience, aided by my self-examination and analysis of the pertinent laws and the facts of the present case, nevertheless impels me otherwise.

Every judgment of conscience has been said to be obligatory, in that "he who acts against his conscience always sins."[81] Judgment on the soundness of my decision will ultimately be for the public to decide. I am nevertheless comforted by the fact that I have resolved this matter with as much transparency and judiciousness as my conscience dictates and now leave people to decide in accordance with their own conscience, as "every man should leave me to mine."[82]

In my Commencement Address to the U.P. College of Law in 2014, I described the two months that started with respondent's attack on my integrity, the JBC's rejection of my nomination, my decision to take on a sitting Chief Justice in *Jardeleza v Sereno*, the Court's last-minute decision to allow my nomination, and finally my appointment by President Aquino, as the most painful and difficult time of my life, as well as of my wife and children. My family and I had to live those two terrible months with the label "traitor" tarred and feathered on my being. In my address, I described our painful experience as one "I would not wish on anybody, not even to those who made these vile accusations against me."

Today, four years later, respondent and her family have had to face up to more months of attacks on her integrity. Perhaps,

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[80] *Supra* note 74.

[81] Saint Thomas Aquinas, III Quodlibet, p. 27.

[82] St. Thomas More's Letter to His Daughter Margaret, 17 April 1534. *St. Thomas More: Selected Letters*, Ed. Elizabeth Rogers, Yale University Press, 1961, Letter #54, pp. 215-223. Taken from https://www.thomasmorestudies.org/docs/More%20to%20Margaret%2017%20Apr%201534.pdf, last accessed May 9, 2018.

because my family and I have endured such a harrowing experience, I fervently hope that reasonably informed persons would believe that I would be among the last to taint another human being's name out of sheer spite.

WHEREFORE, the foregoing premises considered, the *Ad Cautelam* Respectful Motion for Inhibition of Hon. Associate Justice Francis H. Jardeleza filed by Respondent Maria Lourdes P.A. Sereno is hereby **DENIED**.

SO ORDERED.

Annex "A"

"INTEGRITY, ITU ABA, AND THE RULE OF LAW IN THE WEST PHILIPPINE SEA ARBITRATION"

A Keynote Speech
By Supreme Court Associate Justice Francis H. Jardeleza[1]
IBP Western Visayas Regional Convention
Theme: "Ensuring a legal system based on respect for the rule of law"
October 21, 2016, Iloilo City

Ladies and Gentlemen of the IBP Western Visayas Region, thank you for inviting me to be your keynote speaker. It warms my heart to speak before friends in Iloilo, the place where I was born and raised. Here was where I spent my formative years and where I made life-long friends. I am very grateful for your kind invitation to be with you today.

Your EVP and Governor for Western Visayas, Atty. Ade, asked me to share my insights on your convention theme, "Ensuring a legal system based on respect for the rule of law." As lawyers, we are all sworn to act in ways designed to advance

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[1] Former Solicitor General (2012-2014) and Agent for the Republic of the Philippines.

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respect for the Rule of Law. Each of you, I am sure, may have your own personal experiences as to how, in your own small ways, you were able to contribute to the ideal of a legal system based on the Rule of Law. Every experience will carry with it its own lessons, each one as important as those of the person sitting next to you. It is, I believe, in the sharing of, and learning from, these experiences that we help move our profession just that bit nearer to our common aspiration, that of a legal system based on respect for the rule of law.

Today, I would like to share with you a personal story about integrity and keeping faith with the rule of law.

As you know, when I aspired for a seat in the Supreme Court, my application was blocked by the Chief Justice and Senior Associate Justice of the Supreme Court, on the ground that I lacked integrity, specifically in relation to my handling of the Republic's West Philippine Sea arbitration against China.

What was this integrity issue all about? Essentially, the Chief Justice and Senior Associate Justice disagreed with a decision on legal strategy that I made in the case we filed against China. I actually have a whole lecture to explain what the Philippines' case against China was about. Since we do not have the time for it now, I will just try to give you the basics.

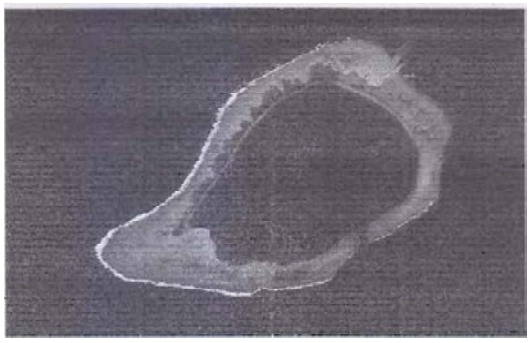
In the arbitration case we filed against China, we had four principal submissions or what we know as causes of action under our Rules on Civil Procedure. One of the submissions related to the **status** of certain features in the West Philippine Sea.

Under the United Nations Convention on the Law of the Seas (or UNCLOS), there are three kinds of land features: an island, a rock, or a low tide elevation. An **island** is defined under the UNCLOS as a naturally- formed area of land, surrounded by water, and is above water at high tide. A good example would be Luzon Island.



(Figure 1)

At the other extreme is the feature called a **low tide elevation.** It is, by definition, not visible at high tide. It includes submerged reefs. A good example would be Subi Reef before China introduced improvements to convert it into an artificial island. (See fig. 2).



(Figure 2)

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In between these two categories are features called **rocks.** They are reefs mainly below water, but have rocky promontories that protrude at high tide. What distinguishes them from islands is that they "cannot sustain human habitation or economic life of its own." A good example would be Scarborough Shoal (See fig. 3).



(Figure 3)

Why is it important to ascertain the status of a feature? It is important because, in simple terms, status determines right to the adjacent sea. An island would, for example, be entitled to a 12 NM territorial sea and a 200 NM exclusive economic zone. A rock, on the other hand, would be entitled to a 12 NM territorial sea. A low tide elevation would not be entitled to anything.

Now, there are more than six hundred features in the West Philippine Sea. Given the challenges posed by the above definitions, our submission was part of what I call a *low-risk strategy,* purposely designed to protect our interests in (1) Scarborough Shoal, a traditional fishing ground for Filipino fishermen, and (2) Reed Bank, a potentially oil and gas rich area beyond Palawan. Our submissions were limited to eight[2]

[2] Later expanded to include Ayungin Shoal.

features, occupied either by us or by China. These features, we submitted, were either low-tide levations (like Subi Reef) entitled to nothing, or at most, rocks (like Scarborough Shoal) entitled to no more than a 12 NM territorial sea.

I called it a low-risk strategy because it presented what the team thought was an "acceptable" worst case scenario, that is, any or all of the features we included in the suit would be declared rocks entitled to a 12 NM territorial sea. Otherwise stated, we were confident that none of the features we identified would conceivably be declared an island (as defined under UNCLOS) capable of generating a 200 NM EEZ. More importantly, none of the features we identified would be capable of generating a 200 NM to overlap with *our* EEZ and put Reed Bank at risk. This was how matters stood as of January 23, 2013, the date we filed our submission.

Towards the end of 2013, however, and a few months before the Philippine Memorial was due, our foreign counsel Paul Reichler from Foley Hoag recommended[3] that we amend our submissions to include Ayungin Shoal, Pagasa plus four other Philippine-occupied features, and Itu Aba, a feature located just outside our EEZ and occupied by Taiwan. These additional features, we would argue, are either low tide elevations or rocks not capable of sustaining human habitation or economic life on its own.

Although our foreign lawyers conceded that there was a risk that the tribunal would conclude that Itu Aba was significant enough a feature to warrant an entitlement of up to 200 NM EEZ, they argued that as a practical matter, the Philippines would not be worse off because competing claims would still remain. That is, even if Itu Aba was declared an island, Philippine-occupied Pagasa, which is only slightly smaller, would, by parity of reasoning, likely also be declared an island

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[3] Memorandum dated November 26, 2013.

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itself entitled to a 200 NM EEZ which would overlap with the EEZ to be generated by ltu Aba.[4]

Considering the gravity of the proposal, we asked Mr. Reichler and his team to visit Manila in January 2014 to discuss the matter further. The Philippine legal team, which I headed and reported directly to then Executive Secretary Paquito Ochoa, readily agreed to amend our claim to include Ayungin Shoal, which we asserted to be a low-tide elevation. At that time, China was already increasing its interference with Philippine resupply missions to our military personnel in the area. Amending our claim to include Ayungin did not add any risk to our original low-risk strategy as the projected worst case would only be, similar to our earlier claims, that it would be declared a rock entitled to no more than a 12NM territorial sea.

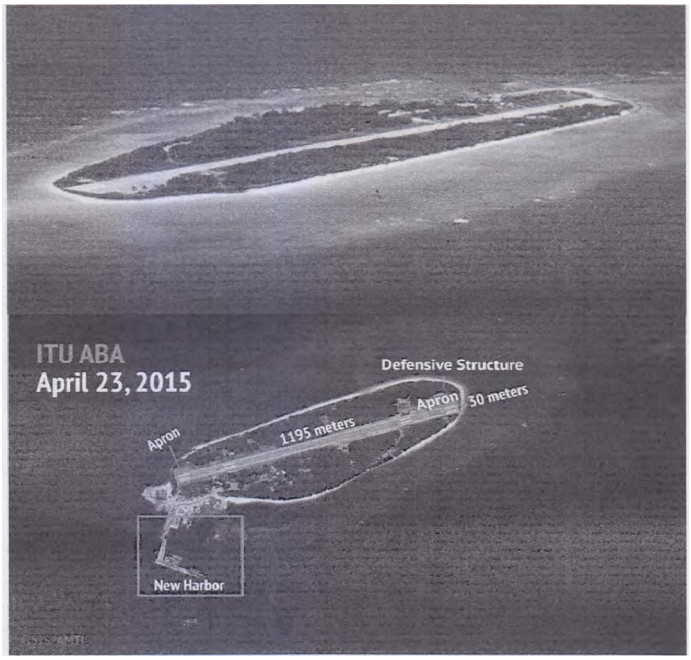
Amending to include Itu Aba was, however, an entirely different matter.

The members of the Philippine team (composed of then Chief Presidential Legal Counsel, now Supreme Court Associate Justice, Benjamin Caguioa, then Undersecretary for Special Concerns Mike Musngi, then Foreign Affairs Secretary Albert del Rosario, then Cabinet Secretary Rene Almendras, myself, and lawyers from the OSG, DOJ and DOE) were *unanimous* in deciding against amending our submissions to include ltu Aba and the four other features occupied by the Philippines. We explained to Mr. Reichler that doing so would deviate trom the low-risk strategy that permeated the filing of the arbitration, and that the risk posed by the inclusion of Itu Aba was not acceptable.

Why? Here are photos of Itu Aba (See fig. 4).

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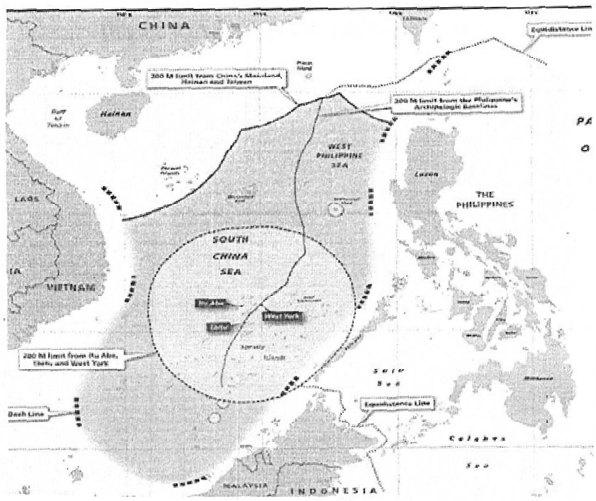
[4] According to Reichler, *et al.,* in such case, the respective entitlements of Itu Aba and Pagasa would overlap "in such a fashion that a putative median line delimiting the boundary between them would cut off the reach of ltu Aba well short of Reed Bank." (Memorandum dated November 26, 2013, p. 3.)



(Figure 4)

At approximately .43 square miles, it is the largest feature in the Spratly Islands and has been occupied by Taiwan since 1946. It reportedly has two wells, garrisoned by military and coast guard personnel, and is partially covered by scrub grass and trees. A military supply ship services the feature twice a year, and a civilian merchant brings general goods every 20 days. Our case being one of first impression, we did not know how the tribunal would rule on the status of Itu Aba. Unlike the case of Scarborough Shoal, none of the members of the Philippine legal team were willing to risk the chances of Itu Aba possibly being declared an island and end up with a worst case scenario like this (See fig. 5).

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(Figure 5)

If Itu Aba was declared an island, it would be capable of generating a 200NM EEZ that would cover large parts of our EEZ, including Reed Bank and extending almost up to Palawan. We thus politely informed our foreign counsel, who accepted our judgment call as client.

Towards the end of March 2014, Undersecretary Musngi and I, together with our staffs, and lawyers from the DFA, went to Washington,D.C. to supervise the preparation of the Memorial which was due for filingat the end of the month. It was then that Reichler and his team proposed to include 14 paragraphs into the Memorial which would *mention* that Itu Aba, even as it is largest high tide feature in the Spratly Islands, is incapable of sustaining human habitation or economic life of its own.

Undersecretary Musngi and I immediately reminded Mr. Reichler and his team about the Manila decision *not* to amend our submissions. We argued that the additional paragraphs

would bring about the same legal and political risks that prompted the decision not to amend in the first place. Since the DFA lawyers supported the inclusion of the 14 paragraphs, I proposed that Reichler, *et al.* put their recommendation in a memorandum addressed to me and Secretary del Rosario so that we can take the matter up with President Aquino for his decision.

Paul Reichler released their memo[5] over that weekend in time for my arrival in Manila with Undersecretary Musngi and the rest of the Philippine delegation. There, they asserted that ignoring the issue of Itu Aba , the largest and most significant feature in the Spratly Islands, would not only damage the Philippines' credibility before the Tribunal but also undermine the entire case.

Secretary Ochoa, CPLC Caguioa, and I thereafter submitted our own memo[6] to President Aquino where we argued *against* the inclusion of the additional 14 paragraphs and submitted that if the Tribunal is so minded, it would, on its own, instruct us to include (whether in the oral arguments or in further written submissions) consideration of the status of Itu Aba in the arbitration. That same day, the three of us were summoned by President Aquino to discuss the conflicting positions. After discussion, President Aquino decided to defer to the advice of our foreign counsel. The matter thus decided, I forthwith communicated the President's instructions to our lawyers. Our Memorial was filed on March 30, 2014, including the 14 paragraphs mentioning Itu Aba.

Little did I realize that my actions concerning the mention of Itu Aba in the Memorial would later be used to impugn my integrity and block my nomination to the Court. The charge against me centered on a memorandum relating to a judgment call made at the highest level of government. A copy of the confidential Foley Hoag memo was leaked to the Chief Justice and to the Senior Associate Justice (both of whom, by the way,

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[5] Dated March 19, 2014.

[6] Date March 24, 2014.

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had nothing to do with, and were not accountable for, the conduct of the arbitration) who thereafter used the same Memo against me.

At the time my nomination was being blocked, however, the arbitration case was still pending. While I knew the truth, I could not, as a professional, disclose intimate case details and matters of strategy as part of my defense. In the one-sided proceedings before the JBC, I was painted, by individuals who were not part of our arbitration team, as being disloyal to our country, and thereby lacking the integrity to be a member of the Supreme Court.

You spend a whole lifetime building a reputation worthy of your parents and of your family. When my integrity was attacked, I knew I had to fight back, if only to clear my name. But, at that time, as agent of the Republic of the Philippines to the arbitration, I had a duty to keep the confidences of my client. I was sworn to keep sensitive secrets about our litigation strategy and tactics affecting the arbitration. One does not telegraph them to the opponent. Considering its sensitive nature, I could neither deny or confirm the existence of the leaked. Foley Hoag memorandum, much less discuss its content. To do so will reveal the reasons for the positions taken by the government , to the possible prejudice of our success in the arbitration. Thus, at that time, I was constrained to put up a defense purely on due process grounds and hope that the rule of law would prevail.

Of course, I was not alone in the handling of the country's arbitration case against China. The Philippine team was composed of many Filipino patriots, who labored long and hard on the West Philippine Sea arbitration. Many of us were lawyers, who believed that the Rule of Law applies to, and protects all of us under international law. Each of us acted according to the best of our abilities and our conscience. In refusing to include Itu Aba in our claim, did we in fact do the right thing? For my part, I can assure you that I acted only with the best of intentions. Did I act with integrity? I would like to believe so, even if in the end the President chose to go another way.

As fate and the vagaries of litigation would have it, it was the Arbitral Tribunal itself that directed the Philippines to make submissions on the status of more than 20 features in the Spratly Islands, including ltu Aba, and to make the determination of their status part of the proceeding. The rest, as they say, is history. On this specific point, the arbitral tribunal unanimously decided that Itu Aba, like Pagasa, was a rock that does not generate an entitlement beyond a 12 NM territorial sea. Thus, the Reed Bank is securely within our EEZ.

This astounding win for the Philippines, and for President Aquino, merits a story by itself about the role of the Rule of Law under international law. The promulgation of the decision also allowed me to talk, publicly and for the first time, about the integrity issue raised against me in the JBC during my nomination to the Supreme Court. I have chosen to break my silence about this issue in my home town, before you, because it is here in Iloilo where the foundations of the integrity I have tried to embrace under a life in the law were first nurtured . I will be dishonest if I say that we knew that we will win, or that the result would be a win as big as this. We did not. The team had many agreements and a few disagreements. But we all worked as a band of patriots, under the leadership of President Aquino, blessed to play a role in the making of history. Along the way, I was just unfortunate that my integrity was questioned.

The meaning of the Rule of Law became so personal to me in a way I never imagined. I was so close to professional death, an inglorious end to a career I worked so hard to nurture. It is an experience I would not wish on anybody. Fortunately for me, however; the Rule of Law prevailed. The Supreme Court decided to allow my name to be placed in nomination, and President Benigno S. Aquino III appointed me to the Court.

I am so glad I did not lose heart. Against all odds, and with only my abiding belief in the Rule of Law, I kept my faith by resorting to the Supreme Court as court of last resort. My falling back on the Rule of Law allowed me to keep the confidences of my client, the Republic, in the West Philippine Sea arbitration, and at the same time, it allowed me a case to be vindicated in

Supreme Court E-Library

the Supreme Court. I tell you these stories because I want to share with you, from real life experience, how we can deal with opportunities and challenges and act in ways to ensure a legal system based on the Rule of Law. I realize that this might not be the case for everyone. I hope though that by sharing with you my story you would be encouraged to continue keeping your faith in the Rule of Law.

Thank you all very much for your time.

SEPARATE OPINION

MARTIRES, *J.*:

It is well to state, at the outset, that we are NOT REMOVING A CHIEF JUSTICE because respondent Maria Lourdes P. A. Sereno, who has no valid appointment, is not the legitimate Chief Justice that the Filipino people perceive her to be. She failed to comply with the requirement of submission of Statements of Assets, Liabilities, and Net Worth (SALNs) imposed by the Judicial and Bar Council (JBC) for applicants to the position of Chief Justice, and such noncompliance necessarily renders her appointment invalid, making her a mere "de facto" Chief Justice who can be removed from office through an action for quo warranto. Further, it is my humble submission that the constitutional provision on impeachment as a mode of removing an impeachable officer from office only applies to a "de jure" and not to a de facto officer like respondent Sereno. In any event, the heart of this petition for quo warranto does not pertain to acts performed by respondent Sereno as a de facto Chief Justice but is with respect to her right to continue to hold and exercise the powers of the office of Chief Justice.

In view of the foregoing, I CONCUR IN THE RESULT of the *ponencia* and vote to GRANT the petition. Respondent Maria Lourdes P. A. Sereno FAILED TO QUALIFY for the position of Chief Justice of the Supreme Court of the Philippines and must therefore be OUSTED from office.

I.

The Petition

The Republic asks this Court to issue a writ of *quo warranto* against respondent, in effect declaring her appointment to the position of Chief Justice of the Supreme Court of the Philippines as void. The basis of the Republic for filing the petition is the respondent's failure to prove her integrity before the JBC by her non-submission of SALNs. Such failure to comply with an essential requirement showed her lack of integrity, an indispensable qualification for the Office of the Chief Justice of the Supreme Court of the Philippines; hence, the ouster of respondent from the said office is prayed for in the present petition.

A. Substantive Aspect

"De facto" officer as distinguished from "de jure" officer

For clarity, it is apt to state the jurisprudential definition of "*de facto*" and "*de jure*," viz: *de facto* means "in point of fact." To speak of something as being de facto is, thus, to say that it is "[a]ctual [or] existing in fact" as opposed to "[e]xisting by right or according to law," that is, *de jure*. Being factual though not being founded on right or law, *de facto* is, therefore, "illegitimate but in effect." [1]

Hence, the following well-settled distinction between a *de facto* from a *de jure* officer, to wit:

> The difference between the basis of the authority of a *de jure* officer and that of a *de facto* officer is that one rests on right, the other on reputation. It may be likened to the difference between character and reputation. One is the truth of a man, the other is what is thought of him.

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[1] *Re: Nomination of Atty. Lynda Chaguile, IBP Ifugao President, As Replacement For IBP Governor for Northern Luzon, Denis B. Habawel,* 723 Phil. 39, 59 (2013).

Supreme Court E-Library

Moreover, as against a mere usurper, "[i]t is the color of authority, not the color of title that distinguishes an officer *de facto* from a usurper." Thus, a mere usurper is one "who takes possession of [an] office and undertakes to act officially without any color of right or authority, either actual or apparent." A usurper is no officer at all.[2]

In *Luna v. Rodriguez*,[3] the Court has held that the *de facto* doctrine was established to contemplate situations where the duties of the office were exercised:

(a) without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumes to be;

(b) under color of a known or valid appointment or election, where the officer has failed to conform to some precedent requirement or condition, for example, a failure to take the oath or give a bond, or similar defect;

(c) under color of a known election or appointment, void because the officer was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power or defect being unknown to the public; and

(d) under color of an election, or appointment, by or pursuant to a public unconstitutional law, before the same is adjudged to be such.

To be considered as a *de facto* officer, therefore, all of the following elements must be present:

1) There must be a *de jure* office;

2) There must be color of right or general acquiescence by the public; and

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[2] *Id*. at 60.

[3] 37 Phil. 186 (1917), citing *State v. Carroll*, 38 Conn., 449; Wilcoxv. Smith, 5 Wendell [N. Y.], 231; 21 Am. Dec., 213; Sheehan's Case, 122 Mass., 445; 23 Am. Rep., 323, cited in *Re: Nomination of Atty. Lynda Chaguile, IBP Ifugao President, as Replacement for IBP Governor for Northern Luzon, Denis B. Habawel, supra* note 1 at 60-61.

Supreme Court E-Library

3) There must be actual physical possession of the office in good faith.[4]

The central issue in the present petition is respondent's non-submission of her SALNs as required by the JBC.

The petition is mainly grounded on respondent's failure to prove her integrity before the JBC by reason of the non-submission of her SALNs during the years she was a professor at the University of the Philippines (UP). To substantiate such claim, the Solicitor General attached the following documents to the petition, which documents have the following salient contents:

(1) *Certification*,[5] dated 8 December 2017, issued by University of the Philippines Diliman Human Resources Development Office (UPD-HRDO), through Director Angela D. Escoto –

> "This is to certify that based on the 201 files of Supreme Court Chief Justice Maria Lourdes A. Sereno under the custody of the Information Management Section of the Human Resources Development Office, University of the Philippines, Diliman, it was found that between the period 2000-2009 the SALN submission on file is as of December 31, 2002."

(2) *Certification*,[6] dated 4 December 2017, issued by the Central Records Division of the Ombudsman –

> "This is to certify that based on records on file, there is no SALN filed by **MS. MARIA LOURDES A. SERENO** for calendar years 1999 to 2009 except SALN

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[4] *Re: Nomination of Atty. Lynda Chaguile, IBP Ifugao President, as Replacement for IBP Governor for Northern Luzon, Denis B. Habawel*, *supra* note 1 at 61.

[5] Annex "B", Petition.

[6] Annex "C", *id*.

Supreme Court E-Library

ending December 1998 which was submitted to this Office on December 16, 2003."

(3) *Letter*,[7] dated 8 December 2017, issued by UPD-HRDO Director Angela D. Escoto –

"1. On the lack of Statement of Assets, Liabilities and Net Worth (SALN) of Chief Justice Ma. Lourdes A. Sereno for the years 2000, 2001, 2003, 2004, 2005, and 2006:

These documents are not contained in the 201 file of Chief Justice Sereno. Her 201 records show that she was on official leave from the University for the following periods:

June 1, 2000 – May 31, 2001
June 1, 2001 – May 31, 2002
November 1, 2003 – May 31, 2004
June 1, 2004 – October 31, 2004
November 1, 2004 – February 10, 2005
February 11, 2005 – October 31, 2005
November 15, 2005 – May 31, 2006
June 1, 2006 – resigned."

Respondent demurs from these documents, alleging that there is no categorical statement therein that she had "failed to file" her SALNs. She invokes *Concerned Taxpayer v. Doblada, Jr.*[8] as authority for declaring as insufficient the evidence to establish the non-filing of SALNs because the report of the Court Administrator in that case made "no categorical statement that respondent failed to file his SALNs for the years earlier mentioned." She argues that she had been complying with her duties and obligations under the applicable SALN laws. She admits, however, that the submission of SALNs was among the additional documents which the JBC required for the position of Chief Justice.[9]

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[7] Annex "D", *id*.

[8] 498 Phil. 395 (2005).

[9] Par. 2.67, p. 65, *Comment Ad Cautelam*.

Respondent proceeds to argue that the failure of an applicant to file SALNs or to submit the same to the JBC would not automatically adversely impact on the applicant's integrity. She admits that she had not submitted to the JBC her SALNs as a UP professor[10] while only three SALNs (2009, 2010, and 2011) were in fact submitted to the JBC at the time of her application, but claims that it was within the discretion of the JBC to determine whether an applicant had complied with its requirement to submit SALNs. She adds that the mere failure to submit such SALNs does not disqualify the applicant especially if she can explain the reason for the non-submission. In this case, there was an explanation, she claims, of the non-submission through a letter, dated 23 July 2012. In this letter (Annex "11" of Comment) addressed to the JBC through Atty. Richard Pascual, respondent explains that her government records in the academe are more than fifteen years old and "infeasible" to retrieve.

To clarify, the SALN issue has two aspects: the first is the filing of SALN as a requirement under the pertinent SALN laws, Republic Act (R. A.) No. 6713 and R.A. No. 3019; and the second is the submission of SALN as a requirement by the JBC for nomination to a position in the judiciary, including that of the Chief Justice.

It is the second aspect, the non-submission of SALNs, which is at the heart of the present petition. Although the Solicitor General argues that non-submission of SALNs can be equated to lack of integrity, I will not venture into that issue because non-submission of SALNs is in itself a ground for questioning respondent's title to her present office because the submission of SALNs is a specific requirement of the JBC.

The JBC was not aware of respondent's non-submission of all the required SALNs when it included respondent as a nominee for Chief Justice.

The Judicial and Bar Council is a constitutional body. It therefore draws its organic functions and duties from the

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[10] Par. 2.69.7, p. 67, *id*.

Supreme Court E-Library

fundamental law. The pertinent provisions of the 1987 Constitution state:

SECTION 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

x x x x x x x x x

(4) The Council shall have the principal function of **recommending appointees to the Judiciary**. It may exercise such other functions and duties as the Supreme Court may assign to it. (emphasis supplied)

As previously stated, the discretion or authority of the JBC to nominate members to the Judiciary is not unbridled. In the exercise of its recommending function, the JBC must ascertain that the nominee it seeks to include in the shortlist of nominees has satisfied all the qualifications for membership in the Judiciary as stated in the fundamental law.

In this regard, Section 7, Article VIII of the 1987 Constitution provides for the qualifications required of a member of this Court, as follows:

SECTION 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

(2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.

(3) A Member of the Judiciary must be a person of **proven** competence, **integrity**, probity, and independence. (emphases supplied)

Respondent asserts that her submission of only three (3) SALNs to the JBC when she applied for the post of the Chief Justice will not invalidate her appointment to such office. She

claims that the JBC deemed the three (3) SALNs and her Letter dated 23 July 2012 as substantial compliance to the SALN requirement imposed by the said body.

The pieces of evidence at hand show, however, that the JBC did not categorically rule that respondent substantially complied with the requirements. On the contrary, the evidence show that the JBC was not aware of the fact that respondent did not submit all the required SALNs.

Records show that during its En Banc meeting on 20 July 2012, the JBC deliberated on the lacking requirements of certain candidates. On motion by Justice Lagman, seconded by Senator Escudero, the Council extended the period of submission of requirements until 23 July 2012 with the condition that applicants with incomplete or out of date documentary requirements will not be interviewed or considered for nomination.

The Council next considered the matter concerning the substantial compliance with documentary requirements. Particularly with regard to SALN, the JBC examined the list of candidates who had substantially complied. With respect to respondent Sereno, the Executive Officer informed the Council that she had not submitted her SALNs for a period of ten (10) years from 1986 to 2006. ***Thereafter, Sen. Escudero moved that the determination of whether a candidate had substantially complied be delegated to the Executive Committee.*** The Minutes of the 20 July 2012 En Banc Meeting in part reads:

> The Council examined the list with regard to the SALNs, particularly the candidates coming from the government, and identified who among them would be considered to have substantially complied:
>
> 1. **Justice Arturo D. Brion** – has substantially complied
> 2. **Justice Antonio T. Carpio –** has substantially complied
> 3. **Secretary Leila M. De Lima –** has substantially complied
> 4. **Chairperson Teresita J. Herbosa –** has complied
> 5. **Solicitor General Francis H. Jardeleza –** has complied
> 6. **Justice Teresita J. Leonardo-De Castro –** has substantially complied

Supreme Court E-Library

7. Dean Raul C. Pangalangan

The Executive Officer informed the Council that Dean Pangalangan lacks five (5) SALNs. She was informed that he could not obtain them from the U.P., but he is trying to get from the Civil Service Commission.

Justice Lagman moved that the SALNs of Dean Pangalangan be considered as substantial compliance.

8. Congressman Rufus B. Rodriguez

Justice Peralta said that as per the report, Congressman Rodriguez did not submit even one SALN. He commented that he may not be interested although he accepted his nomination.

The Executive Officer informed the Council that he is abroad. He was notified through email, as his secretary would not give his contact number.

9. Commissioner Rene V. Sarmiento – has lacking SALNs

10. Justice Maria Lourdes P.A. Sereno

The Executive Officer informed the Council that she had not submitted her SALNs for a period of ten (10) years, that is, from 1986 to 2006.

Senator Escudero mentioned that Justice Sereno was his professor at U.P. and that they were required to submit SALNs during those years.

11. Judge Manuel DJ Siayngco – has complied

Atty. Cayosa mentioned that Judge Siayngco has to submit a certificate of exemption because judges are also required to comply with that requirement.

12. Dean Amado D. Valdez – has lacking requirements

13. Justice Presbitero J. Velasco, Jr. – has complied

14. Atty. Vicente R. Velasquez – has lacking requirements

15. Dean Cesar L. Villanueva – has lacking requirements

16. Atty. Ronaldo B. Zamora – has lacking SALNs and MCLE cert.

Senator Escudero moved that the motion of Justice Lagman to extend the deadline on Monday be applied to all the candidates and that the determination of whether a candidate has substantially complied with the requirements be delegated to the Execom. He further moved that any candidate who would still fail to complete the requirements at the close of office hours on Monday, July 23, 2012 would be excluded from the list to be interviewed and considered for nomination; unless, they would be included if in the determination of the Execom he or she has substantially complied.

After the 20 July 2012 En Banc meeting, the records are silent as to how the candidates, including respondent, were considered to have complied, whether completely or substantially, with the documentary requirements particularly on the SALNs.

Based on the testimonies of the members of the JBC during the hearing before the House of Representatives —— Committee on Justice, however, it appears that the JBC was prevented from making a judicious and intelligent decision with respect to respondent's compliance with the SALN requirements due to incomplete information relative thereto.

During the hearing on 12 February 2018, Atty. Annaliza S. Ty-Capacite of the JBC acknowledged that the respondent, instead of complying with the SALN requirements, sent the subject 23 July 2012 letter explaining the reason for her failure to submit her missing SALNs, thus:

THE CHAIRPERSON. Okay. So, sinabi mayroong substantial at may attempt. So, it's not even five. So, what you're saying 'yung tatlo is substantial na sa inyo kahit wala ng effort to add more to it?

MS. TY-CAPACITE. Since the… those with lacking SALNs or other requirements were given up to July 23 to comply. Chief Justice Sereno, instead of submitting those SALNs…

THE CHAIRPERSON. Sent a letter.

MS. TY-CAPACITE. …sent a letter…

THE CHAIRPERSON. 'Yun.

Supreme Court E-Library

MS. TY-CAPACITE. …instead.[11]

In the same hearing, it was discovered that the members of the JBC were not aware of respondent's 23 July 2012 letter. Justice Diosdado Peralta, who was an *ex-officio* member of the JBC in 2012, explained that he was not informed or made aware that there was an issue regarding the respondent's SALN requirements.

MR. PERALTA. May I [say] something, Your Honor?

THE CHAIRPERSON. Yes, Your Honor.

MR. PERALTA. I was not informed because the letter of the Chief Justice and the attachment to that were not… were never placed in the deliberation, Your Honor. I think I was not the one who asked that question about… about the non-submission of SALN. I believe that the members then were the ones who brought this one but I was not fully aware of the issue, Your Honor, because had there been really an issue on the non-submission of SALN, then I could have objected too. This letter… this letter, including the attachment, Your Honor, were not there in the deliberations.[12]

Justice Peralta's claim that he was not furnished with a copy of the respondent's 23 July 2012 letter was corroborated by Atty. Ty-Capacite, thus:

REP. VELOSO. …the Chair is asking for proof na natanggap nila 'yon because they are disclaiming na natanggap nila.

MS. TY-CAPACITE. Per this document, it was received by the offices of the Regular Members and by the… by my office and the Office of Recruitment, Selection and Nomination. This document is with the OAFS and they… they just sent… sent this to me a while ago through Messenger. So the document is still there po.

REP. VELOSO. So hindi nila natanggap?

MS. TY-CAPACITE. Per this document, they did po.

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[11] TSN, 12 February 2018, p. MLMR/XI – 2.

[12] *Id*. at MLMR/VI – 3.

Supreme Court E-Library

REP. VELOSO. Ano, ano?

MS. TY-CAPACITE. Per this document, the letter dated 7-23-2012 regarding the SALN was received by four offices of the Regular Members and the two other operating offices.[13]

x x x x x x x x x

MR. PERALTA. I want to be clarified. So, in other words, the ex-officio members never received this letter, I mean, the … only the Regular Members. And that's the… that's the…

MS. LEONARDO-DE CASTRO. Based on the record.

MR. PERALTA. That based on the records?

MS. LEONARDO-DE CASTRO. Oo, 'yung sa receiving.

MR. PERALTA. I think it's very clear from their statements that it was only received by the Regular Members, not the ex-officio members. That's why, Your Honor…

REP. VELOSO. So you agree with that, Atty. Capacite?

MS. TY-CAPACITE. Based on that record, it appears that it's just the office… offices of ano…

MR. PERALTA. Regular Members, yeah.

MS. TY-CAPACITE. …Regular Members who received that and the two other operating offices.[14]

Furthermore, it would appear that at least one regular member of the JBC was unaware of the existence of respondent's 23 July 2012 letter. When asked regarding respondent's compliance with the SALN requirements, Atty. Maria Milagros N. Fernan-Cayosa, a regular member of the JBC, repeatedly denied reading the subject letter.

REP. G.F. GARCIA. And the secretariat was?

MS. FERNAN-CAYOSA. Was…Executive Officer is the head of the secretariat, Atty. Capacite. At that time, the JBC Regular

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[13] *Id*. at HLEF/XXII – 2.

[14] *Id*. at HLEF/XXII – 3.

Supreme Court E-Library

Members were not assigned to any particular office while we do now. So, Your Honors, to be candid, **I don't even recall having seen this letter from then Associate Justice Sereno because it was not given to us. We were not furnished copies**…

REP. G.F. GARCIA. You're talking of the July 23, 2012 letter?

MS. FERNAN-CAYOSA. Yes, Your Honor. The one addressed to Atty. Pascual at that time.

REP. G.F. GARCIA. No. This is addressed to the Judicial and Bar Council. Subject: Call of Atty. Richard Pascual on 20 July 2012.

MS. FERNAN-CAYOSA. Yes.[15]

(emphasis supplied)

x x x x x x x x x

REP. VELOSO. Atty. Cayosa, do you confirm that na hindi mo rin natanggap ito?

MS. FERNAN-CAYOSA. It… they state that it was received by my office but I don't recall having seen that document, Your Honors. You have to remember that there were several applicants and each dossier is about this thick. So, in the same manner that, perhaps, it may have escaped the attention of ano… of Justice Peralta. I am… also, I cannot recall having seen this document even just…[16]

x x x x x x x x x

REP. G.F. GARCIA. Atty. Cayosa, were you given a copy of the July 23 letter? Just for the record.

MS. FERNAN-CAYOSA. Your Honor, while they claim that we were… our offices were furnished, but I do not recall reading it until the document was presented to us for a clearance for release, Your Honors. I was even surprised myself that there was such a letter.[17]

Later during the hearing, Atty. Ty-Capacite also denied reading the subject letter, thus:

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[15] *Id*. at LCLV/XIII – 2.

[16] *Id*. at HLEF/XXII – 4.

[17] *Id*. at MLMR/XXVI – 3.

Supreme Court E-Library

REP. G.F. GARCIA. May I know why Atty. Capacite never brought this to the attention of even the four Regular Members which would comprise the ExeCom and which would determine whether they had substantially complied with the requirements?

MS. TY-CAPACITE. Your Honors, truth to tell, even up to this time, **I cannot recall having read that letter. I just… I just relied on the report of the ORSN** wherein there is… there is a …[18] (emphasis supplied)

The report referred to by Atty. Ty-Capacite is the report from the Office of Recruitment, Selection, and Nomination (*ORSN*) on 24 July 2012 which indicated that the respondent substantially complied with the requirements of the JBC. The said report, however, was not signed by any officer of the ORSN and, thus, the truth and veracity of the contents thereof are highly dubious.

REP. VELOSO. And she claimed in her letter 23 July, I write with respect to the follow up made by your Atty. Richard Pascual regarding the submission of SALN, *et cetera*. As I have noted in my Personal Data Sheet, nandito na 'yung mga explanation na sabi niya. In a nutshell, okay, naging practitioner kasi siya and then starting 2006 up to 2010 so iyon ang hindi mako-cover na SALN. But earlier than 2006, 2006 wala siyang SALN na naibigay, and also when she was a professor in U.P. at in-invoke pa niya 'yung clearance na ibinigay ng U.P. But looking at this clearance, hindi naman ito all-encompassing na clearance, eh. Hindi kasama dito 'yung SALN. Parang property clearances lang ito. So, in short, looking at this, para sa akin, hindi ito compliant kung babasahin mo ang 23 July. Is that correct Atty. Capacite? Huwag ka nang tatango kasi hindi nare-record 'yang tango. Hindi ito compliant? Speaking of the SALN lang requirement, 'yung additional requirement, hindi ito compliant?

MS. TY-CAPACITE. Your Honors, in the…

REP. VELOSO. Yes or no? Unahin mo ang sagot. Tes, then explain why. No, why?

MS. TY-CAPACITE. It's not a compliance with the requirements but it was after… After going over the list submitted by the ExeCom… by the ORSN, most likely, as far as I can recall, she was considered

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[18] *Id*. at MLMR/XXVI – 4.

Supreme Court E-Library

to have substantially complied because in the July 24, 2012 submitted report, it was… it's stated here, complete requirements. And then the letter dated 7-23-2012 was indicated here.

REP. VELOSO. Sino'ng pumirma diyan?

MS. TY-CAPACITE. It was released by the ORSN.

REP. VELOSO. Sino'ng pumirma.

MS. TY-CAPACITE. It's not… it's… there's no signature but it's part of the documents being distributed by the ORSN.[19]

From the foregoing, it is clear that the JBC was prevented from scrutinizing and making a proper determination of respondent's qualification as the members thereof were not made aware and were misinformed about respondent's compliance with the JBC requirements.

B. Procedural Aspect

Impeachment is not the exclusive mode to oust respondent from holding office as Chief Justice.

Impeachment refers to the power of Congress to remove a public official for serious crimes or misconduct as provided for in the Constitution.[20] A mechanism designed to check abuse of power, impeachment has its roots in Athens and was adopted in the United States (*U.S.*) through the influence of English common law on the Framers of the US Constitution.[21] Our own Constitution's provisions on impeachment were adopted from the U.S. Constitution.[22]

Section 2, Article XI of the 1987 Constitution provides:

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[19] *Id*. at LCLV/XXIII – 1 to 3.

[20] *Chief Justice Renato C. Corona v. Senate of the Philippines*, 691 Phil. 156, 170 (2012).

[21] *Id*.

[22] *Id*.

SECTION 2. The President, the Vice-President, the **Members of the Supreme Court**, the Members of the Constitutional Commissions, and the Ombudsman ***may* be removed from office**, on **impeachment** for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment. (emphases supplied)

Respondent claims that under the aforementioned provision, she may be removed from office only through impeachment, excluding all other remedies such as the present petition for *quo warranto*. To her, the word '*may*' in the provision qualifies only the penalty imposable after the impeachment trial; not that it suggests another mode to remove an impeachable official from office.

The respondent is mistaken.

Four reasons militate against the soundness of respondent's theory that she may be removed from office only through impeachment:

Firstly, no less than the 1987 Constitution itself recognizes that a person holding an office otherwise reserved to an impeachable officer may be ousted therefrom through modes other than impeachment. The last paragraph of Section 4, Article VII of the 1987 Constitution provides that the Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or the Vice-President, and may promulgate its rules for the purpose, thus –

The Supreme Court, sitting *en banc* shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice President and may promulgate its rules for the purpose.

Pursuant to this Constitutional provision, the Court promulgated rules for the guidance of the Presidential Electoral Tribunal. The most recent of these rules is A.M. No. 10-4-29-

Supreme Court E-Library

SC or the 2010 Rules of the Presidential Electoral Tribunal, which in part reads:

RULE 13. *Jurisdiction*. – The Tribunal shall be the sole judge of all contests relating to the election, returns, and **qualifications** of the President or Vice-President of the Philippines.

RULE 14. *How initiated*. – An election contest is initiated by the **filing of** an election protest or a **petition for *quo warranto*** against the President or Vice-President. An election protest shall not include a petition for *quo warranto*. A petition for *quo warranto* shall not include an election protest.

x x x x x x x x x

RULE 16. *Quo warranto*. – A verified **petition for *quo warranto*** contesting the election of the President or Vice- President on the ground of **ineligibility** or disloyalty to the Republic of the Philippines may be filed by any registered voter who has voted in the election concerned within ten days **after the proclamation** of the winner.[23] (emphases supplied)

The said rules provide that an election contest – which may either be an election protest or a petition for *quo warranto* – may be filed against the President or the Vice-President.[24]

The election protest is a challenge to the election of the President or the Vice-President on the ground of their alleged failure to validly obtain the required plurality of votes; while the petition for *quo warranto* is based on the public officers' alleged ineligibility or disloyalty to the Republic of the Philippines. A successful election contest in either case may result in the ouster of, as the case may be, the President or the Vice-President – public officials who are otherwise removable only through impeachment. This is only logical because in an election contest, the issue is the very qualification or title of the purported impeachable officer to continue holding office.

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[23] Based on A.M. No. 10-4-29-SC, or the 2010 Rules of the Presidential Electoral Tribunal. The Supreme Court had recently issued an amendment thereto.

[24] A.M. No. 10-4-29-SC, Rule 14.

If it is found that the respondent therein indeed failed to gather the necessary votes to be elected, or found to be ineligible, then he will be declared as holding office merely as a *de facto* officer and would be ousted from his position as President or Vice-President.

Admittedly, Article VIII of the 1987 Constitution does not contain a provision similar to Section 4, Article VII. Even so, the fact remains that the rule on impeachable officers under Section 2, Article XI is not absolute. Stated differently, Section 2, Article XI cannot be used to shield a person who claims to be an impeachable officer when his eligibility to the office he is holding is assailed.

Such is the predicament of herein respondent. Certainly, respondent is occupying an office reserved for an impeachable officer. Equally true, however, is the fact that the present petition asserts that she is just a *de facto* officer who should be ousted from the office of the Chief Justice because of the invalidity of her appointment thereto. It is under this factual setting that I find Section 2, Article XI inapplicable to the present petition.

Case law demonstrates the non-exclusivity of the impeachment as a mode of removing an impeachable officer. In *Funa v. Villar (Funa)*,[25] subject of the petition was the appointment of respondent Reynaldo Villar as Chairman of the Commission on Audit (COA). Villar was a Commissioner of the COA with a term of seven (7) years. During Villar's fourth year as COA Commissioner, COA Chairman Guillermo Carague finished serving his seven (7)-year term. President Gloria Macapagal-Arroyo then promoted Villar by appointing him as Chairman of the COA and, as such, was considered an impeachable officer under the Constitution.

The Constitution, however, provides that:

"The Chairman and Commissioners shall be appointed by the President with the consent of the Commission on Appointments for

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[25] 686 Phil. 571 (2010), *En Banc*, per *J.* Velasco.

Supreme Court E-Library

a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, one Commissioner for five years, and the other commissioners for three years without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any member be appointed or designated in a temporary or acting capacity." (Sec. 1(2), Art. IX (1) of the Constitution)

Petitioner Funa commenced a Petition for Certiorari and Prohibition to challenge the promotion of Villar as COA Chairman. He contended that the appointment was proscribed by the constitutional ban on reappointment. On the other hand, respondent Villar countered that his promotion accorded him a fresh term of seven (7) years. Before the Court could decide, however, Villar resigned from his post. Nevertheless, the Court determined that the case fell within the requirements for review of a moot and academic case.

Proceeding, the Court considered the remedy of certiorari applicable in view of the allegation that then President Macapagal-Arroyo exercised her appointing power in a manner constituting grave abuse of discretion. On the substantive aspect, the Court interpreted Sec. 1(2), Art. XI(1) of the Constitution as not precluding the promotional appointment or upgrade of a commissioner to a chairman, subject to the limitation that the appointee's tenure in office does not exceed 7 years in all.

Nonetheless, the Court declared the appointment of Villar as unconstitutional reasoning that the same provision also decrees, in a mandatory tone, that the appointment of a COA member shall be for a fixed 7-year term if the vacancy results from the expiration of the term of the predecessor. For clarity, I quote the pertinent portion of the decision:

In net effect, then President Macapagal-Arroyo could not have had, under any circumstance, validly appointed Villar as COA Chairman, for a full 7-year appointment, as the Constitution decrees, was not legally feasible in light of the 7-year aggregate rule. Villar had already served 4 years of his 7-year term as COA Commissioner. A shorter term, however, to comply with said rule would also be invalid as the corresponding appointment would effectively breach the clear purpose

of the Constitution of giving to every appointee so appointed subsequent to the first set of commissioners, a fixed term of office of 7 years. To recapitulate, a COA commissioner like respondent Villar who serves for a period less than seven (7) years cannot be appointed as chairman when such position became vacant as a result of the expiration of the 7-year term of the predecessor (Carague). Such appointment to a full term is not valid and constitutional, as the appointee will be allowed to serve more than seven (7) years under the constitutional ban.[26]

What can easily be gathered from the case above is that, had Villar not resigned as COA Chairman ahead of the Court's decision, he could have been removed from his office via a petition for certiorari and prohibition premised on the grave abuse of discretion on the part of President Macapagal-Arroyo when she exercised her power to make an appointment. The grave abuse of discretion in turn is justified by the appointment's patent violation of a mandatory provision in the Constitution. Note that a petition for certiorari and prohibition is procedurally and conceptually different from impeachment. Regardless of the difference, either procedure could produce, in this instance, the same consequential effect, which is removal from office of the impeachable officer.

To recapitulate, the manner by which the President, Vice President, or the members of the COA, which is one of three Constitutional Commissions, may be removed from office is demonstrably not limited to impeachment alone. Since the impeachment provision mentions not only the President, Vice-President and members of the Constitutional Commissions, the idea of the non-exclusivity of impeachment as a vehicle for removing an impeachable officer from office must, by extension, be applied as well to the other impeachable officers, **including the Chief Justice** or a member of the Supreme Court.

Secondly, a comparison of the 1935 Constitution and 1973 Constitution on the one hand and the 1987 Constitution on the other readily shows a shift in the language used in describing

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[26] *Id*. at 603-604.

Supreme Court E-Library

impeachment as a mode of removing an impeachable officer from office. Under the 1935 and 1973 Constitutions, the operative word *"shall"* appears antecedent to the phrase *"be removed from office on impeachment for, and conviction of."* Upon the other hand, the 1987 Constitution utilizes the permissive word *"may"* to qualify the same phrase *"be removed from office on impeachment for, and conviction of,"* thus –

1935 Constitution	1973 Constitution	1987 Constitution
ARTICLE IX.— IMPEACHMENT SECTION 1. The President, the Vice-President, the Justices of the Supreme Court, and the Auditor General, ***shall*** be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, or other high crimes.	ARTICLE XIII **ACCOUNTABILITY OF PUBLIC OFFICERS** SEC. 2. The President, the Members of the Supreme Court, and the Members of the Constitutional Commissions ***shall*** be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, other high crimes, or graft and corruption.	ARTICLE XI Accountability of Public Officers SECTION 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman ***may*** be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

(emphases supplied)

The change in phraseology is not without significance. *Verba legis* dictates that wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed, in which case the significance thus attached to them prevails.[27] In *J.M. Tuason & Co., Inc.*

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[27] *Macalintal v. Presidential Electoral Tribunal (Macalintal)*, 650 Phil. 326, 340 (2010), per *J.* Nachura.

Supreme Court E-Library

v. Land Tenure Administration,[28] the Court, through Chief Justice Enrique Fernando, said:

> As the Constitution is not primarily a lawyers document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus, these are cases where the need for construction is reduced to a minimum.

Applying the foregoing rule, the present provision ineluctably suggests that impeachment as a process is not the sole means of removing an impeachable officer from office.

Thirdly, the word "only," or its equivalent, does not appear in Section 2, Article XI or anywhere else in the 1987 Constitution in order to qualify the term "impeachment" that would establish exclusivity to such mode of removal affecting the impeachable officers. Again, consistent with the *verba legis* principle, the provision indicates non-exclusivity of impeachment as a mode of removing an impeachable officer.

Lastly, the impeachment of a public officer is availed of based on the commission of specific offenses ***while in office***, namely, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. The impeachment is pursued regardless of the qualification of the officer at the time of his or her appointment or election to office. Otherwise stated, it refers to acts done by the impeachable officer after having assumed the office to which he or she was elected to or appointed to.

This is primarily the reason why impeachment as a mode of removing an impeachable officer is contained in the article devoted to "Accountability of Public Officers." Accountability means an obligation or willingness to accept responsibility or

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[28] 142 Phil. 393 (1970), cited in *Macalintal, supra*.

Supreme Court E-Library

to account for one's actions.[29] It presupposes that the public officer had already assumed office and performed certain acts for which he must be held accountable.

The deliberations of the members of the Constitutional Commission who drafted the Constitutional provisions on Accountability of Public Officers lend an illumination of the principle, viz:

MR. MAAMBONG. Last point, just to enrich our records. I would like the Committee to comment on this quotation from *Philippine Constitution* by Former Chief Justice Fernando, wherein he said:

> In the United States Constitution, the term is high crime and misdemeanors. The Philippine Constitution speaks only of high crimes. There is support for the view that while there need not be a showing of the criminal character of the act imputed, it must be of sufficient seriousness as to justify the belief that there was a grave violation of the trust imposed on the official sought to be impeached.

MR. ROMULO. Yes. Let me say that essentially, impeachment is a political act.

MR. MAAMBONG. Yes. I will also quote the report of the General Committee on the impeachment of President Quirino, Volume IV, Congressional Records, House of Representatives, 1553:

> High crimes refer to those offenses which, like treason and bribery, are indictable offenses and are of such enormous gravity that they strike at the very life or orderly working of the government.

Would the Committee agree to this?

MR. ROMULO. Yes, of course, especially if the President is involved.

MR. MAAMBONG. Finally, I will again refer to the committee report on the impeachment of President Quirino on the phrase "culpable violation of the Constitution," and I quote:

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[29] *Merriam-Webster Dictionary*; at https://www.merriamwebster.com/dictionary/accountability.

> Culpable violation of the Constitution means willful and intentional violation of the Constitution and not violation committed unintentionally or involuntarily or in good faith or thru an honest mistake of judgment.

Would the Committee agree?

MR. ROMULO. Yes, we agree with that.

MR. MAAMBONG. And this is really the final quotation which I would like the Committee to comment on. Chief Justice Fernando also said:

> Culpable violation implies deliberate intent, perhaps a certain degree of perversity for it is not easy to imagine that individuals in the category of these officials would go so far as to defy knowingly what the Constitution commands.

Could this be an agreeable interpretation to the Committee?

MR. ROMULO. Yes, subject to exception, such as the last administrator we had.

MR. MAAMBONG. The Commissioner has been very kind.

Thank you very much. Thank you, Madam President.[30]

Still further –

MR. REGALADO. Thank you, Madam President.

I have a series of questions here, some for clarification, some for the cogitative and reading pleasure of the members of the Committee over a happy weekend, without prejudice later to proposing amendments at the proper stage.

First, this is with respect to Section 2, on the grounds for impeachment, and I quote:

> … culpable violation of the Constitution, treason, bribery, other high crimes, graft and corruption or betrayal of public trust.

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[30] Records of the Deliberations of the Constitutional Commission, Volume II, p. 278.

Supreme Court E-Library

Just for the record, what would the Committee envision as a betrayal of the public trust which is not otherwise covered by the other terms antecedent thereto?

MR. ROMULO. I think, if I may speak for the Committee and subject to further comments of Commissioner de los Reyes, the concept is that this is a catchall phrase. Really, it refers to his oath of office, in the end that the idea of a public trust is connected with the oath of office of the officer, and if he violates that oath of office, then he has betrayed that trust.

MR. REGALADO. Thank you.

MR. MONSOD. Madam President, may I ask Commissioner de los Reyes to perhaps add to those remarks.

THE PRESIDENT. Commissioner de los Reyes is recognized.

MR. DE LOS REYES. The reason I proposed this amendment is that during the Regular Batasang Pambansa when there was a move to impeach then President Marcos, there were arguments to the effect that there is no ground for impeachment because there is no proof that President Marcos committed criminal acts which are punishable, or considered penal offenses. And so the term "betrayal of public trust," as explained by Commissioner Romulo, is a catchall phrase to include all acts which are not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in office. It includes betrayal of public interest, inexcusable negligence of duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance, cronyism, favoritism, etc. to the prejudice of public interest and which tend to bring the office into disrepute. That is the purpose, Madam President.

Thank you.

MR. ROMULO. If I may add another example, because Commissioner Regalado asked a very good question. This concept would include, I think, obstruction of justice since in his oath he swears to do justice to every man; so if he does anything that obstructs justice, it could be construed as a betrayal of public trust.

Thank you.

MR. NOLLEDO. In pursuing that statement of Commissioner Romulo, Madam President, we will notice that in the presidential oath of then President Marcos, he stated that he will do justice to every man. If he appoints a Minister of Justice and orders him to issue or to prepare repressive decrees denying justice to a common man without the President being held liable, I think this act will not fall near the category of treason, nor will it fall under bribery nor other high crimes, neither will it fall under graft and corruption. And so when the President tolerates violations of human rights through the repressive decrees authored by his Minister of Justice, the President betrays the public trust.[31]

It is very much clear from the foregoing exchanges that the impeachment process addresses the serious offenses committed by an impeachable public officer while in office. The process does not concern itself about the impeachable officer's qualifications to such office.

Respondent offers a different signification to the word "may" appearing in the subject provision. According to her, it merely provides a qualification to the penalty that may be imposed on the impeached public officer after trial. Again, I beg to differ.

Section 3, Article XI of the 1987 Constitution provides:

SECTION 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

x x x x x x x x x

(7) Judgment in cases of impeachment shall not extend further than **removal from office** and **disqualification to hold any office** under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment according to law. (emphasis supplied)

The language in paragraph 7 above is clear enough that upon conviction, an impeached officer can only be meted a penalty

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[31] *Id*. at 272.

Supreme Court E-Library

of removal from office and disqualification to hold any office under the Republic of the Philippines. After all, the objective of an impeachment proceeding is to protect the State or serve as a deterrent against gross and highly reprehensible acts in office by those who were given the greatest powers.[32] But, as the impeachment trial is not a criminal prosecution, the convicted public officer cannot be held criminally liable in the same proceedings. However, the penalty of removal from office and disqualification to hold public office imposed in said proceedings is without prejudice to the criminal prosecution and punishment of the same public officer upon his or her conviction in the proper criminal proceedings.

There is nothing in the aforementioned text of the constitutional provision that suggests a penalty for a convicted impeached officer lesser than removal from office and disqualification to hold public office. Given the gravity of the impeachable offenses such as culpable violation of the Constitution, bribery, graft and corruption, other high crimes or betrayal of public trust, it would indeed be folly to impose upon a convicted public officer a penalty less than that of removal from office or disqualification to hold public office, such as suspension, censure, reprimand, or even a stern warning. To be sure, none of these enumerated lighter penalties are mentioned in the same article concerning accountability of public officers or anywhere else in the Constitution.

Jurisprudence, likewise, proffers no such instance wherein, upon conviction, an impeached officer was meted a penalty less grave than removal from office and disqualification to hold any public office.

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[32] See Records of the Deliberations of the Constitutional Commission, Volume II, p. 352.

Supreme Court E-Library

In truth, there are only two possible results, resting at opposite ends of each other that may follow an impeachment proceeding: either removal from office upon conviction, or no removal at all upon acquittal.[33] It is neither here nor there; the outcome can only be black or white.

The question remains as to what becomes of the "impeachable officer" or her office if she is not accused of committing any of the serious offenses in Section 2 of Article XI, but who is lacking or wanting of the qualifications to hold office. The answer unavoidably points to another legal process which is the *quo warranto* proceeding.

A petition for quo warranto is the proper remedy to oust respondent from office.

The special civil action of *quo warranto* is a "prerogative writ by which the Government can call upon any person to show by what warrant he holds a public office or exercises a public franchise."[34] Its progenitor is the Rules of Court issued by the Supreme Court under its constitutional authority to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts.[35] Rule 66 of said Rules of Court, in part provides:

Section 1. *Action by Government against individuals.* — An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:

(a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;

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[33] *Id*. at 355.

[34] *Municipality of San Narciso, Quezon v. Hon. Mendez*, 309 Phil. 12, 16 (1994), citing Moran, *Comments on the Rules of Court*, Vol. 3, 1970 ed., p. 208.

[35] Section 5 (5), Article VIII, 1987 Constitution.

Supreme Court E-Library

(b) A public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office; or

(c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act.

Section 2. *When Solicitor General or public prosecutor must commence action*. — The Solicitor General or a public prosecutor, when directed by the President of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in the preceding section can be established by proof, must commence such action.

Section 3. *When Solicitor General or public prosecutor may commence action with permission of court*. — The Solicitor General or a public prosecutor may, with the permission of the court in which the action is to be commenced, bring such an action at the request and upon the relation of another person; but in such case the officer bringing it may first require an indemnity for the expenses and costs of the action in an amount approved by and to be deposited in the court by the person at whose request and upon whose relation the same is brought.

x x x x x x x x x

Section 5. *When an individual may commence such an action*. — A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name.

x x x x x x x x x

Section 9. *Judgment where usurpation found*. — When the respondent is found guilty of usurping into, intruding into, or unlawfully holding or exercising a public office, position or franchise, judgment shall be rendered that such respondent be ousted and altogether excluded therefrom, and that the petitioner or relator, as the case may be, recover his costs. Such further judgment may be rendered determining the respective rights in and to the public office, position or franchise of all the parties to the action as justice requires.

x x x x x x x x x

Section 11. *Limitations*. — Nothing contained in this Rule shall be construed to authorize an action against a public officer or employee for his ouster from office unless the same be commenced within one (1) year after the cause of such ouster, or the right of the petitioner to hold such office or position, arose, nor to authorize an action for damages in accordance with the provisions of the next preceding section unless the same be commenced within one (1) year after the entry of the judgment establishing the petitioner's right to the office in question. (16a)

I highlight five points in recognizing *quo warranto* as an appropriate remedy in the present case:

1. *Quo warranto may be used to remove a purported impeachable officer from office.*

In *Spykerman v. The Honorable Melvin G. Levy*,[36] the Supreme Court of Pennsylvania explained *quo warranto* in this wise:

Quo warranto is the Gibraltar of stability in government tenure. Once a person is duly elected or duly appointed to public office, the continuity of his services may not be interrupted and the uniform working of the governmental machinery disorganized or disturbed by any proceeding less than a formal challenge to the office by that action which is now venerable with age, reinforced by countless precedent, and proved to be protective of all parties involved in a given controversy, namely, *quo warranto*.

A *quo warranto* action must be brought to oust de jure, as well as de facto officers from their public positions. A de facto officer is a "person in possession of an office and discharging its duties under the color of authority, – that is, authority derived from an election or appointment however irregular or informal, so that the incumbent be not a mere volunteer." Generally, *quo warranto* can be instituted only by the Attorney General or by the District Attorney. A private person may not bring a *quo warranto* action to redress a public wrong when he has no individual grievance. If a private person has a special right or interest, as distinguished from the right or

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[36] 491 Pa. 470 (1980); 421 A.2d 641.

Supreme Court E-Library

interest of the public generally, or he has been specially damaged, he may have standing to bring a *quo warranto* action.[37] (citations omitted)

It has been abundantly established that the Constitution does not preclude other modes of removing an "impeachable officer" from office. At the risk of being repetitive, an impeachment is not the sole means of ousting a purported impeachable officer, particularly when it is alleged that the said officer failed to satisfy the requirements of her office, thereby making her appointment void, or has not committed or alleged to have committed the impeachable offenses mentioned in the Constitution.

A petition for *quo warranto* is concededly vastly different from impeachment proceedings. Unlike impeachment, *quo warranto* does not pertain to acts committed by the impeachable officer during his term. It involves, instead, ineligibility of the person to hold public office. That ineligibility triggers the removal of one who had already assumed an office. It is, therefore, an effective mechanism even as against a person occupying a position reserved for impeachable officer. A *quo warranto* action is the sole and exclusive method to try title or right to public office, and is addressed to preventing a continued exercise of authority unlawfully asserted, rather than to correct what has already been done under the authority.[38]

Lest the respondent forgets, the viability of *quo warranto* proceedings to oust an impeachable officer had already been tested.

In *Estrada v. Desierto,*[39] a petition for *quo warranto* was filed by the petitioner, former President Joseph Ejercito Estrada, to challenge the legitimacy of the presidency of respondent Gloria Macapagal-Arroyo. Petitioner Estrada claimed in his

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[37] *Brinton v. Kerr*, 320 Pa. 62, 63-64, 181 A. 569, 570 (1935); *Schermer v. Franek*, 311 Pa. 341, 166 A. 878 (1933).

[38] *Spykerman v. Levy*, 491 Pa. 470, 484-485 (1980).

[39] 406 Phil. 1(2001).

petition that he was the lawful President of the Philippines, and that respondent Macapagal-Arroyo was merely acting as President due to the temporary disability of the former. Although the Court eventually denied the petition, the tribunal gave due course to it, declaring in the process that what was involved was not a political question but a justiciable controversy.

Despite this, the respondent insists that she may be removed from office only through impeachment. To support her position, respondent cited the cases of *In Re: Gonzales*,[40] *Jarque v. Desierto*,[41] and *Marcoleta v. Borra,*[42] among others. A careful reading of these cases, however, would reveal that they have no application to the present case.

The aforementioned cases dealt with disbarment cases filed against impeachable officers who under the Constitution are required to be Members of the Philippine Bar. The Supreme Court dismissed the disbarment complaints in these cases holding that a public officer who under the Constitution is required to be a Member of the Philippine Bar as a qualification for the office held by him and who may be removed from office only by impeachment, cannot be charged with disbarment during the incumbency of such public officer.

In the said cases, the qualification of the impeachable officer to continue holding his post was not the issue; there was no dispute that the impeachable officers therein met all the qualifications for their offices at the time of their respective appointments or at any time thereafter. Granting the disbarment complaints, therefore, would result in the elimination of a qualification which the impeachable officer had already satisfied at the time of the appointment. This would, as a consequence, indirectly strip the impeachable officer of his right to the office.

The present case is glaringly different. As repeatedly discussed, the petition for *quo warranto* against respondent is

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[40] 243 Phil. 167 (1988).

[41] A.C. No. 4509, 5 December 1995, 250 SCRA xi-xiv.

[42] 601 Phil. 470 (2009).

Supreme Court E-Library

a direct attack on her title to the office of the Chief Justice of the Supreme Court on the ground of her failure to demonstrate and satisfy the indispensable requirement of integrity. Simply stated, the present petition asserts that respondent's appointment as the Chief Justice is void *ab initio*; and that she is merely sitting as a *de facto* officer in the office of the Chief Justice and who should not be allowed to continue holding on to the said office. This ground for her removal is within the province of *quo warranto* proceedings and not of impeachment.

2. The Solicitor General may institute on his own the petition for quo warranto.

Under Sections 3 and 5 of Rule 66, there are two different parties who may commence the action for *quo warranto*: (1) the Solicitor General or public prosecutor, and (2) a private individual who claims to be entitled to the public office usurped. The action shall be brought against the person who allegedly usurped, intruded into or is unlawfully holding or exercising such office.[43]

In the first case, the text of Section 3 reveals that the commencement of the action may be directed by the President *or* when, upon complaint or otherwise, he has good reason to believe that any case specified in the preceding section can be established by proof. The provision is clear.

That the commencement of an action for *quo warranto* may be done sans the imprimatur of the President is consistent with the said office's powers and functions as stated under the law. As enumerated in the Administrative Code, the powers and functions of the Office of the Solicitor General are as follows:

SECTION 35. Powers and Functions.—The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer.

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[43] *Santiago v. Guingona*, 359 Phil. 276, 302-303 (1998).

Supreme Court E-Library

When authorized by the President or head of the office concerned, it shall also represent government-owned or -controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

(2) Investigate, initiate court action, or in any manner proceed against any person, corporation or firm for the enforcement of any contract, bond, guarantee, mortgage, pledge or other collateral executed in favor of the Government. Where proceedings are to be conducted outside of the Philippines the Solicitor General may employ counsel to assist in the discharge of the aforementioned responsibilities.

(3) Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court.

(4) Appear in all proceedings involving the acquisition or loss of Philippine citizenship.

(5) Represent the Government in all land registration and related proceedings. Institute actions for the reversion to the Government of lands of the public domain and improvements thereon as well as lands held in violation of the Constitution.

(6) Prepare, upon request of the President or other proper officer of the National Government, rules and guidelines for government entities governing the preparation of contracts, making of investments, undertaking of transactions, and drafting of forms or other writings needed for official use, with the end in view of facilitating their enforcement and insuring that they are entered into or prepared conformably with law and for the best interests of the public.

(7) Deputize, whenever in the opinion of the Solicitor General the public interest requires, any provincial or city fiscal to assist him in the performance of any function or discharge of any duty incumbent

Supreme Court E-Library

upon him, within the jurisdiction of the aforesaid provincial or city fiscal. When so deputized, the fiscal shall be under the control and supervision of the Solicitor General with regard to the conduct of the proceedings assigned to the fiscal, and he may be required to render reports or furnish information regarding the assignment.

(8) Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts, and exercise supervision and control over such legal Officers with respect to such cases.

(9) Call on any department, bureau, office, agency or instrumentality of the Government for such service, assistance and cooperation as may be necessary in fulfilling its functions and responsibilities and for this purpose enlist the services of any government official or employee in the pursuit of his tasks.

Departments, bureaus, agencies, offices, instrumentalities and corporations to whom the Office of the Solicitor General renders legal services are authorized to disburse funds from their sundry operating and other funds for the latter Office. For this purpose, the Solicitor General and his staff are specifically authorized to receive allowances as may be provided by the Government offices, instrumentalities and corporations concerned, in addition to their regular compensation.

(10) Represent, upon the instructions of the President, the Republic of the Philippines in international litigations, negotiations or conferences where the legal position of the Republic must be defended or presented.

(11) Act and represent the Republic and/or the people before any court, tribunal, body or commission in any matter, action or proceeding which, in his opinion, affects the welfare of the people as the ends of justice may require; and

(12) Perform such other functions as may be provided by law.[44]

(underscoring supplied)

From the cited provisions, it is clear that there are only three instances where the intervention of the President may be required

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[44] Administrative Code, Section 35, Chapter 12, Title III, Book IV.

before the Office of the Solicitor General may perform its functions. These are the representation of government-owned or -controlled corporations; preparation of rules and guidelines for government entities; and the representation of the Republic in international litigations, negotiations, or conferences. Verily, the filing of the present petition is not one of them.

At this juncture, I would like to point out that it is highly irresponsible for the respondent to even insinuate that there are forces beyond the ordinary legal processes operating to influence the present proceedings. As a member of the Philippine Bar, the respondent is presumed to know that lawyers are proscribed from making public statements regarding a pending case tending to arouse public opinion for or against a party.[45] As a public officer who is occupying the highest post in the judiciary, the respondent should know that her reckless comments may pose a threat to the administration of justice.

3. The present petition for quo warranto has not prescribed.

It is true that under Section 7, Rule 66 of the Rules of Court, the prescriptive period for bringing an action for *quo warranto* is one (1) year counted from the cause of the ouster, or from when the right of the petitioner to the contested position arose. Nevertheless, it is submitted that the aforesaid one-year prescriptive period does not apply to the present case.

It must be noted that the petitioner in this case does not seek to oust the respondent and, in her stead, assume the position. Recall that a petition for *quo warranto* may be commenced by a private individual who has been deprived of and is claiming a position that has been usurped by another. It is in this instance when *quo warranto* is instituted by a private individual that the one-year prescriptive period applies. Consistently, the reckoning of the period is the cause of the ouster, or when the right of the petitioner to the position arose.

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[45] Code of Professional Responsibility, Canon 13, Rule 13.02.

Supreme Court E-Library

A clear example is the recent case of *Philip Aguinaldo, et al. v. Benigno Aquino, et al.*,[46] wherein the petitioners assailed, through petition for *quo warranto*, the appointment by President Aquino of respondents Michael Frederick Musngi and Geraldine Faith Econg as Associate Justices of the Sandiganbayan. The petitioners were among those shortlisted by the JBC for the vacant positions of the Sandiganbayan due to the creation of two additional divisions in the court. They, therefore, had a stake in the contested positions.

Upon the other hand, the conditions with which to bring in operation the commencement of the running of the prescriptive period do not apply to the instance when it is the Solicitor General or public prosecutor who initiates the action for *quo warranto*. It is for this reason that, at the pain of sounding repetitive, the Solicitor General is not claiming that he has been deprived of a public office. Nor does he seek to take over such position. The logical conclusion is that the one-year prescriptive period does not apply.

The interpretation that the one-year prescriptive period is inapplicable assumes greater significance when contrasted with the identity of the petitioner who is the Republic of the Philippines or the State. It is a hornbook principle that prescription does not run against the State.[47] Concededly, an exception may lie against imprescriptibility of actions by the State; that is, when the law itself provides for prescription even against the State. However, a closer perusal of Section 11 of Rule 66 does not demonstrate such exception.

Applying the above precepts to the case at bar, prescription has not set in because the petition was instituted by the Solicitor General on behalf of the State. It could not have set in for the simple reason that it has not even commenced to run.

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[46] G.R. No. 224302, 29 November 2016.

[47] Article 1108 of the Civil Code; See also *East Asia Traders, Inc. v. Republic*, 477 Phil. 848, 863 (2004), citing *Reyes v. Court of Appeals*, 356 Phil. 606, 625 (1998).

4. The reckoning point of prescription is the date of discovery of the defect in the title of the respondent.

The parties are at odds as to when to reckon the one-year period of prescription to institute the action for *quo warranto* as provided in Section 11 of Rule 66.

On the one hand, the Solicitor General contends that, on the theory that prescription applies in this instance, the reckoning point is the discovery of the defect in the title to the office of the respondent, that is, during the hearings conducted by the Justice Committee of the House of Representatives on the impeachment complaint against respondent when the latter's qualification was put in question due to non-filing of SALNs from 1986 to 2006, or during the time that she had taught at the University of the Philippines (UP) College of Law.

Respondent, on the other hand, insists that such one-year period is counted from the "cause of ouster" and not from the discovery of the disqualification. Likening "cause of ouster" to "cause of action," Respondent believes that the OSG had cause of action to seek her ouster as early as her appointment on 24 August 2012. One year therefrom is 24 August 2013. However, the OSG's petition was filed only on 5 March 2018, or four and a half years late, so respondent explains.

She adds further that assuming the one-year period is to be counted from discovery of her disqualification, the petition must still be time-barred because UP, which is a State university, or the OSG would have discovered any failure to file a SALN the moment the statutory deadline for the filing of SALN lapsed. Such failure to file her SALN could also have been discovered even while the JBC was still considering her application for the position of Chief Justice.

Frankly, the debate on when to reckon the one-year period of prescription in this case is an exercise in futility. There could not be a proper determination of such reckoning point when the period of prescription, as discussed above, is not even

Supreme Court E-Library

applicable in the first place. To reiterate, there are two reasons why the one-year period in Section 11 of Rule 66 cannot apply to the Solicitor General (or the public prosecutor): *first,* the conditions that qualify the commencement of the running of the period, i.e., deprivation of the petitioner's right to the public office and taking over such position which is usurped by another, do not appropriately apply to the Solicitor General or the State which he represents; and *second,* prescription does not lie against the State.

In any case, assuming for the sake of argument that prescription applies, the reckoning point of counting such period should be the discovery by the OSG of the defect in the respondent's right to the office. Such interpretation is with jurisprudential precedent. The case of *Frivaldo v. COMELEC (Frivaldo)*[48] is apropos.

In *Frivaldo,* Frivaldo was elected Governor of the Province of Sorsogon in the 18 January 1988 local elections. On 27 October 1988, a petition for the annulment of Frivaldo's election was filed with the Commission on Elections *(COMELEC)* alleging among other things that Frivaldo was an alien having been naturalized as an American citizen on 20 January 1983 and, hence, he was not qualified to run and be elected as governor. Frivaldo assailed the petition arguing, among other things, that it was in reality a petition for *quo warranto*, as such, it has already prescribed pursuant to the Omnibus Election Code which requires the filing of a petition for *quo warranto* within ten (10) days from proclamation. The private respondents countered that the petition could not have been filed within 10 days because it was only in September 1988 that they received proof of his naturalization. The Court brushed aside the contention that the petition has already prescribed and ruled:

The argument that the petition filed with the Commission on Elections should be dismissed for tardiness is not well-taken. The herein private respondents are seeking to prevent Frivaldo from

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[48] 255 Phil. 934 (1989).

continuing to discharge his office of governor because he is disqualified from doing so as a foreigner. Qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. Once any of the required qualifications is lost, his title may be seasonably challenged. If, say, a female legislator were to marry a foreigner during her term and by her act or omission acquires his nationality, would she have a right to remain in office simply because the challenge to her title may no longer be made within ten days from her proclamation? It has been established, and not even denied, that the evidence of Frivaldo's naturalization was discovered only eight months after his proclamation and his title was challenged shortly thereafter.

This Court will not permit the anomaly of a person sitting as provincial governor in this country while owing exclusive allegiance to another country. The fact that he was elected by the people of Sorsogon does not excuse this patent violation of the salutary rule limiting public office and employment only to the citizens of this country. The qualifications prescribed for elective office cannot be erased by the electorate alone. The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified. Obviously, this rule requires strict application when the deficiency is lack of citizenship. If a person seeks to serve in the Republic of the Philippines, he must owe his total loyalty to this country only, abjuring and renouncing all fealty and fidelity to any other state.[49]

The present case is similar to the above-cited case of *Frivaldo*. The common thread in this case and *Frivaldo* is the impossibility of the filing of the petition for *quo warranto* within the statutory period of prescription because the knowledge or proof of the lack of qualification of the respondent was not yet available at the time. Resultantly, the reckoning of the prescriptive period for the filing of the petition for *quo warranto* must be the time the lack of qualification of the respondent was discovered. If, in *Frivaldo*, the reckoning point is the date of discovery of such ineligibility, so it must be in this case. Again, this must

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[49] *Id*. at 944-945.

Supreme Court E-Library

be the solution only if it can be accepted that prescription is applicable to this case in the first place.

Even foreign jurisprudence sets the reckoning period of prescription from the date of discovery. In *Cada vs. Baxter Healthcare Corp.*, the United States Court of Appeals explained:[50]

xxx We must first distinguish between the accrual of the plaintiff's claim and the tolling of the statute of limitations, then between two doctrines of tolling, last between different kinds of information that Cada may or may not have possessed. Accrual is the date on which the statute of limitations begins to run. It is not the date on which the wrong that injures the plaintiff occurs, but the date—often the same, but sometimes later—on which the plaintiff discovers that he has been injured. The rule that postpones the beginning of the limitations period from the date when the plaintiff is wronged to the date when he discovers he has been injured is the "discovery rule" of federal common law, which is read into statutes of limitations in federal-question cases (even when those statutes of limitations are borrowed from state law) in the absence of a contrary directive from Congress. The discovery rule is implicit in the holding of Ricks that the statute of limitations began to run "at the time the tenure decision was made and communication to Ricks." If Cada did not discover that he had been injured, i.e., that a decision to terminate him had been made, until May 22, the statute of limitations did not begin to run till that day and his suit is not time-barred.

It may not be time-barred even if the statute of limitations began to run earlier. Tolling doctrines stop the statute of limitations from running even if the accrual date has passed. Two tolling doctrines might be pertinent here (others include the plaintiff's incapacity and the defendant's fugitive status). One, a general equity principle not limited to the statute of limitations context, is equitable estoppel, which comes into play if the defendant takes active steps to prevent the plaintiff from suing in time, as by promising not to plead the statute of limitations. Equitable estoppel in the limitations setting is sometimes called fraudulent concealment, but must not be confused with efforts by a defendant in a fraud case to conceal the fraud. To the extent that such efforts succeed, they postpone the date of accrual

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[50] *Joseph F. Cada v. Baxter Healthcare Corporation*, 920 F.2d 466, 54 Fair Empl.Prac.Cas. 961, 55 Empl. Prac. Dec. P 40,424, 59 USLW 2411.

by preventing the plaintiff from discovering that he is a victim of a fraud. They are thus within the domain of the discovery rule. Fraudulent concealment in the law of limitations presupposes that the plaintiff has discovered, or, as required by the discovery rule, should have discovered, that the defendant injured him, and denotes efforts by the defendant—above and beyond the wrongdoing upon which the plaintiff's claim is founded—to prevent the plaintiff from suing in time. (citations omitted)

5. The Court is vested with the prerogative to suspend its own rules.

Even if it were to be assumed that the action had prescribed, the rule on prescription of action for *quo warranto*, or any rule of procedure for that matter, may, at the discretion of the Court, be suspended when the petition is able to fashion out an issue of transcendental importance or when paramount public interest is involved.

There can be little quibble that the eligibility of one who was appointed to the highest office in the judiciary involves a matter of transcendental importance to the public. Not only is the issue one of first impression, it also involves a highly sensitive office so much so that the fundamental law even adopted a policy of least resistance so as not to hamper the discharge of the important functions of the office. It cannot be denied that the task of the Chief Justice, as the head of the judiciary who assumes the lead role in dispensing justice in the country, is as much important as its effect to the public in general. A decision on the petition, therefore, whether in favor or against it, would have far-reaching implications to the general public and may necessitate the promulgation of rules for the proper guidance of the bench, the bar, and the public in future analogous cases.

On a related matter, the Court observed in the case of *Arturo De Castro v. Judicial and Bar Council (De Castro)*,[51] that the issue concerning the authority of the President to appoint the successor of the retiring incumbent Chief Justice is one of

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[51] 629 Phil. 629 (2010).

Supreme Court E-Library

transcendental importance. There, the Court waived the requirement of legal standing in favor of the petitioners owing to the transcendental importance of the matter involved.

II.

The Oral Argument

It has not escaped my attention that respondent maintained a hostile stance towards this Court throughout the oral argument held last 10 April 2018.

I noted, at the outset, that respondent, instead of focusing on the issues subject of the oral arguments and limiting her responses to the questions thereon, embarked on what, to my mind, amounted to threats of future charges of the same nature, *viz*:

JUSTICE DE CASTRO:

I would like to ask you about the submission of your SALN. Did you religiously comply with the submission of the SALN as mandated by law?

CHIEF JUSTICE SERENO:

Justice De Castro and my colleagues, before I answer that question, can I have your assurance that should a quo warranto Petition be filed against any of you on the ground that one or more of your SALNs are not on record, that you would also under oath declare before this Court, answer all questions regarding your SALNs, for example, Justice De Castro, who should have filed thirty-nine (39) SALNs but filed only fifteen (15) with the JBC?

JUSTICE DE CASTRO:

Will you please answer the question? You are being asked a question.

CHIEF JUSTICE SERENO:

Yes.[52] (underscoring supplied)

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[52] TSN, Oral Arguments, 10 April 2018, pp. 26-27.

Alarming also was the condescending manner in which respondent disregarded the questions and inputs raised and offered by Members of this Court. In several instances, she interrupted questions propounded to her, engaged in argument instead of answering directly, and refused to listen to clarifications made to her, prompting Acting Chief Justice Carpio to intervene. This is exemplified by the following exchange:

JUSTICE DE CASTRO:

You are placed under oath.

CHIEF JUSTICE SERENO:

Yes, that's true.

JUSTICE DE CASTRO:

You are not supposed to . . .

CHIEF JUSTICE SERENO:

Well, that is your expectation, Justice De Castro, but this is important because this is a due process and equal protection issue I am raising now.

ACTING CHIEF JUSTICE CARPIO:

Yeah, will the Chief Justice just answer the question, please?[53]

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JUSTICE DE CASTRO:

You have thirty (30) days. The law says, the law does not require you…

CHIEF JUSTICE SERENO:

That is nit-picking, that is nit-picking.[54]

x x x x x x x x x

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[53] *Id*. at 27.

[54] *Id*. at 48.

Supreme Court E-Library

JUSTICE DE CASTRO:

Excuse me, excuse me. That matter is the subject of another administrative matter where we asked the JBC officials…

CHIEF JUSTICE SERENO:

It is related…

JUSTICE DE CASTRO:

…and the four regular members of the JBC to submit their comment on the records that were forwarded to us by the…

CHIEF JUSTICE SERENO:

You cannot keep that administrative matter away from the public…

JUSTICE DE CASTRO:

Yes…

CHIEF JUSTICE SERENO:

…that has to do with what their action…

JUSTICE DE CASTRO:

No, we are not…

CHIEF JUSTICE SERENO:

…and you are basically questioning why they did, what they did by shortlisting me…

JUSTICE DE CASTRO:

No…

CHIEF JUSTICE SERENO:

How can you deprive the country…

JUSTICE DE CASTRO:

No, we're not…

CHIEF JUSTICE SERENO:

…of the entire story trying to segment one half of the story that you do not like because it is not favourable…

JUSTICE DE CASTRO:

No. Chief, Chief…

CHIEF JUSTICE SERENO:

…to me and then crucifying me on other things?

JUSTICE DE CASTRO:

Chief Justice, will you listen? When I say that it is a pending matter, we are looking into the culpability of anyone in the JBC as to what happened here. So it is a separate matter and we are not keeping it from the public because the investigation is not complete, it's not yet complete, we want to find out...

CHIEF JUSTICE SERENO:

You know, we already…

ACTING CHIEF JUSTICE CARPIO:

(to *Chief Justice Sereno*.)

Wait. Can you just let…

(*to Justice De Castro*.)

Continue.

(to Chief Justice Sereno.)

Can you just wait until she's finished?[55] (underscoring supplied)

In one instance, respondent even dispensed with due courtesy when she addressed Justice Teresita Leonardo-De Castro simply by her nickname, *viz*:

JUSTICE DE CASTRO:

What I, since you mentioned that, I just want to give you an information that based on the hearing, it turned out, the ex-officio members that includes Justice Peralta, Escudero, and Secretary Musngi, were not given a copy of your letter of July 23, 2010, only the four regular members were given copies. That is the reason why Justice Peralta is saying, I have not seen your letter. And in addition to that,

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[55] *Id*. at 57-58.

Supreme Court E-Library

when Richard Pascual was preparing her, his matrix, he never quoted the whole letter, he just pick (sic] portions of it referring to government records which does not mention at all about the SALN. So there are…

CHIEF JUSTICE SERENO:

Tess, can we just flash?

JUSTICE DE CASTRO:

Yes.[56] (underscoring supplied)

More disconcerting is the way respondent attempted to mislead the public by making it appear it was this Court which compelled her to appear in the oral arguments, when it was respondent herself who filed an ad cautelam motion requesting the conduct of oral arguments, as expressly admitted by her counsel:

JUSTICE TIJAM:

So, you are saying as defenses, you have no legal obligation, you could no longer locate it, and you have no obligation to keep proper records filing of these, of these documents? Now, on another matter, on the matter of impeachment and quo warranto, you have been publicly, you've publicly proclaimed that you want your day in Court and I think that today is your day in Court and I'm happy.

CHIEF JUSTICE SERENO:

This is not my day in Court, Your Honor, you compelled me. I wanted to argue this case…

JUSTICE TIJAM:

I'm sorry, I'm sorry, Your Honor.

CHIEF JUSTICE SERENO:

We were, I was compelled.

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[56] *Id*. at 61.

JUSTICE TIJAM:

We did not compel you. We…

CHIEF JUSTICE SERENO:

Okay.

JUSTICE TIJAM:

The SolGen requested for oral argument, we denied it. And suddenly, you filed a Motion Ad Cautelam for Oral Argument. I was against it because I did not want this kind of spectacle wherein the public sees you, the Chief Justice and the Members of the Court discoursing on issues questions of law because this can be better addressed by the lawyers, but you insisted and you said you wanted the public to know how we arrived at cases, which I think is wrong because internal deliberations of the Court is supposed to be confidential, but you have been given. We did not compel you to attend. As a matter of fact, it was an agreement, should you fail to attend, we will cancel the…

CHIEF JUSTICE SERENO:

Your Honor…

JUSTICE TIJAM:

…the oral argument.[57] (emphasis supplied)

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JUSTICE MARTIRES:

I'd like to ask this question, few questions to both Solicitor Calida and Atty. Poblador. Atty. Poblador, I am bothered by the statement of your client that she was forced to this oral argument. Is it not a fact that you filed an ad cautelam motion asking for an oral argument?

ATTY. POBLADOR:

That is true, I think, we filed…

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[57] *Id*. at 147-148.

Supreme Court E-Library

JUSTICE MARTIRES:

Do you have a copy of that motion?

ATTY. POBLADOR:

No, it is considered that we asked for…

JUSTICE MARTIRES:

Yes, do you have a copy of that ad cautelam motion?

ATTY. POBLADOR:

Yes, Your Honor.

JUSTICE MARTIRES:

Can you show it to Solicitor Calida if that is the same ad cautelam motion that the Solictor General's Office received?

ATTY. POBLADOR:

I would, we filed, no, we prepared.

JUSTICE MARTIRES:

Can you show, Atty. Poblador, a copy of your copy, a copy of that ad cautelam motion, Atty. Pascual?

ATTY. POBLADOR:

We will show a copy filed this morning, served and filed this morning.

JUSTICE MARTIRES:

The ad cautelam motion asking for an oral argument.

ATTY. POBLADOR:

That is the motion.

JUSTICE MARTIRES:

Because it would seem as what the media has first reported that this Court has forced the respondent to go into this Oral Argument. Do you have a copy? Show it, Atty. Poblador.

ATTY. POBLADOR:

I concede, Your Honor, that we filed a motion.[58] (emphasis and underscoring supplied)

It behooves me to remind respondent of her duty to observe and maintain the esteem due to courts and to judicial officers, as embodied in the Code of Professional Responsibility (*CPR*);[59] otherwise, she risks diminishing the public's respect for the law and the legal processes, as well as the public's confidence in the courts as bastions of justice. The CPR ensures, among others, that only those whose integrity are intact may be allowed to facilitate the attainment of justice.

Integrity, while evading precise definition, has been linked to an applicant's good reputation for honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards.[60] Put simply, it is the quality of a person's character.[61] Being related to morality and the internal processes of the human mind, it can only be assessed and determined through one's outward acts.

Sadly, respondent's demeanor and conduct fell short of the ethics expected from the highest magistrate of the land and exposed the courts to diminution of public respect when she failed to extend courtesy, fairness, and candor toward her fellow justices during the oral arguments.[62] This, to me, calls into question her integrity, past and present.

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[58] *Id*. at 183-184.

[59] Canon 1 of the Code of Professional Responsibility provides that "a lawyer shall uphold the Constitution, obey the laws of the land, and promote respect for law and for legal processes."

[60] *Jardeleza v. Sereno*, 741 Phil. 460, 495 (2014).

[61] *Id*.

[62] Canon 8 of the Code of Professional Responsibility provides that "a lawyer shall conduct himself with courtesy, fairness, and candor toward his professional colleagues.

Supreme Court E-Library

The foregoing also validates the finding that, even at present, she lacked this constitutionally mandated quality when she assumed office as Associate Justice of the Supreme Court and thereafter as Chief Justice. I apply by analogy here the *res inter alios acta* evidentiary rule in our Rules of Court – that while evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or similar thing at another time, it may be received to prove an identity, a scheme, a habit, or the like.[63]

Similarly, the above manifestations of respondent's character indicate a propensity to disregard sound ethical standards that compromise integrity, which may be inherent and likely to have existed at the time of her appointment, when respondent made questionable decisions relating to the non-submission and non-filing of her SALNs.

III.

The Motion for Inhibition

The fear that I expressed during the *En Banc* session of 27 February 2018 is now taking its form. In front of my colleagues, I told movant Sereno that she is a "very vindictive person and I am afraid of what (you) will do to me after this morning's session."

In her Motion filed on 5 May 2018, movant Sereno seeks my recusal, alleging that:

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4. The Chief Justice, with due respect, has reasonable grounds to believe that the Hon. Associate Justice Samuel R. Martires has manifested **actual bias** against her which should disqualify him from participating in these proceedings.

5. During the oral arguments on 10 April 2018, Justice Martires appears to have made insinuations questioning the Chief Justice's "mental" or "psychological" fitness on the basis of her belief that

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[63] Section 34, Rules 130, Rules of Court.

God is "[t]he source of everything in [her] life," even as the Chief Justice's mental or psychological fitness was not an issue raised at all in the Petition, to wit:

JUSTICE MARTIRES:

Solicitor Calida, would you agree with me *na lahat ng taong may dibdib ay may kaba sa dibdib? At lahat ng taong may ulo ay may katok sa ulo?*

SOLICITOR GENERAL CALIDA:

Yes, Your Honor, I agree.

JUSTICE MARTIRES:

Now, would you consider[64] it a mental illness when a person always invokes God as the source of his strength? The source of his inspiration? The source of happiness? The source of everything in life? Is that a mental illness?

SOLICITOR GENERAL CALIDA:

Not necessarily, Your Honor.

JUSTICE MARTIRES:

So, I'm just making a follow-up to the question that Justice Velasco earlier asked. So, would you agree with me that the psychiatrist made a wrong evaluation with respect to the psychiatric report of the Chief Justice?

SOLICITOR GENERAL CALIDA:

Unfortunately, I have not read the psychiatric report, yet, Your Honor.

JUSTICE MARTIRES:

You did not read that in the newspapers?

SOLICITOR GENERAL CALIDA:

I read it in the papers but I have not seen the document, Your Honor.

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[64] As corrected on May 7, 2018.

Supreme Court E-Library

JUSTICE MARTIRES:

Thank you very much.

6. The Chief Justice respectfully views the foregoing utterances of Justice Martires as a suggestion that the respondent suffers from some "mental" or "psychological" illness because of her pervasive belief in God, and that such position was **purely personal** to Justice Martires. In fact, the Solicitor General who had not even raised that issue in his Petition, disagreed with such a proposition.

7. More important, such suggestion was purportedly based on the psychiatric report of the Chief Justice and newspaper reports, which neither the Petitioner nor the Chief Justice submitted to this Honorable Court. The Solicitor General even denied having read such psychiatric report.

8. With due respect, it appears that Justice Martires has formed an opinion on the competence of Respondent to serve as Chief Justice on some basis **other than what he learned from his participation on this case.** His objectivity and impartiality therefore appears to have been impaired.

In a cunning spin-off, movant Sereno's camp depicted me as a "faith-shaming justice" as may be shown in Rappler's on-line article on 5 May 2018, to wit:

MANILA, Philippines – Chief Justice Maria Lourdes Sereno has sought the inhibition of Associate Justice Samuel Martires in her quo warranto case, her camp said on Saturday, May 5.

The Sereno camp said in a statement that the Chief Justice filed the petition seeking to inhibit Martires in the case on Friday, May 4, citing his alleged manifestation of "actual bias" against Sereno during the April 10 oral arguments on the quo warranto petition.

This was when Martires seemed to insinuate that Sereno was suffering from a mental illness due to her faith in God. At the time, he was posing some questions to Solicitor General Jose Calida, who filed the quo warranto petition against Sereno.

"Would you agree it a mental illness when a person always invokes God as the source of his strength? The source of happiness? The source of everything in life? Is that mental illness?" Martires asked Calida.

The Sereno camp alleged that this was a case of "faith-shaming."

In filing the petition, Sereno cited Canon 3, Section 5(a) of the New Code Of Judicial Conduct for the Philippine Judiciary, which states that judges shall disqualify themselves from a proceeding where they are unable to decide a matter impartially, specifically in instances where a judge has actual bias concerning a party.

Because he allegedly showed bias, Sereno said that Martires' participation in the case would violate her constitutional right to due process, which requires a hearing before an impartial and disinterested tribunal.

"With due respect, it appears that Justice Martires has formed an opinion on the competence of Respondent (Sereno) to serve as Chief Justice on some basis other than what he learned from his participation in this case. His objectivity and impartiality therefore appears to have been impaired," Sereno said in her petition.

Martires is one of 6 justices the Chief Justice wants to inhibit in her quo warranto case. The other 5 are Associate Justices Teresita Leonardo de Castro, Diosdado Peralta, Lucas Bersamin, Francis Jardeleza, and Noel Tijam.

The SC denied Sereno's motions for inhibition.

In the same petition, Sereno asked the SC en banc to resolve the separate motions to inhibit without the participation of the 6, and before the Court decides on the quo warranto petition.

"It is not wrong to expect that their presence, the [motions for inhibition] will not prosper merely because of the numerical strength of the justices whose competence is being challenged," she said.

She also said that the 6 justices should inhibit from the case "out of delicadeza and out of the great public necessity that this Honorable Court be perceived as a neutral body." – **Rappler.com**[65]

In her desperate move to invite sympathy, movant Sereno now changes her self-styled award-winning act by shifting the blame from political personalities and the independence of the judiciary to religion.

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[65] https://www.rappler.com/nation/201854-sereno-quo-warranto-destroy-judicial-independence. Last visited: 10 May 2018 7:14pm.

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Unless her vision and comprehension have already been greatly impaired by the problems she herself has created, there is nothing in my questions to Solicitor General Calida that "insinuates" that she is mentally ill because of her pervasive faith in God.

For better understanding of what I said because my simple English may be hardly understood by intellectuals, let me put this in a language we all can speak and write as Filipinos.

Basahin man nang pabali-baliktad ang mga tanong ko noong "oral argument," maliwanag pa sa sikat ng araw na wala akong sinabi o binigkas na salita na nagpapahiwatig na "baliw" si Gng. Sereno dahil sa kanyang masidhing paniniwala sa Panginoon.

Isasalin ko sa sariling wika ang tanong na ito:

Question 2:

Now, would you consider it a mental illness when a person always invokes God as the source of his strength? The source of his inspiration? The source of happiness? The source of everything in life? Is that a mental illness?

(*Ngayon, itituring mo ba na kasiraan ng ulo kung ang isang tao ay palaging sumasamba, dumudulog o tumatawag sa Diyos at itinuturing na ang Diyos ang kanyang lakas? Ang kanyang "inspirasyon"? Ang kanyang kaligayahan? At ang lahat sa ating buhay? Kabaliwan ba iyon?*)

Question 3:

So, would you agree with me that the psychiatrist made a wrong evaluation with respect to the psychiatric report of the Chief Justice?

(*Kanya't, sasang-ayon ka ba sa akin na iyong "psychiatrist" ay nagkamali sa kanyang pagsusuri hinggil sa "psychiatric report" sa Punong Mahistrado?*)

Movant Sereno clearly made a consciously selective reading of the transcript of stenographic notes.

Calling me a "faith shamer" hit me where it hurts most as movant Sereno is fully aware that we have the same spiritual beliefs – that God is the reason for our success, the source of

our happiness, and the center of our lives. It would be incongruous, if not totally absurd, for me to consider movant Sereno as "sira ulo" on the basis of her religious beliefs because that would make me crazier than her.

While this brand new name came as a surprise to me, the distorted story she made on the questions I asked Solicitor General Calida was a vengeful act that I expected from movant Sereno. Heaven knows that as early as 2012 when Jomar Canlas wrote in the Manila Times about the results of movant Sereno's psychiatric examination, I already defended her. I told Canlas that the psychiatrist did not make a fair assessment and evaluation of the tests conducted and hastily jumped into a conclusion that there was something wrong with movant Sereno. Movant Sereno is well aware of the defenses I made to protect her because I told her about this during our first meeting when I was appointed as Associate Justice of the Supreme Court. Now, my only consolation is that she is mouthing the very defenses I used to shield her from criticism.

Movant Sereno's press statement that I testified against her in Congress is another big lie. Foremost, let me state that my appearance before the Congress was approved by the Court. The records of the congressional hearing would prove that I only testified on matters pertinent to the survivorship benefits case and nothing more. Indeed, my answers to the queries posed to me were purely based on the records of that case. Not an instance did I utter a word against her either in relation to the survivorship benefits case or in her capacity as a Chief Justice.

Who is the real faith shamer?

In a meeting with the Chiefs of Office of the Supreme Court sometime between the period 2012-2013, movant Sereno directed the chiefs of office not to make the sign of the cross during official meetings or functions before and after the ecumenical prayer is recited. Was movant Sereno curtailing the right to religion of the court employees? Was movant Sereno insulting the Catholics when, in a PHILJA meeting, she made the sign of the cross even if she is not a Catholic? Or is this movant Sereno's way of mocking the Catholic faith?

Supreme Court E-Library

I dare movant Sereno to bare only the truth as to what I have revealed here. She cannot forever cowardly hide the truth by mudslinging every person who she thinks could unravel her distorted claims.

I must say that hand in hand with our quest for truth, is the need to respect each other, which movant Sereno must be sorely missing as she now finds herself in a quagmire of her own version of fabricated falsehoods and distorted truths.

The Internal Rules of the Supreme Court of the Philippines enumerates the grounds for the inhibition of a member of the Court:[66]

> Section 1. *Grounds for inhibition*. – A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:
>
> (a) the Member of the Court was the ponente of the decision or participated in the proceedings in the appellate or trial court;
>
> (b) the Member of the Court was counsel, partner or member of law firm that is or was the counsel in the case subject to Section 3(c) of this rule;
>
> (c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;
>
> (d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;
>
> (e) the Member of the Court was executor, administrator, guardian or trustee in the case; and
>
> (f) the Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.

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[66] Section 1, Rule 8 of A.M. No. 10-4-20-SC.

A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.

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Clearly, none of the mandatory grounds for inhibition are present in the case at bar. Just as clear, there is also no just or valid reason for the undersigned to inhibit in the present case.

CONCURRING AND DISSENTING OPINION

VELASCO, JR., *J.*:

I share the view that the remedy of *quo warranto* is available to unseat, in the extreme, even an impeachable officer. This submission, however, should be assayed against the backdrop where the respondent's eligibility and qualifications have been passed upon by the Judicial and Bar Council (JBC) before she was nominated. As her nomination, which is matter of public record, has not been timely challenged, much less nullified, the JBC's findings on her eligibility and qualification should be respected.

Quo Warranto is available even against impeachable officers

Section 2, Article XI of the 1987 Constitution provides that a member of the Supreme Court, among other officials, may be removed from office by way of impeachment proceedings "for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust," *viz*:

ARTICLE XI
Accountability of Public Officers

SECTION 2, ARTICLE XI. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes,

Supreme Court E-Library

or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

Nothing in the adverted provision, however, precludes a resort to *quo warranto* as a means to unseat a member of this Court or any impeachable officer. After all, a *quo warranto* and impeachment proceedings are anchored on different grounds and governed by different procedural mechanisms.

On one hand, a removal by impeachment presupposes that the officer subject of the proceeding had *legally assumed his office*, which in turn means he had all the qualifications and none of the qualifications therefor. His assumption to office was legal but a *subsequent act (i.e.,* culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust) rendered him unworthy to remain in office and so he must be removed by impeachment proceedings.

A *quo warranto* proceeding, on the other hand, is brought against a person who is alleged to have usurped, intruded into, or unlawfully held or exercised a public office.[1] Section 1, Rule 66 of the Rules of Court provides, thus:

> SECTION 1. Action by Government against individuals. — An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:
>
> (a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise.

Quo warranto is thus available against a person who had *no legal right to hold the office from the outset*, his appointment thereto being void *ab initio*, considering that he does not have all or some of the qualifications prescribed by the Constitution or the law for the position. As to him, no impeachment proceeding is required for his removal as he is deemed never to have assumed and occupied the office in the first place.

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[1] *Arquero v. Court of Appeals*, 673 Phil. 545 (2011).

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As pointed out by the Republic, the postulate that *quo warranto* is available even against an impeachable officer is recognized in the 2010 Rules of the Presidential Electoral Tribunal,[2] which allows the initiation of an Election Protest against the President and Vice-President—both impeachable officers—by the filing a petition for *quo warranto*. The Rules pertinently provide:

> RULE 14. How Initiated. — An election contest is initiated by the filing of an election protest or a petition for *quo warranto* against the President or Vice-President. An election protest shall not include a petition for quo warranto. A petition for quo warranto shall not include an election protest. (R13)
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> x x x x x x x x x
>
> RULE 16. Quo Warranto. — A verified petition for *quo warranto* contesting the election of the President or Vice-President on the ground of ineligibility or disloyalty to the Republic of the Philippines may be filed by any registered voter who has voted in the election concerned within ten days after the proclamation of the winner. (R16)

In fact, this special civil action proceedings is not a case of first impression. Indeed, the Court had previously assumed jurisdiction over a petition for *quo warranto* seeking the ouster of an impeachable officer. In *Estrada v. Desierto*,[3] this Court took cognizance of a *quo warranto* petition commenced by Joseph Ejercito Estrada against then sitting President Gloria Macapagal-Arroyo even after she has taken her oath and assumed her office.

The acknowledgment by this Court of the availability of the petition for *quo warranto* against an impeachable officer neither strengthens nor weakens the tribunal, as some have insinuated. Wielding the power to inquire into the legitimacy of an impeachable officer's appointment or election does not make the tribunal vulnerable nor omnipotent. On the contrary, by allowing a *quo warranto* petition even against an impeachable officer, the Court does no more but adhere to its judicial duty

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[2] The 2010 Rules of the Presidential Electoral Tribunal, A.M. No. 10-4-29-SC, May 4, 2010.

[3] *Estrada v. Desierto*, 406 Phil. 1 (2001).

Supreme Court E-Library

to exercise jurisdiction "over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus."[4] It does not depart from any established precedents, let alone stray from the rule of law.

Nullity of the JBC Nomination is a condition sine qua non to the filing of a petition for quo warranto against a member of the Supreme Court

That being said, I do not subscribe to the hypothesis that the instant petition for *quo warranto* can unseat respondent Chief Justice Maria Lourdes P. A. Sereno.

Unlike the other impeachable officers listed in the adverted Section 2, Article XI of the 1987 Constitution, the members of the Supreme Court and the Ombudsman and her deputies, for that matter, had to pass through rigorous scrutiny by an office created by constitutional mandate—the Judicial and Bar Council (JBC).[5] Sections 8 and 9, Article VIII of the Constitution explicitly provide that only those who were short listed by the JBC can be appointed to this Court, *viz*:

SECTION 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

(2) The regular Members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.

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[4] Section 5, Article VIII, The 1987 Constitution.

[5] *See also* Executive Order No. 216. *Effectivity of the Creation of a Judicial and Bar Council.*

Supreme Court E-Library

x x x x x x x x x

(5) **The Council shall have the principal function of recommending appointees to the Judiciary.** It may exercise such other functions and duties as the Supreme Court may assign to it.

SECTION 9**. The Members of the Supreme Court** and judges of lower courts **shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy**. Such appointments need no confirmation.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.[6]

In *Villanueva v. Judicial and Bar Council*,[7] the Court elucidated on the primary function of the JBC. At the minimum, the JBC is charged with the duty of screening aspiring justices, making certain that those who are nominated for an appointment to the Supreme Court possess all the eligibilities and qualifications set by the Constitution[8] for a judicial post:[9]

As an offspring of the 1987 Constitution, the JBC is mandated to recommend appointees to the judiciary and only those nominated by the JBC in a list officially transmitted to the President may be appointed

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[6] Emphasis supplied.

[7] G.R. No. 211833, April 7, 2015.

[8] **ARTICLE VIII**

Judicial Department

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SECTION 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

(2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.

(3) A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.

[9] See *Jardeleza v. Sereno*, G.R. No. 213181, August 19, 2014.

Supreme Court E-Library

by the latter as justice or judge in the judiciary. Thus, the JBC is burdened with a great responsibility that is imbued with public interest as it determines the men and women who will sit on the judicial bench. While the 1987 Constitution has provided the qualifications of members of the judiciary, this does not preclude the JBC from having its own set of rules and procedures and providing policies to effectively ensure its mandate.

The functions of searching, screening, and selecting are necessary and incidental to the JBC's principal function of choosing and recommending nominees for vacancies in the judiciary for appointment by the President. However, the Constitution did not lay down in precise terms the process that the JBC shall follow in determining applicants' qualifications. In carrying out its main function, the JBC has the authority to set the standards/ criteria in choosing its nominees for every vacancy in the judiciary, subject only to the minimum qualifications required by the Constitution and law for every position. The search for these long held qualities necessarily requires a degree of flexibility in order to determine who is most fit among the applicants. Thus, the JBC has sufficient but not unbridled license to act in performing its duties.

JBC's ultimate goal is to recommend nominees and not simply to fill up judicial vacancies in order to promote an effective and efficient administration of justice. Given this pragmatic situation, the JBC had to establish a set of uniform criteria in order to ascertain whether an applicant meets the minimum constitutional qualifications and possesses the qualities expected of him and his office. Thus, the adoption of the five-year requirement policy applied by JBC to the petitioner's case is necessary and incidental to the function conferred by the Constitution to the JBC.

Equal Protection

There is no question that **JBC employs standards to have a rational basis to screen applicants who cannot be all accommodated and appointed to a vacancy in the judiciary, to determine who is best qualified among the applicants, and not to discriminate** against any particular individual or class.

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That is the situation here. In issuing the assailed policy, the JBC merely exercised its discretion in accordance with the constitutional requirement and its rules that a member of the Judiciary must be of

proven competence, integrity, probity and independence. "**To ensure the fulfillment of these standards in every member of the Judiciary, the JBC has been tasked to screen aspiring judges and justices, among others, making certain that the nominees submitted to the President are all qualified and suitably best for appointment. In this way, the appointing process itself is shielded from the possibility of extending judicial appointment to the undeserving and mediocre and, more importantly, to the ineligible or disqualified**."[10]

Thus, the rules applicable during respondent's nomination and subsequent appointment reflected this Constitutional prescription and ensured that only those who are found to possess all the constitutional and statutory qualifications will be nominated for appointment to this Court. In this regard, the *Judicial and Bar Council Resolution No. JBC-009*[11] set forth the specific parameters to objectively approximate and assess the subjective qualifications of "competence, integrity, probity, and independence"[12] of the applicants for the erstwhile vacancy in this Court:

RULE 2

Constitutional and Statutory Qualifications for Appointment

SECTION 1. *Qualifications applicable to all Members of the Judiciary and the Ombudsman and his deputies*. — (a) No person may be appointed Member of the Supreme Court or any lower collegiate court or as Ombudsman or deputy Ombudsman unless he is natural-born citizen of the Philippines (CONST. Art. VIII, Section 7, par. 1; *Id*., Art. XI, Section 8).

(b) No person may be appointed judge of any court lower than a collegiate court unless he is a citizen of the Philippines (CONST. Art. VIII, Section 7, par. 2).

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[10] *Villanueva*, *supra* note 7. Emphasis and underscoring supplied.

[11] October 18, 2000. Later amended by *The Revised Rules of the Judicial and Bar Council,* JBC No. 2016-01, September 20, 2016.

[12] Section 7(3), Article VIII of the 1987 Constitution.

Supreme Court E-Library

(c) A Member of the Judiciary must be of proven competence, integrity, probity and independence (*id.*, *id.*, par. 3) and a member of the Philippine Bar (*id.*, *id.*, par. 2).

SECTION 2. *Additional qualifications for Members of the Supreme Court*. — No person shall be appointed Member of the Supreme Court unless he is at least forty years of age and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines. (*id.*, *id.*, par. 1).

RULE 3

Competence of Applicants

SECTION 1. *Guidelines in determining competence*. — In determining the competence of the applicant or recommendee for appointment, the Council shall consider his educational preparation, experience, performance and other accomplishments of the applicant.

SECTION 2. *Educational preparation*. — The Council shall evaluate the applicant's (a) scholastic record up to the completion of the degree in law and other baccalaureate and post-graduate degrees obtained; (b) bar examination performance; (c) civil service eligibilities and grades in other government examinations; (d) academic awards, scholarships or grants received/obtained; and (e) membership in local or international honor societies or professional organizations.

SECTION 3. *Experience*. — The experience of the applicant in the following shall be considered:

(a) Government service, which includes that in the Judiciary (Court of Appeals, Sandiganbayan, and courts of the first and second levels); the Executive Department (Office of the President proper and the agencies attached thereto and the Cabinet); the Legislative Department (elective or appointive positions); Constitutional Commissions or Offices; Local Government Units (elective and appointive positions); and quasi-judicial bodies.

(b) Private Practice, which may either be general practice, especially in courts of justice, as proven by, among other documents, certifications from Members of the Judiciary and the IBP and the affidavits of reputable persons; or specialized practice, as proven by, among other documents, certifications from the IBP and appropriate government agencies or professional organizations, as well as teaching or administrative experience in the academe; and

Supreme Court E-Library

(c) Others, such as service in international organizations or with foreign governments or other agencies.

SECTION 4. *Performance*. — (a) The applicant who is in the government service shall submit his performance ratings, which shall include a verified statement as to such performance for the past three years.

(b) For incumbent Members of the Judiciary who seek a promotional or lateral appointment, performance may be based on landmark decisions penned; court records as to status of docket; reports of the Office of the Court Administrator: verified feedback from the IBP; and a verified statement as to his performance for the past three years, which shall include his caseload, his average monthly output in all actions and proceedings, the number of cases deemed submitted and the date they were deemed submitted, and the number of this decisions during the immediately preceding two-year period appealed to a higher court and the percentage of affirmance thereof.

SECTION 5. *Other accomplishments*. — The Council shall likewise consider other accomplishments of the applicant, such as authorship of law books, treatises, articles and other legal writings, whether published or not; and leadership in professional, civic or other organizations.

RULE 4

Integrity

SECTION 1. *Evidence of integrity*. — The Council shall take every possible step to verify the applicant's record of and reputation for honesty, integrity, incorruptibility, irreproachable conduct and fidelity to sound moral and ethical standards. For this purpose, the applicant shall submit to the Council certifications or testimonials thereof from reputable government officials and non-governmental organizations, and clearances from the courts, National Bureau of Investigation, police, and from such other agencies as the Council may require.

SECTION 2. *Background check*. — The Council may order a discreet back-ground check on the integrity, reputation and character of the applicant, and receive feedback thereon from the republic, which it shall check or verify to validate the merits thereof.

SECTION 3. *Testimony of parties*. — The Council may receive written opposition to an applicant on ground of his moral fitness

Supreme Court E-Library

and, at its discretion, the Council may receive the testimony of the oppositor at a hearing conducted for the purpose, with due notice to the applicant who shall be allowed to cross-examine the oppositor and to offer countervailing evidence.

SECTION 4. *Anonymous complaints*. — Anonymous complaints against an applicant shall not be given due course, unless there appears on its face a probable cause sufficient to engender belief that the allegations may be true. In the latter case, the Council may either direct a discreet investigation or require the applicant to comment thereon in writing or during the interview.

SECTION 5. *Disqualification*. — The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman or Deputy Ombudsman:

1. Those with pending criminal or regular administrative cases;

2. Those with pending criminal cases in foreign courts or tribunals; and

3. Those who have been convicted in any criminal case; or in administrative case, where the penalty imposed is at least a fine of more than ₱10,000, unless he has been granted judicial clemency.

SECTION 6. *Other instances of disqualification*. — Incumbent judges, officials or personnel of the Judiciary who are facing administrative complaints under informal preliminary investigation (IPI) by the Office of the Court Administrator may likewise be disqualified from being nominated if, in the determination of the Council, the charges are serious or grave as to affect the fitness of the applicant for nomination.

For purposes of this Section and of the preceding Section 5 insofar as pending regular administrative cases are concerned, the Secretary of the Council shall, from time to time, furnish the Office of the Court Administrator the name of an applicant upon receipt of the application/recommendation and completion of the required papers; and within ten days from receipt thereof the Court Administrator shall report in writing to the Council whether or not the applicant is facing a regular administrative case or an IPI case and the status thereof. In regard to the IPI case, the Court Administrator shall attach to his report copies of the complaint and the comment of the respondent.

RULE 5

Probity/Independence

SECTION 1. *Evidence of probity and independence*. — Any evidence relevant to the candidate's probity and independence such as, but not limited to, decisions he has rendered if he is an incumbent member of the judiciary or reflective of the soundness of his judgment, courage, rectitude, cold neutrality and strength of character shall be considered.

SECTION 2. *Testimonials of probity and independence*. — The Council may likewise consider validated testimonies of the applicant's probity and independence from reputable officials and impartial organizations.

Acknowledging that the JBC "takes every possible step to verify an applicant's track record for the purpose of determining whether or not he is qualified for nomination"[13] and that it conducts an arduous screening process to evaluate the applicants' "competence, integrity, probity, and independence" and all other matters bearing on their fitness for judicial office, the JBC "retains a very wide degree of freedom and autonomy in the vetting of the applicants for vacant positions in the Judiciary."[14] The august body's independent determination of the qualifications and fitness of judicial applicants is considered discretionary;[15] the selection of the candidates whose names will be in the list to be submitted to the President lies within the discretion of the JBC.[16] Thus, absent any showing that the council exceeded its authority or gravely abused its discretion, it cannot be compelled, not even by this Court, to amend a list already submitted or add or delete a name in the list of nominees for appointment to a judicial post.[17]

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[13] *Jardeleza v. Sereno,* G.R. No. 213181, August 19, 2014.

[14] *Jardeleza v. Sereno,* G.R. No. 213181 (Notice), January 21, 2015.

[15] *See* Justice Leonen's Dissent in *Umali v. Judicial and Bar Council*, G.R. No. 228628, July 25, 2017.

[16] *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 706-707 (2010).

[17] See *Villanueva*, *supra* note 7.

Supreme Court E-Library

As a constitutional body vested with the power and wide latitude in screening and selecting applicants to the Judiciary,[18] the JBC is more than entitled to the presumption of regularity in the performance of its constitutional duty. Its determination as to respondent's possession of all the qualifications and eligibilities for appointment to this Court must accordingly be accorded with respect; it cannot be capriciously set aside without even impleading the council and allowing it to justify its action.[19]

To my mind then, **the nullification of the JBC's nomination** of respondent to a position in this Court **is a precondition before the Court could grant a *quo warranto* petition** and declare her without right or claim to post she holds on the ground of ineligibility. As there was no attempt to assail and contest, much less, nullify the JBC's findings that respondent possessed all the qualifications to be appointed to this Court, **the independent constitutional body's determination of the respondent's eligibility to her judicial post must stand.**

The **prematurity** of this recourse becomes all the more plain considering the fact that the JBC was not given the opportunity to review its own decision. The allegations thrown against the respondent ultimately boils down to her lack of integrity. However, JBC-009 already conceived that an applicant's integrity may be questioned and, for that purpose required a unanimous vote for the challenged applicant's inclusion in the list of nominees. It stated:

RULE 10

Voting Requirements

SECTION 1. *Votes required for inclusion as nominee*. — No applicant shall be considered for nomination for appointment to a judicial position unless he shall obtain the affirmative vote of at least a majority of all the Members of the Council.

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[18] *Id*.

[19] See *Republic v. Spouses Lazo*, 744 Phil. 367 (2014), citing *Republic v. Nolasco*, 496 Phil. 853 (2005).

SECTION 2. *Votes required when integrity of a qualified applicant is challenged*. — In every case when a integrity of an applicant who is not otherwise disqualified for nomination is raised or challenged, **the affirmative vote of all the members of the Council must be obtained for the favorable consideration of his nomination.**

No one, however, raised or challenged respondent's integrity when she was first included in the list of nominees to a post in this Court in 2010. And again, when she was nominated for appointment to the Office of the Chief Justice in 2012, no one questioned her qualifications. The Republic cannot hide behind the dictum that estoppel will not lie against the state. Like all general rules, this principle admits of exceptions in the interest of justice and fair play.[20] This Court has said so in every conceivable turn: "the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations . . ., the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals."[21]

In sum, a *quo warranto* petition under Rule 66 of the Rules of Court and under Section 5, Article VIII of the 1987 Constitution can be filed against any member of the Supreme Court, the Ombudsman and the members of the Civil Service Commission, Commission on Elections and Commission on Audit before the Supreme Court. On the other hand, a *quo warranto* petition can only be filed against the President or Vice President before the Presidential Electoral Tribunal.

With respect to the members of the Supreme Court and the Ombudsman, who need a nomination from the Judicial and Bar Council, no petition for *quo warranto* can be filed against any of them without first filing a petition for *certiorari* against the Judicial and Bar Council and the official sought to be removed to nullify the nomination made by the council for said impeachable official.

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[20] *Commissioner of Internal Revenue v. Court of Appeals*, 335 Phil. 219 (1997).

[21] *Republic v. Court of Appeals*, 361 Phil. 319 (1999).

Supreme Court E-Library

This is a prerequisite to afford due process to the JBC to defend its decision to nominate the official based on its findings and decision that the latter possesses all the qualifications and none of the disqualifications prescribed by the Constitution and pertinent laws. Otherwise, the constitutional duty and the importance of the JBC as a constitutional body will be denigrated and downplayed as its actions or decisions can easily be circumvented though a petition for *quo warranto* without giving it its day in court. The bottomline is the nullification of the nomination of the challenged official by the JBC should be first obtained to pave the way for the ouster of an unfit or unqualified official.

A becoming regard of the respondent's position as the Chief Justice of this Court and the head of the government's Judicial Department, requires, at the very least, the strictest compliance with the all the requisites before *quo warranto* proceedings should be initiated.

WHEREFORE, I vote to **DISMISS** the petition.

DISSENTING OPINION

CARPIO, *J.*:

This *quo warranto* petition, filed by the Republic of the Philippines, represented by the Office of the Solicitor General (OSG), seeks to nullify the appointment of respondent Maria Lourdes P. A. Sereno as Chief Justice of the Supreme Court, an impeachable officer under Section 2, Article XI of the Constitution,[1] for lack of proven integrity which is required

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[1] This provision reads:

Sec. 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not impeachment.

Supreme Court E-Library

under Section 7(3), Article VIII of the Constitution[2] for appointment to a judicial post. Petitioner asserts that respondent's repeated failure to file her Statement of Assets, Liabilities, and Networth (SALN) as required by law shows lack of integrity.

The qualifications of members of the Supreme Court are prescribed under Sections 7(1) and 7(3), Article VIII of the Constitution, to wit:

> Sec. 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines;
>
> (2) x x x x x x x x x
>
> (3) **A member of the Judiciary must be a person of proven competence, integrity, probity, and independence**. (Emphasis supplied)

When the position of the Chief Justice became vacant in 2012, upon the impeachment of then Chief Justice Renato C. Corona, the Judicial and Bar Council (JBC) issued an announcement for the opening of the Chief Justice position. Included in the documents required to be submitted were the SALNs of the applicant: *All previous SALNs (up to 31 December 2011) for those in the government or SALN as of 31 December 2011 for those from the private sector*.[3] As an applicant for the Chief Justice position, respondent submitted to the JBC her SALNs only for the years 2009, 2010, and 2011, despite being in government service for 20 years (1986-2006) as a professor at the University of the Philippines (UP) College of

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[2] This provision reads:

> Sec. 7 (3) A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.

[3] jbc.judiciary.gov.ph/announcements/2012/CJ%20Vacancy%206-4-12.pdf (visited 11 May 2018).

Supreme Court E-Library

Law. The Certification dated 8 December 2017 of Director Angela D. Escoto of the UP Human Resources Development Office (UP HRDO) stated that based on the 201 files of respondent under the custody of the UP HRDO, between the period of 2000 to 2009, the respondent's SALN on file is only as of 31 December 2002. Based on the records, it appears that while employed at the UP College of Law, respondent only submitted her SALNs for the years 1985, 1989, 1990, 1991, 1993, 1994, 1995, 1996, 1997, 1998,[4] and 2002.[5]

I. Failure to File SALN

No less than the Constitution mandates the filing of the SALN by all public officers and employees upon assumption of office and as often thereafter as may be required by law. Section 17, Article XI of the Constitution expressly declares:

> Sec. 17. **A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth.** In the case of the President, the Vice President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law. (Emphasis supplied)

Republic Act No. (RA) 3019, or the *Anti-Graft and Corrupt Practices Act*, likewise requires the filing of the SALN by every government employee not only upon assumption of office and every year thereafter, but also upon the expiration of his term of office or upon his resignation or separation from office. Section 7 of RA 3019 provides:

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[4] The certified true copy of respondent's 1998 SALN was obtained from the Office of the Ombudsman.

[5] The certified true copies of respondent's SALN for the years 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002 were obtained from the Human Resources Development Office of the UP-Diliman. Respondent furnished the Court a photocopy of her 1989 SALN but it was not a certified true copy.

Section 7. *Statement of assets and liabilities.* – **Every public officer, within thirty days after assuming office, thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of department or Chief of an independent office, with the Office of the President, a true, detailed sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year**: *Provided*, That the public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of the said calendar year.[6] (Emphasis supplied)

The importance of filing a SALN for all public officials and employees is furthermore emphasized in RA 6713,[7] or the *Code of Conduct and Ethical Standards for Public Officials and Employees*, the latest law on the matter and which has a more detailed provision of the SALN requirement. Section 8 of RA 6713 states:

Section 8. Statements and Disclosure. – **Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.**

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[6] As amended by RA 3047 (approved on 17 June 1961) and PD 677 (issued on 31 March 1975).

[7] AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES. RA 6713 was enacted on 20 February 1989 and took effect on 25 March 1989.

Supreme Court E-Library

(A) Statements of Assets and Liabilities and Financial Disclosure. – All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The two documents shall contain information on the following:

(a) real property, its improvements, acquisition costs, assessed value and current fair market value;
(b) personal property and acquisition cost;
(c) all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;
(d) liabilities, and;
(e) all business interests and financial connections.

The documents must be filed:

(a) within thirty (30) days after assumption of office;
(b) on or before April 30, of every year thereafter; and
(c) within thirty (30) days after separation from the service.

All public officials and employees required under this section to file the aforestated documents shall also execute, within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their assets, liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible, the year when they first assumed any office in the Government.

Husband and wife who are both public officials or employees may file the required statements jointly or separately.

The Statements of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections shall be filed by:

(1) Constitutional and national elective officials, with the national office of the Ombudsman;
(2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively;
Justices, with the Clerk of Court of the Supreme Court;

> Judges, with the Court Administrator; and all national executive officials with the Office of the President.
> (3) Regional and local officials and employees, with the Deputy Ombudsman in their respective regions;
> (4) Officers of the armed forces from the rank of colonel or naval captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and
> (5) All other public officials and employees, defined in Republic Act No. 3019, as amended, with the Civil Service Commission.

(B) Identification and disclosure of relatives. – It shall be the duty of every public official or employee to identify and disclose, to the best of his knowledge and information, his relatives in the Government in the form, manner and frequency prescribed by the Civil Service Commission.

(C) Accessibility of documents. – (1) Any and all statements filed under this Act, shall be made available for inspection at reasonable hours.

(2) Such statements shall be made available for copying or reproduction after ten (10) working days from the time they are filed as required by law.

(3) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of reproduction and mailing of such statement, as well as the cost of certification.

(4) **Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.**

(D) Prohibited acts. – It shall be unlawful for any person to obtain or use any statement filed under this Act for:

> (a) any purpose contrary to morals or public policy; or
>
> (b) any commercial purpose other than by news and communications media for dissemination to the general public. (Emphasis supplied)

Likewise highlighting the significance of the SALN, Executive Order No. 292 or the *Administrative Code of 1987* explicitly

Supreme Court E-Library

declares as a general principle governing government employees the filing of the SALN, thus:

SECTION 34. Declaration of Assets, Liabilities and Net Worth.— A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth.

The *Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees* (Rules),[8] which was promulgated by the Civil Service Commission (CSC) on 27 May 1989, clarified when the SALN should be filed. Section 1(c) of Rule VII reads:

(c) When to File

The above documents under the Code must be filed:
(1) within thirty (30) days after assumption of office, statements of which must be reckoned as of his first day of service;
(2) on or before April 30 of every year thereafter, statements of which must be reckoned as of the end of the preceding year; or
(3) within thirty (30) days after separation from the service, statements of which must be reckoned as of his last day of office. (Boldfacing and underscoring supplied)

CSC Resolution No. 06-0231[9] dated 1 February 2006 further clarified the procedure for the filing of the SALN by amending Rule VIII of the Rules. CSC Resolution No. 06-0231 reads in part:

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[8] Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees <http://www.csc.gov.ph/2014-02-21-08-28-23/pdf-files/category/168-ra-6713-code-of-conduct-and-ethical-standards.html> (visited 2 May 2018).

[9] Review and Compliance Procedure in the Filing and Submission of the Statement of Assets, Liabilities and Net Worth and Disclosure of Business Interests and Financial Connections.

I. Rule VIII is hereby amended to read, as follows:

Rule VIII. Review and Compliance Procedure in the Filing and Submission of the Statements of Assets, Liabilities and Networth and Disclosure of Business Interests and Financial Connections

Section 1. Filing and Submission of SALN on Time and to the Proper Official

a. **All public officials and employees, except those who serve in an official honorary capacity, without service credit or pay, temporary laborers and casual or temporary and contractual workers, shall file under oath their SALNs and Disclosure of Business Interests and Financial Connections with their respective Chief or Head of the Personnel/Administrative Division or Unit/ Human Resource Management Office (HRMO), to wit:**

1. **Within thirty (30) days after assumption of office, statements of which must be reckoned as of his/her first day of service**;
2. On or before April 30 of every year thereafter, statements of which must be reckoned as of the end of the preceding year; and
3. Within thirty (30) days after separation from the service, statements of which must be reckoned as of his/her last day of office.

b. Public officials and employees under temporary status are also required to file under oath their SALNs and Disclosure of Business Interests and Financial Connections in accordance with the guidelines provided under these rules.

c. Public officials and employees are strictly required to fill in all applicable information and/or make a true and detailed statement of their SALNs.

Section 2. Duties of the Chief/Head of the Personnel/Administrative Division or Unit/HRMO

Upon receiving the SALN forms, the Chief/Head of the Personnel/ Administrative Division or Unit/HRMO shall evaluate the same to determine whether said statements have been properly accomplished. A SALN is deemed properly accomplished when all applicable information or details required therein are provided by the filer. Items not applicable to the filer should be marked N/A (not applicable).

Supreme Court E-Library

The Chief/Head of the Personnel/Administrative Division or Unit/ HRMO shall submit a list of employees in alphabetical order, who: a) filed their SALNs with complete data; b) filed their SALNs but with incomplete data; and c) did not file their SALNs, to the head of office, copy furnished the CSC, on or before May 15 of every month. (Boldfacing and underscoring supplied)

The requirement of filing a SALN aims to suppress any questionable accumulation of wealth which usually results from non-disclosure of such matters.[10] As held in *Office of the Ombudsman v. Racho,*[11] the rationale for requiring all public officers and employees to make a complete disclosure of their assets, liabilities and net worth is to suppress and avoid the unlawful acquisition of wealth, and is aimed at curtailing and minimizing the opportunities for official corruption in order to maintain a standard of honesty in the public service. Citing *Carabeo v. Court of Appeals,*[12] the Court elucidated:

"Unexplained" matter normally results from "non-disclosure" or concealment of vital facts. SALN, which all public officials and employees are mandated to file, are the means to achieve the policy of accountability of all public officers and employees in the government. By the SALN, the public are able to monitor movement in the fortune of a public official; it is a valid check and balance mechanism to verify undisclosed properties and wealth.

In *Casimiro v. Rigor*,[13] the Court stated that the filing of SALN promotes transparency in the civil service and serves as an effective mechanism to verify undisclosed wealth, thus:

The requirement of filing a SALN is enshrined in the Constitution to promote transparency in the civil service and serves as a deterrent against government officials bent on enriching themselves through

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[10] *Daplas v. Department of Finance*, G.R. No. 221153, 17 April 2017.

[11] 656 Phil. 148, 160 (2011).

[12] 622 Phil. 413, 429-430 (2009), citing *Ombudsman v. Valeroso*, 548 Phil. 688, 698 (2007).

[13] 749 Phil. 917, 929-930 (2014).

unlawful means. By mandate of law, every government official or employee must make a complete disclosure of his assets, liabilities and net worth in order to avoid any issue regarding questionable accumulation of wealth. The importance of requiring the submission of a complete, truthful, and sworn SALN as a measure to defeat corruption in the bureaucracy cannot be gainsaid. Full disclosure of wealth in the SALN is necessary to particularly minimize, if not altogether eradicate, the opportunities for official corruption, and maintain a standard of honesty in the public service. Through the SALN, the public can monitor movement in the fortune of a public official; it serves as a valid check and balance mechanism to verify undisclosed properties and wealth. The failure to file a truthful SALN reasonably puts in doubt the integrity of the officer and normally amounts to dishonesty.

Considering that the requirement of filing a SALN within the period prescribed by law is enshrined in the Constitution, the non-filing of SALN within the prescribed period clearly constitutes a violation of an express constitutional mandate. **The repeated non-filing of SALN therefore constitutes culpable violation of the Constitution and betrayal of public trust, which are grounds for impeachment under the Constitution**.

Culpable violation of the Constitution must be understood to mean "willful and intentional violation of the Constitution and not violations committed unintentionally or involuntarily or in good faith or through an honest mistake of judgment."[14] The framers of the Constitution, particularly the Committee on Accountability of Public Officers, "accepted the view that [culpable violation of the Constitution] implied 'deliberate intent, perhaps even a certain degree of perversity for it is not easy to imagine that individuals in the category of these officials

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[14] *J.* Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* 1112 (2003 Edition), citing II ARUEGO, *THE FRAMING OF THE PHILIPPINE CONSTITUTION* 590 (1930); Report of the Special Committee on the Impeachment of President Quirino, IV CONGRESSIONAL RECORD, HOUSE OF REPRESENTATIVES 1553 (1949).

Supreme Court E-Library

would go so far as to defy knowingly what the Constitution commands.'"[15]

Betrayal of public trust, on the other hand, refers to acts "less than criminal but must be attended by bad faith and of such gravity and seriousness as the other grounds for impeachment," as the Court held in *Gonzales III v. Office of the President of the Philippines,*[16] thus:

> Betrayal of public trust is a new ground for impeachment under the 1987 Constitution added to the existing grounds of culpable violation of the Constitution, treason, bribery, graft and corruption and other high crimes. While it was deemed broad enough to cover any violation of the oath of office, the impreciseness of its definition also created apprehension that "such an overarching standard may be too broad and may be subject to abuse and arbitrary exercise by the legislature." Indeed, the catch-all phrase betrayal of public trust that referred to "all acts not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in office" could be easily utilized for every conceivable misconduct or negligence in office. However, deliberating on some workable standard by which the ground could be reasonably interpreted, the Constitutional Commission recognized that human error and good faith precluded an adverse conclusion.
>
> x x x x x x x x x
>
> The Constitutional Commission eventually found it reasonably acceptable for the phrase betrayal of public trust to refer to "acts which are just short of being criminal but constitute gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism, and gross exercise of discretionary powers." **In other words, acts that should constitute betrayal of public trust as to warrant removal from office may be less than criminal but must be attended by bad faith and of such gravity and seriousness as the other grounds for impeachment.** (Emphasis supplied)

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[15] *J.* Bernas, *The Intent of the 1986 Constitution Writers* 765 (1995 Edition), citing II RECORD at 278.

[16] 694 Phil. 52, 100-101 (2012).

Since the repeated failure to file the SALN constitutes culpable violation of the Constitution and betrayal of public trust, it is immaterial if the failure to file the SALN is committed before appointment to an impeachable office. However, it is up to Congress, which is the constitutional body vested with the exclusive authority to remove impeachable officers, to determine if the culpable violation of the Constitution or betrayal of public trust, committed before appointment as an impeachable officer, warrants removal from office considering the need to maintain public trust in public office. For instance, if an impeachable officer is discovered to have committed treason before his appointment, it is up to the impeachment court to determine if the continuance in office of the impeachable officer is detrimental to national security warranting removal from office.

II. Period Required to Maintain SALN Records

Under Section 8 (C) (4) of RA 6713, the SALNs shall be available to the public in the custodian's office for 10 years from filing, after which period, the SALNs may be destroyed unless needed in an ongoing investigation. Since the government custodian is required to keep the SALNs for only 10 years, government employees cannot be required to keep their SALNs for more than 10 years. Thus, applicants for government positions, in particular judicial positions, should not be required to submit SALNs more than 10 years prior to the application. Incidentally, the vacancy for the Chief Justice post in 2012 was the first and only time that the JBC required applicants to submit all the SALNs they filed while in government service prior to the application. Thereafter, the JBC only required the submission of SALNs for two years prior to the application.

III. Penalty and Prescription of the Offense of Failure to File SALN

RA 3019 states that as an administrative offense, the failure to file the SALN "**shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution**

Supreme Court E-Library

is instituted against him."[17] RA 6713 provides a more specific penalty which is "a fine not exceeding the equivalent of six (6) months salary or suspension not exceeding one (1) year, or **removal depending on the gravity of the offense**." Section 11 of RA 6713 reads:

> Section 11. Penalties. – (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with **a fine not exceeding the equivalent of six (6) months salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency.** If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (₱5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.
>
> (b) **Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him**.
>
> x x x x (Emphasis supplied)

The imposition of penalty for failure to file the SALN was clarified in CSC Resolution No. 06-0231:

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[17] Section 9(b) of RA 3019 states:

> Section 9. Penalties for violations. – x x x
>
> (b) Any public officer violating any of the provisions of Section 7 [Statement of assets and liabilities] of this Act shall be punished by a fine of not less than one thousand pesos nor more than five thousand pesos, or by imprisonment not exceeding one year and six months, or by both such fine and imprisonment, at the discretion of the Court.
>
> The violation of said section proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution is instituted against him. (As amended by BP Blg. 195, 16 March 1982).

Supreme Court E-Library

Section 4. Sanction for Failure to Comply/Issuance of a Show-Cause Order

Failure of an official or employee to correct/submit his/her SALN in accordance with the procedure and within the given period pursuant to the directive in Section 3 hereof shall be a ground for disciplinary action. The Head of Office shall issue a show-cause order directing the official or employee concerned to submit his/her comment or counter-affidavit; and if the evidence so warrants, proceed with the conduct of the administrative proceedings pursuant to the Uniform Rules on Administrative Cases in Civil Service (CSC Resolution No. 99-1936 dated August 31, 1999). The offense of failure to file SALN is punishable under Rule IV, Section 52 (B) (8) thereof, with the following penalties:

1st offense – Suspension for one (1) month and one (1) day to 6 months

2nd offense – Dismissal from the service

Section 5. Transmittal of all submitted SALNs to the concerned agencies on or before June 30.

The Chief/Head of the Personnel/Administrative Division or Unit/ HRMO shall transmit all original copies of the SALNs received, on or before June 30 of every years, to the concerned offices, as specified below:

x x x x x x x x x

Clerk of Court of the Supreme Court – Justices of the Supreme Court, Court of Appeals, Sandiganbayan and Court of Tax Appeals

x x x x x x x x x

On 24 January 2013, CSC Resolution No. 1300174[18] was promulgated amending Section 3 (first paragraph) and Section 4 of CSC Resolution No. 06-0231 to read as follows:

Section 3. Ministerial Duty of the Head of Office to Issue Compliance Order.

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[18] Amendment to the Review and Compliance Procedure in the Filing and Submission of the Statement of Assets, Liabilities and Net Worth and Disclosure of Business Interests and Financial Connections (CSC Resolution No. 060231 dated 1 February 2006).

Supreme Court E-Library

Within five (5) days from receipt of the aforementioned list and recommendation, it shall be the ministerial duty of the Head of Office to issue an order requiring those who have incomplete data in their SALN to correct/supply the desired information and those who did not file/submit their SALN to comply within a non-extendible period of thirty (30) days from receipt of the said Order.

Section 4. Sanction for Failure to Comply/Issuance of a Show Cause Order.

Failure of an official or employee to correct/submit his/her SALN in accordance with the procedure and within the given period pursuant to the directive in Section 3 hereof shall be a ground for disciplinary action. The Head of Office shall issue a show-cause order directing the official or employee concerned to submit his/her comment or counter-affidavit; and if the evidence so warrants, proceed with the conduct of the administrative proceedings pursuant to the Revised Rules on Administrative Cases in Civil Service (RRACCS), CSC Resolution No. 1101502 dated November 8, 2011. The offense of failure to file SALN is punishable under Section 46(D)(8) of Rule X thereof, with the following penalties:

First Offense – Suspension for one (1) month and one (1) day to six (6) months

Second Offense – Dismissal from the service

Public officials and employees who fail to comply with the thirty (30) day period required under Section 3 hereof or who submit their SALNs beyond the said period shall be considered as not having filed their SALNs, and shall be made liable for the offense of Failure to File SALN with a penalty of suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense.

Heads of agencies/offices who fail to comply with the provisions of CSC Resolution No. 06-0231 dated February 1, 2006, as amended, shall be liable for Simple Neglect of Duty, which shall be punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense.

Supreme Court E-Library

The offense of failure to file the SALN prescribes in 20 years, as provided under Section 11[19] of RA 3019. However, Section 11 of RA 3019 should be read in conjunction with Section 2 of Act No. 3326[20] which specifically provides when prescription shall begin to run for offenses penalized by special laws, thus:

SEC. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at that time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

In the case of *PCGG v. Desierto*,[21] the Court ruled that when it is impossible for the State to have known when the offense or violation took place, the prescriptive period should be computed from the discovery of the commission thereof and not from the day of such commission. The Court held:

The case before us is not of first impression. On all fours is *Presidential Ad Hoc Fact Finding Committee on Behest Loans vs. Hon. Aniano A. Desierto, et al.,* also involving a complaint filed with the Office of the Ombudsman for an alleged behest loan obtained by the Philippine Seeds, Inc. during the Marcos administration. We ruled therein that since the law alleged to have been violated is Section

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[19] Section 11 of RA 3019, as amended by RA 10910, states that "All offenses punishable under this Act shall prescribe in twenty years." RA 10910 lapsed into law on 21 July 2016 without the signature of the President in accordance with Section 27(1), Article VI of the Constitution. However, for offenses committed prior to 21 July 2016, the 15-year prescriptive period under the law prior to the amendment applies. (See *Amar v. Odiaman,* 109 Phil. 681 [1960]; *Quetulio v. De la Cuesta,* 130 Phil. 494 [1968]; *Kiamco v. Court of Appeals,* 286 Phil. 260 [1992]).

[20] AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL LAWS AND MUNICIPAL ORDINANCES, AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN.

[21] 484 Phil. 53 (2004).

Supreme Court E-Library

3 of Republic Act No. 3019, the applicable rule in the computation of the prescriptive period is Section 2 of Act No. 3326, as amended, cited earlier. Under Section 2 of this Act, there are two (2) rules for determining when the period of prescription shall commence: *First*, on the day of the commission of the violation, if such commission is known. *Second*, if the commission of the violation is not known at the time, then, from discovery thereof and institution of judicial proceedings for investigation and punishment.

In this case, it was obviously impossible for the State, the aggrieved party, to have known when the questioned transactions took place. Clearly, the prescriptive period for the offense charged should be computed *from the discovery of the commission thereof* and not from the day of such commission.[22] (Italicization in the original)

IV. Effect of Certification by Custodian of SALN

Section 1, Rule 131 of the Rules of Court provides that the "[b]urden of proof (*onus probandi*) is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence.[23] In administrative cases, the burden of proof lies with the complainant, who is required to prove his case by substantial evidence.[24] Once the plaintiff or complainant has established his case, by *prima facie* evidence, the burden of evidence shifts to the defendant or respondent, who, in turn, has the burden to establish his defense.[25]

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[22] *Id*. at 60-61.

[23] Section 1, Rule 133 of the Rules of Court; *Republic of the Philippines v. De Borja,* G.R. No. 187448, 9 January 2017; *Sps. De Leon v. Bank of the Philippine Islands*, 721 Phil. 839 (2013).

[24] Section 5, Rule 133 of the Rules of Court; *Concerned Citizen v. Divina,* 676 Phil. 166, 176 (2011), *Montemayor v. Bundalian,* 453 Phil. 158, 167 (2003).

[25] *Sps. De Leon v. Bank of the Philippine Islands*, 721 Phil. 839 (2013).

Prima facie evidence is defined as:

Evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. **Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence.**[26]

In cases involving the requirement of filing the SALN, a certification duly issued by the official custodian that no SALN of a government employee is on file in the custodian's office constitutes *prima facie* proof of non-filing of the SALN. Such certification satisfies the burden of proof, and shifts the burden of evidence to the government employee to prove otherwise. The government employee must present countervailing evidence to shift back the burden of evidence. In the absence of countervailing evidence, the government employee can be held liable for non-filing of the SALN on the basis of the certification by the official custodian that no SALN is on file.

V. Respondent Chief Justice Sereno's Situation

A. Effect of Certification of UP HRDO

In the present case, the burden of proof lies with the Republic which is the party that initiated the present *quo warranto* petition. Thus, the OSG, representing the Republic, must present evidence to prove its allegation that respondent repeatedly failed to comply with the constitutional and statutory requirement of filing the SALN.

There is no dispute that respondent was a faculty member of the UP College of Law from 1986 to 2006.[27] Being a government employee at the time, respondent was required to file the SALN annually.

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[26] *Wa-acon v. People*, 539 Phil. 485, 494 (2006), citing H. Black, *et al.*, *BLACK'S LAW DICTIONARY* 1190 (6th ed., 1990). (Emphasis supplied)

[27] Respondent's Memorandum, p. 6.

Supreme Court E-Library

The OSG claims that respondent "deliberately failed to file her SALN with her [government] employer, UP, eleven times in her twenty years as a law professor."[28] To prove its claim, the OSG submitted a Certification[29] from the UP HRDO which stated that "based on the 201 files of [respondent] under the custody of the Information Management Section of the [UP HRDO], it was found that between the period 2000-2009 the SALN submission on file is as of December 31, 2002." Further, in a Letter addressed to the OSG dated 6 March 2018, UP HRDO Director Escoto stated that only the SALNs of respondent for the years 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002 were found in the UP HRDO records.[30] The OSG likewise submitted a Certification from the Office of the Ombudsman Central Records Division which stated that "there is no SALN filed by MS. MARIA LOURDES A. SERENO for calendar years 1999 to 2009 except SALN ending December 1998 x x x."[31]

The submission by the OSG of the UP HRDO Certification and Letter and the Ombudsman Certification constitutes *prima facie* proof of respondent's non-filing of her SALNs for a certain number of years during her employment at the UP College of Law. In other words, the OSG successfully satisfied the burden of proof by submitting the UP HRDO and Ombudsman Certifications which constituted *prima facie* evidence that respondent did not file her SALNs for the years 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005, and 2006, during which respondent was employed as a UP College of Law Professor.[32] Thus, if uncontradicted, this *prima facie* evidence is considered sufficient to sustain respondent's liability for non-filing of her SALNs. It is therefore incumbent upon

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[28] Petitioner's Memorandum, p. 50.

[29] Petitioner's Memorandum, Annex "B".

[30] Petitioner's Memorandum, Annex "O".

[31] Petitioner's Memorandum, Annex "C".

[32] Respondent furnished the Court a photocopy of her 1989 SALN but it was not a certified true copy.

respondent to rebut and overthrow the OSG's *prima facie* evidence by presenting her own evidence to the contrary. In short, the burden of evidence now shifted to respondent to disprove the OSG's evidence against her.

In her 23 July 2012 letter to the JBC, respondent stated:

> As I had noted in my Personal Data Sheet, after my resignation from government service in 2006, as a professor at the University of the Philippines, I became a full-time private practitioner. Hence, when I was nominated for the position of Associate Justice of the Supreme Court in 2010, my nomination was considered as that of a private practitioner, and not as a government employee. Thus, the requirements imposed on me in connection with the consideration of my name were those imposed on nominees from the private sector, and my earlier-terminated government service, did not control nor dominate the kind of requirements imposed on me.
>
> Considering that most of my government records in the academe are more than fifteen years old, it is reasonable to consider it infeasible to retrieve all of those files.
>
> In any case, the University of the Philippines has already cleared me of all academic/administrative responsibilities, money and property accountabilities and from administrative charges as of 01 June 2006. Since it is the ministerial duty of the Head of the Office to ensure that the SALNs of its personnel are properly filed and accomplished (CSC Resolution No. 060231 dated 01 February 2006 and CSC Memorandum Circular No. 10-2006 dated 17 April 2006), this clearance can be taken as an assurance that my previous government employer considered the SALN requirements to have been met. A copy of the Clearance dated 19 September 2011 issued by the University of the Philippines is hereby attached.
>
> x x x. Hence, in compliance with the documentary requirements for my candidacy as Chief Justice, I submitted only the SALNs from end of 2009 up to 31 December 2011, since I am considered to have been returned to public office and rendered government service anew from the time of my appointment as Associate Justice on 16 August 2010.
>
> x x x x x x x x x[33]

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[33] Respondent's Memorandum, Annex "11".

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Based on this letter, respondent made it appear that she had filed her SALNs with the UP HRDO during her employment as a UP College of Law Professor but she could no longer find her personal copies of her SALNs. Respondent manifested to this Court in her Memorandum that she "religiously filed her SALNs."[34] If indeed she had religiously filed her SALNs but her personal copies were lost, she could easily have secured a Certification from the UP HRDO that she had filed her SALNs. The requirement to submit SALNs was announced through advertisement in a newspaper by the JBC. Respondent never secured a certification from the UP HRDO as to her SALNs on file in that office. Her failure to secure such certification exposes as a misrepresentation her claim that she could not find her SALNs. For how could she find her personal copies of her SALNs when there is no record that she filed her SALNs for the years 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005, and 2006 with the UP HRDO?

Clearly, respondent failed to adduce satisfactory evidence to rebut and overthrow the OSG's *prima facie* evidence of her failure to file her SALNs for several years while she was teaching in the UP College of Law. Respondent conveniently alleges that she ***religiously filed*** her SALNs without presenting any evidence to prove such allegation. Suffice to state, mere allegation is not proof.[35] This means that the OSG's *prima facie* evidence establishing respondent's repeated failure to file her SALNs remains uncontradicted, and thus, respondent can be held liable for her repeated non-filing of SALNs while she was employed as a UP College of Law Professor.

B. Effect of Respondent's Failure to File SALN within 30 days from Assuming Office

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[34] Respondent's Memorandum, p. 8.

[35] *Brodeth v. People of the Philippines,* G.R. No. 197849, 29 November 2017; *Dr. De Jesus v. Guerrero III,* 614 Phil. 520, 529 (2009); *V.V. Soliven Realty Corp. v. Ong,* 490 Phil. 229, 237 (2005), citing *Workers of Antique Electric Coop., Inc. v. NLRC*, 388 Phil. 847 (2000).

In her Memorandum, respondent manifested that the SALN she filed with the JBC when she was applying as an Associate Justice of the Supreme Court was "not [the] required SALN as it is understood in law. x x x. Rather, it was a measuring tool which happened to be on a SALN form, requested by the JBC to test the veracity of her declarations in her ITRs."[36] Respondent testified during the Oral Arguments, thus:

JUSTICE DE CASTRO:

Okay. So, let's go now with the SALN that you filed which so far has been located and particularly those which you submitted to the Judicial and Bar Council. When you applied for Associate Justice of the Supreme Court, you were required to submit a Sworn Statement of Assets and Liabilities, and that was in 2010. So, you submitted a Statement of Assets and Liabilities which you signed in July 27, 2010 and you wrote a letter stating that yesterday, you wrote a letter to the JBC, yesterday, that was, your letter is dated, was dated July 28. Yesterday, you submitted your Statement of Assets and Liabilities as of 2006. You deliberately did not use the word Sworn Statement of Assets and Liabilities because what you submitted is a Statement of Assets and Liabilities for 2006 which was not signed, which was not notarized. So, you omitted the word "Sworn," you agree to that or you want to see the document?

CHIEF JUSTICE SERENO:

The JBC did not require from me my 2006 SALN. They requested me to give my Statement of Assets regardless of whether it's sworn or not as of the time of application. Now, the form there, the only form I used there was a downloadable form as of 2006 but if you can look at the signature portion, it is 2010. So, it is a metric tool that was used by the JBC and they explained it to me intimately that it had to do with the measurement of the banks, deposits and the income tax return. **So, that SALN is not the SALN contemplated by law but it is another measurement tool of the JBC.**

JUSTICE DE CASTRO:

Will you explain why you dated, why you mentioned in that …

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[36] Respondent's Memorandum, p. 11.

Supreme Court E-Library

CHIEF JUSTICE SERENO:

I came from the private sector, Justice De Castro, so, it is a 2010 Statement of Assets unsworn during the time of my application. It is not that specified under the … SALN law.

x x x x x x x x x

It's not the SALN required by law. I had to find a form I could easily file because I was being asked to immediately send it by fax. So, the only downloadable form was what was available in the website. I downloaded it, I filled it up, I sent it.[37] (Emphasis supplied)

True, the SALN form referred to by respondent when she applied for the Associate Justice post in 2010 is not the SALN form specified by and required under the law. It has been an accepted practice of the JBC to allow applicants for judicial positions from the private sector to accomplish and submit such SALN as part of the documentary requirements. Accordingly, there was nothing irregular attending respondent's submission to the JBC of her unsworn SALN on 27 July 2010 when she was applying for the Associate Justice position.

However, when respondent was appointed as Associate Justice of the Supreme Court and assumed such position on 16 August 2010, respondent was duty-bound to submit a SALN in the prescribed form and within the period specifically required by the Constitution, law, and rules.

Again, the following are the relevant provisions on SALN filing:

Section 17, Article XI of the Constitution

A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit **a declaration under oath** of his assets, liabilities, and net worth. (Emphasis supplied)

Section 7, RA 3019

Section 7. *Statement of assets and liabilities.* – Every public officer, **within thirty days after assuming office**, thereafter, on or before

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[37] TSN, 10 April 2018, pp. 34-35.

Supreme Court E-Library

the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of department or Chief of an independent office, with the Office of the President, a true, detailed **sworn statement of assets and liabilities,** including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: *Provided*, That the public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of the said calendar year. (Emphasis supplied)

Section 8, RA 6713

Statements and Disclosure – Public officials and employees have an obligation to accomplish and submit **declarations under oath** of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

x x x x x x x x x

The documents must be filed:
(a) within thirty (30) days after assumption of office;
(b) on or before April 30, of every year thereafter; and
(c) within thirty (30) days after separation from the service.

All public officials and employees required under this section to file the aforestated documents shall also execute, within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their assets, liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible, the year when they first assumed any office in the Government. (Emphasis supplied)

Administrative Code of 1987, Book 1, Chapter 9, Section 34

A public officer or employee shall upon assumption of office and as often thereafter as may be required by law, submit **a declaration under oath** of his assets, liabilities, and net worth. (Emphasis supplied)

Supreme Court E-Library

CSC Rules

Section 1. Filing and Submission of SALN on Time and to the Proper Official

a. All public officials and employees, except those who serve in an official honorary capacity, without service credit or pay, temporary laborers and casual or temporary and contractual workers, shall file under oath their SALNs and Disclosure of Business Interests and Financial Connections with their respective Chief or Head of the Personnel/Administrative Division or Unit/Human Resource Management Office (HRMO), to wit:

1. **Within thirty (30) days after assumption of office, statements of which must be reckoned as of his/her first day of service;**
2. On or before April 30 of every year thereafter, statements of which must be reckoned as of the end of the preceding year; and
3. Within thirty (30) days after separation from the service, statements of which must be reckoned as of his/her last day of office.

b. Public officials and employees under temporary status are also required to file under oath their SALNs and Disclosure of Business Interests and Financial Connections in accordance with the guidelines provided under these rules.

c. Public officials and employees are strictly required to fill in all applicable information and/or make a true and detailed statement of their SALNs. (Emphasis supplied)

Since respondent took her oath and assumed her position as Associate Justice of the Supreme Court on 16 August 2010, she was required to file under oath her SALN within thirty (30) days after assumption of office, or until 15 September 2010, and the **statements must be reckoned as of her first day of service, pursuant to the relevant provisions on SALN filing.**

However, respondent failed to file a SALN containing sworn statements reckoned as of her first day of service within thirty (30) days after assuming office. **While she allegedly submitted**

an "entry SALN" on 16 September 2010,[38] **it was unsubscribed**[39] **and the statements of her assets, liabilities and net worth were reckoned as of 31 December 2009, and not as of her first day of service, or as of 16 August 2010.** This is clear from the following quoted portions of respondent's testimony during the Oral Arguments, to wit:

JUSTICE DE CASTRO:

Okay, now, let's go to, so, after that you were appointed Associate Justice, after that you were appointed Associate Justice of the Supreme Court, and upon assumption within thirty (30) days, you should file a SALN as of the date of your assumption to office. As you mentioned in, as you mentioned, you resigned on June 1st, 2006. So, you were no longer, you were no longer a government official as of December 31, 2009, and this is now no longer a printed date. The date depicts zero, nine (09) after two zero (00) was handwritten, so that, when you assumed office in August of 2010, and you need to follow the law to require, which requires you to file a SALN within thirty (30) days from your assumption to duty, you filed your SALN, September 2010, okay? So, with respect to the date, that is within thirty (30) days but look at the date of your Sworn Statement of Assets and Liabilities, that is your Sworn Statement of Assets and Liabilities, that is your Sworn Statement of Assets and Liabilities as of December 31, 2009, when the law requires you to reckon your Statement of Assets and Liabilities when you assumed office? So, it should have been dated between, between August and September 2010, but no,

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[38] Respondent's Memorandum, p. 111. Since the last day for filing her SALN was 15 September 2010, the "entry SALN" filed by respondent was belatedly filed.

Respondent's 31 December 2009 SALN which is attached to petitioner's Memorandum shows that it was received by the Supreme Court's Office of the Clerk of Court on 28 June 2012. On page 111 of respondent's Memorandum, she stated that "[t]he 2009 SALN is an entry SALN which the Chief Justice originally filed on 16 September 2010, within thirty (30) days after her assumption of office as an Associate Justice of the Supreme Court. It was not 'belatedly filed.' The revised 2009 SALN which has the annotation 'revised as of 22 June 2012,' is a revised version executed in June 2012 to more accurately reflect the acquisition cost of certain assets declared in 2010."

[39] *Ponencia*, pp. 7, 110; Petitioner's Annexes to the Memorandum, pp. 25-26.

Supreme Court E-Library

you did not do that. You submitted a sworn declaration of Assets and Liabilities dated December 31, 2009, when you are no longer a government employee at that time?

May I know your answer?

CHIEF JUSTICE SERENO:

This is the entry SALN after having taken my oath and the requirement is as of the end of the preceding year.

JUSTICE DE CASTRO:

No...

CHIEF JUSTICE SERENO:

So, it must be as of end of December 2009 even if it is 2010.

JUSTICE DE CASTRO:

No, it's, I read to you the law, I read to you the provision of law and the rules, it says there, that when you assumed office, **your SALN must be reckoned as of the date of your assumption to office.** So, it cannot be several months before because if it is several months before, from December 31, 2009 up to September 2010, there could have been assets and liabilities between that period of time which cannot be found in your September 2010 SALN. There is a gap …

x x x x x x x x x

CHIEF JUSTICE SERENO:

Your Honor, the law only says that it must be within thirty (30) days after assumption of office. Nowhere can I say that it must be the Statement of Assets within that month. So, it is not wrong for me to have even given government a better chance and better tools to assess whether I will be hiding any ill-gotten wealth because I'm giving the government even more information than you are proposing. Because the law only says within thirty (30) days, it doesn't say as of that date.

x x x x x x x x x

CHIEF JUSTICE SERENO:

Your Honor, my proposal is this. This is a unique reading by you of the IRR while I am reading the law itself. You know, in September, my husband and I would have already accumulated income from January 1 up to September when I filed within the reglementary period. Within that period, we cannot measure our assets and liabilities

accurately because of the tax implication of those incomes that we have reviewed. That is why, in fact, the mandatory requirement for annual filing of SALNs is after computation of taxes. What I have provided the government is, in fact, a better way of assessing because anyway, from September 20 up to December 31, 2010, Justice De Castro, I filed again another SALN. So, there's even more data that government can mine to find out if I have hidden anything. The law is clear, within thirty days, it does not say, ah, it does not say as of reckoned as of what date. So, I followed what has been government regulation, it was OAS of the Supreme Court, Atty. Vidal, who said it must be as of end of December 2009.

x x x x x x x x x

CHIEF JUSTICE SERENO:

August 16 … So, I assumed office, I entered into the functions of my office, August, same day. How can I? We were preparing for the oral arguments, then following day was the Hacienda Luisita, I have to have bank certifications of all my bank records. I have to force my husband to compute our estimated tax liabilities, I have to make a run down of all the debts that are due me and have not been paid. I have to, at the same time, find out if I owe anybody anything. And then if I have to find out that valuation of all my properties, how can you do that in a matter of three weeks, Justice De Castro? This is the most absurd, oppressive interpretation ever. What I am offering the government is a good database from which to assess whether I'm violating the SALN law. I have end 2009, I have end 2010, government can run after me if I have any ill-gotten wealth. In the first place, the SolGen has not made any case that I have violated anything of any kind.

x x x x x x x x x

JUSTICE DE CASTRO:

You are not required by law to submit a SALN as of December 31, 2009, because you mentioned that from June 1, 2006 up to the time that you assumed office on August 2010, you were no longer in government. So, why is it that you have a SALN for December 31, 2009? What is that for?

CHIEF JUSTICE SERENO:

Your Honor, if there had been any problem with my SALN, Chief Justice Corona should have called my attention because he is the

Supreme Court E-Library

head of the Judiciary. Under the procedures, he should have called my attention, "mali iyong entry SALN mo, bakit masyadong maaga? Bakit December 2009? **Eh, ang reading ko ng batas, kung end 2009 pwede na iyon sa entry SALN kasi iyon naman usually at iyon naman ang sinabi sa akin, end 2009.** Iyon ang hiningi talaga.[40] (Emphasis supplied)

The Constitution, law, and rules clearly require that the sworn entry SALN "must be reckoned as of his/her first day of service" and must be filed "within thirty (30) days after assumption of office." Evidently, respondent failed to file under oath a SALN reckoned as of her first day of service, or as of 16 August 2010, within the prescribed period of thirty (30) days after her assumption of office. In other words, respondent failed to file the required SALN upon her assumption to office, which is a clear violation of Section 17, Article XI of the Constitution. In light of her previous failure to file her SALNs for several years while she was a UP College of Law Professor, her failure to file her SALN upon assuming office in 2010 as Associate Justice of this Court constitutes culpable violation of the Constitution, **a violation committed while she was already serving as an impeachable officer.**

VI. Jurisprudence on Failure to File SALN

Respondent harps on the case of *Concerned Taxpayer v. Doblada, Jr.*[41] to justify her claim that she is not liable for non-filing of SALN since she religiously filed her SALNs while she was teaching in UP.

In *Doblada*, the Office of the Court Administrator (OCA) issued a certification that Doblada had no SALNs on file for certain years, including for 2000. Doblada claimed he filed all his SALNs through the Clerk of Court. Doblada presented a letter from the Clerk of Court certifying that the latter transmitted to the OCA Doblada's SALN for 2000. The Clerk of Court is tasked to forward all SALNs filed with his office to the OCA

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[40] TSN, 10 April 2018, pp. 42-46, 68.

[41] 498 Phil. 395 (2005).

which is the custodian of SALNs for lower courts. The Clerk of Court merely collects for the OCA. The Court held that the OCA certification is not conclusive, and Doblada could not be held liable for non-filing of his SALNs.

In *Doblada*, the OCA certification satisfied the burden of proof that Doblada did not file his SALNs for a number of years, and thus, the burden of evidence shifted to Doblada. However, the Clerk of Court letter, a countervailing evidence submitted by Doblada, was sufficient to shift back the burden of evidence because the Clerk of Court letter cast doubt on the record keeping of the OCA insofar as Doblada's SALNs were concerned. In short, the OCA Certification did not constitute conclusive evidence that Doblada did not file his SALNs, precisely because it was discredited by the Clerk of Court letter, and thus, Doblada could not be held liable for non-filing of his SALNs.

In the present case, the *Doblada* doctrine cannot apply because respondent did not file any countervailing evidence to cast doubt on the record keeping of the UP HRDO. Respondent should have presented a certification from the Secretary of the UP College of Law that she submitted all her SALNs with the College Secretary during her entire employment with the UP College of Law. The Secretary of the UP College of Law forwards to the UP HRDO whatever SALNs are submitted to the Secretary. What the UP HRDO has on file are only the 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002 SALNs of respondent. Respondent failed to shift the burden of evidence as to her failure to file her 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005, and 2006 SALNs.

To repeat, *Doblada* is inapplicable here since respondent failed to present any certification, which could attest clearly that she submitted her SALNs with the UP College of Law Secretary, who collects the SALNs and forwards the same to the UP HRDO.

VII. Jurisdiction to Remove an Impeachable Officer

Section 2, Article XI of the Constitution provides:

Supreme Court E-Library

SECTION 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

According to the *ponente*, "the language of Section 2, Article XI of the Constitution does not foreclose a *quo warranto* action against impeachable officers. x x x. To construe Section 2, Article XI of the Constitution as proscribing a *quo warranto* petition is to deprive the State of a remedy to correct a 'public wrong' arising from defective or void appointments."[42]

The *ponente* posits that "while impeachment concerns actions that make the officer unfit to continue exercising his or her office, *quo warranto* involves matters that render him or her ineligible to hold the position to begin with."[43]

This is erroneous.

Section 2, Article XI of the Constitution expressly provides the mode of removal from office of "the President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman." Removal from office of these public officers shall only be by impeachment, and not through any other mode. In *Lecaroz v. Sandiganbayan,* the Court held:

x x x [T]he above provision proscribes removal from office of the aforementioned constitutional officers by any other method; otherwise, to allow a public officer who may be removed solely by impeachment to be charged criminally while holding his office with an offense that carries the penalty of removal from office, would be violative of the clear mandate of the fundamental law.[44] (Boldfacing and underscoring supplied)

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[42] *Ponencia*, pp. 58, 61.

[43] *Ponencia*, pp. 63-64.

[44] 213 Phil. 288, 294 (1984).

The provision mandating removal only by impeachment is "**the Constitution's strongest guarantee of security of tenure. The guarantee effectively blocks the use of other legal ways of ousting an officer.**"[45] Thus, in *In re First Indorsement from Hon. Gonzales*,[46] the argument that a sitting member of this Court may be subjected to disbarment proceedings, which could possibly result in the sitting Justice being disbarred and thus not qualified for the position, was rejected by this Court, thus:

> x x x. A public officer who under the Constitution is required to be a Member of the Philippine Bar as a qualification for the office held by him and **who may be removed from office only by impeachment**, cannot be charged with disbarment during the incumbency of such public officer. Further, such public officer, during his incumbency, cannot be charged criminally before the *Sandiganbayan* or any other court with any offence which carries with it the penalty of removal from office, or any penalty service of which would amount to removal from office. (Boldfacing and underscoring supplied)

The Court explained the important underlying reason for this rule in the same case of *In re First Indorsement from Hon. Gonzales*, to wit:

> The above rule rests on the fundamental principles of judicial independence and separation of powers. The rule is important because judicial independence is important. Without the protection of this rule, Members of the Supreme Court would be vulnerable to all manners of charges which might be brought against them by unsuccessful litigants or their lawyers or by other parties who, for any number of reasons might seek to affect the exercise of judicial authority by the Court.[47]

A sitting impeachable officer can be removed from office ***only*** through impeachment by Congress. As I have stated in a

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[45] *J.* Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* 1111 (2003 Edition).

[46] *In re First Indorsement from Hon. Gonzales*, 243 Phil. 167, 170 (1988).

[47] *Id*. at 172.

Supreme Court E-Library

Dissenting Opinion,[48] the sole disciplining authority of all impeachable officers, including members of this Court, is Congress.

> Under the Constitution, the ***sole*** disciplining authority of all impeachable officers, including Justices of this Court, is Congress. Section 3(1), Article XI of the Constitution provides that, "The House of Representatives shall have the **exclusive power** to initiate all cases of impeachment." Likewise, Section 3(6) of the same Article provides that, "The Senate shall have the **sole power** to try and decide cases of impeachment." These provisions constitute Congress as the **exclusive authority to discipline all impeachable officers** for any impeachable offense, **including "betrayal of public trust," a "catchall phrase" to cover any misconduct involving breach of public trust by an impeachable officer.** (Emphasis supplied)

The House impeaches, and the Senate convicts. This is the ***only*** method allowed under the Constitution to remove a member of this Court. To allow any other method is to re-write the Constitution. To permit this *quo warranto* petition to remove an incumbent member of this Court is to violate the Constitution.

The grounds for impeachment are: culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, and betrayal of public trust.

The catch-all phrase "betrayal of public trust" covers every conceivable misconduct by an impeachable officer, whether committed while in government service before the appointment, at the time of application for the office, or after appointment to office. **Any misrepresentation on material matters at the time of application for office is an integrity issue subsumed under the phrase "betrayal of public trust."**

As I pointed out earlier, the repeated failure to file SALNs constitutes culpable violation of the Constitution and betrayal of public trust, grounds for removing an impeachable officer. While the failure to file SALNs may also raise questions on

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[48] *In the Matter of the Charges of Plagiarism, etc., against Assoc. Justice Mariano C. Del Castillo*, 657 Phil. 13, 80-81 (2011).

the integrity, and thus the qualification, of an applicant for Justice of the Supreme Court, the relevant applicable violation, for purposes of removing such impeachable officer once already in office, is culpable violation of the Constitution and betrayal of public trust. Only Congress, through the impeachment process, can remove an impeachable officer on these grounds.

If a court finds that an impeachable officer has committed an impeachable act, the court should refer the matter to Congress, for Congress to exercise its exclusive mandate to remove from office impeachable officers. No court, not even this Court, can assume the exclusive mandate of Congress to remove impeachable officers from office. As I have expressed in a Dissenting Opinion:[49]

> This Court may conduct an investigation of an administrative complaint against a sitting Justice to determine if there is basis in recommending to the House of Representatives the initiation of an impeachment complaint against the sitting Justice. This Court may also conduct an investigation of an administrative complaint against a sitting Justice to determine if the complaint constitutes contempt of this Court. However, this Court has no power to decide on the guilt or innocence of a sitting Justice in the administrative complaint because such act is a usurpation of the exclusive disciplinary power of Congress over impeachable officers under the Constitution. Any decision by this Court in an administrative case clearing a sitting Justice of an impeachable offense is void for want of jurisdiction and for violation of an express provision of the Constitution.
>
> Such a decision will put this Court on a collision course with Congress if subsequently an impeachment complaint for plagiarism is filed with Congress against the sitting Justice. Incidentally, an impeachment complaint has already been filed in the House of Representatives involving the same complaint subject of this administrative case. If the House of Representatives decides to take cognizance of the complaint and initiates an impeachment based on the same administrative complaint that this Court had already dismissed as baseless, then this Court would have created a constitutional crisis that could only weaken the public's faith in the primacy of the Constitution.

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[49] *Id*. at 83-84.

Supreme Court E-Library

Thus, this Court should treat the present *quo warranto* petition as an administrative investigation by this Court of one of its members. The resolution of this Court should be to refer its findings and recommendation against respondent to Congress.

ACCORDINGLY, I vote to **DISMISS** the petition and to refer to the Congress of the Philippines for possible inclusion of the acts constituting culpable violation of the Constitution and betrayal of public trust, as found in the present case, in the ongoing impeachment proceedings against respondent Chief Justice Maria Lourdes P. A. Sereno.

DISSENTING OPINION

DEL CASTILLO, *J.*:

With all due respect to the *ponencia*, I dissent and vote for the dismissal of the *quo warranto* petition against the respondent, Chief Justice Ma. Lourdes P. Sereno. I express strong reservations against the Court's assumption of jurisdiction over a *quo warranto* petition against an impeachable officer, particularly when the ground for removal constitutes an impeachable offense.

My position is anchored on a holistic reading of the Constitution, which leads me to no other conclusion but that the intent of the framers is to ensure that the principles of separation of powers and checks and balance, and the independence of constitutional offices be maintained. Below, I explain my construction and understanding of the relevant constitutional provisions and principles; in gist, I maintain that **impeachment, not *quo warranto*, is the mode of removal from office of an appointive impeachable officer who does not possess the qualifications required by the Constitution for the position.**

THE ISSUES FOR RESOLUTION

Before the Court, the petition presents two core issues – one jurisdictional, and the other, substantive. The first asks **whether**

this Court has jurisdiction over a *quo warranto* petition against an impeachable official. Subsumed in this question is **whether the Constitution allows the removal from office of an impeachable official by modes other than impeachment**. The second questions **whether the respondent met the qualifications required by the Constitution to become a Member of this Court**. Since it is my view that this Court is without jurisdiction over the present proceeding, my discussion will focus mainly on the jurisdictional issue.

The jurisdictional issue

The *ponencia* relies on two constitutional provisions to justify the Court's assumption of jurisdiction over the present proceeding. First is the express grant of original jurisdiction over *quo warranto* petitions to this Court under Section 5(1), Article VIII of the Constitution. Second is the absence of an express provision in the Constitution restricting the removal from office of an impeachable officer solely to impeachment. Referring to Section 2, Article XI of the Constitution, the *ponencia* declares that nothing in its language forecloses a *quo warranto* action against impeachable officers.[1]

With due respect, I disagree with the *ponencia* and find that these provisions, in and of themselves, do not justify the Court's act of assuming jurisdiction over the petition and giving it due course. I believe that the reasoning adopted by the *ponencia* is based on an attenuated appreciation of the Constitution and its underlying principles, thereby disregarding well-settled rules on constitutional construction.

In *Francisco v. House of Representatives*,[2] this Court listed three main rules on constitutional construction:

"First, *verba legis* where, whenever possible, the words used in the Constitution must be given their ordinary meaning except

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[1] *Ponencia*, p. 58.

[2] 460 Phil. 830 (2003).

Supreme Court E-Library

where technical terms are employed."[3] The primary source from which to ascertain constitutional intent or purpose is the language of the provision itself.[4] The Court continues that "[w]e do not of course stop [with the language of the provision], but that is where we begin."[5]

"Second, where there is ambiguity, *ratio legis est anima*. The words of the Constitution should be interpreted in accordance with the intent of its framers."[6] In determining the intent behind a doubtful constitutional provision, courts should consider the objective sought to be accomplished and/or the evils sought to be prevented or remedied by the framers.[7]

"Finally, *ut magis valeat quam pereat*. The Constitution is to be interpreted as a whole."[8] Constitutional provisions do not stand alone and cannot be read independently of one another.[9] These should be considered together with other parts, and kept subservient to the general intent of the whole enactment.[10]

Applying these rules, I find that the principles embodied in the Constitution's language and design operate to deny this Court authority to assume jurisdiction over a *quo warranto* petition against an *appointive* impeachable officer.

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[3] *Id*. at 884-885.

[4] *Funa v. Villar*, 686 Phil. 571, 592 (2012), citing *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections,* G.R. Nos. 147589 & 147613, June 26, 2001, 359 SCRA 698, 724.

[5] *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, 31 SCRA 413 (1970), cited in *Francisco v. House of Representatives, Supra*.

[6] *Supra*.

[7] *Civil Liberties Union v. Executive Secretary*, 194 SCRA 317 (1991), cited in *Francisco v. House of Representatives, supra* note 2 at 885.

[8] *Francisco v. House of Representatives*, *supra* note 2 at 886.

[9] *J.* Brion's Separate Opinion in *De Castro v. Judicial & Bar Council*, 629 Phil. 629 (2010).

[10] *De Castro v. JBC, id*. at 699.

A. A purely literal reading of Section 5(1), Article VIII and Section 2, Article XI of the Constitution does not justify this Court's assumption of jurisdiction over a* quo warranto *petition against an appointive impeachable officer

A.1 Section 5(1), Article VIII of the Constitution is a general grant of quo warranto jurisdiction to the Court

There is no doubt that this Court has original jurisdiction over petitions for *quo warranto*. This is expressly provided for under Section 5(1), Article VIII of the Constitution, which also grants this Court jurisdiction over *certiorari*, prohibition, *mandamus*, and *habeas corpus* petitions:

> Section 5. The Supreme Court shall have the following powers:
>
> **(1) Exercise original jurisdiction** over cases affecting ambassadors, other public ministers, and consuls, and **over petitions for** *certiorari*, prohibition, *mandamus*, ***quo warranto*,** and *habeas corpus*. [emphasis supplied]

Although the Court is vested by no less than the Constitution with jurisdiction over these petitions, it cannot directly and immediately assume jurisdiction upon the mere filing of a petition, as ***other relevant laws and principles must be taken into account***. **The Constitution does not operate in a vacuum, and the application of its provisions can vary depending on the context within which they are applied.**

A.1.a. The assumption and exercise of jurisdiction take into account other relevant laws and principles

Supreme Court E-Library

Since jurisdiction over these petitions is not exclusive to this Court,[11] the principle of hierarchy of courts ought to be considered in determining the proper forum that can hear and resolve these petitions.[12] The Court may, however, exempt a petition filed directly before it from observing the rule on hierarchy when it raises issues of transcendental importance, as the *ponencia* proposes to do in the present case.[13]

The respondent's status may also be taken into consideration, as the Court did in *David v. Arroyo*,[14] where several *certiorari* and prohibition petitions were filed before the Court to assail presidential issuances of then President Gloria Macapagal Arroyo. Even as the Court assumed jurisdiction over the petitions, it excluded President Arroyo from being impleaded as respondent therein as it recognized the immunity that clothed the President during her incumbency.[15] Notably, presidential immunity obtains not by virtue of an express grant under the Constitution, but is a privilege that the courts have consistently acknowledged, for logical and practical reasons, to be inherent in the position. In other words, an implicit privilege recognized in favor of the President may deny this Court authority to assume jurisdiction notwithstanding an express grant by the Constitution.

Certainly, in such cases, the Court's refusal to assume jurisdiction cannot constitute an abdication of its judicial duties, but simply a recognition that **there are other compelling**

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[11] The Court of Appeals and the Regional Trial Courts also have original jurisdiction. See Sections 9(1) and 21(1), respectively, of Batas Pambansa Blg. 129 or the Judiciary Reorganization Act of 1980.

[12] The *ponencia* considered the hierarchy of courts but exempted its application to the present petition as it raises a matter of transcendental importance, pp. 45-46.

[13] *Ibid*.

[14] 522 Phil. 705 (2006).

[15] *Id*. at 763-764. Similarly, in *Aguinaldo v. Aquino,* G.R. No. 224302, November 29, 2016, the Court dropped President Aquino as respondent in a petition for *quo warranto, certiorari*, and prohibition.

constitutional principles that should prevail. Parts B and C of this Dissent will identify and discuss what these other compelling constitutional principles are. For now, however, the discussion will be limited to the literal construction of the constitutional provisions on which the *ponencia* relies.

A.2 Section 2, Article XI of the Constitution does not indicate exclusivity as to the mode of removal of impeachable officers

Proceeding from the position that the Court's jurisdiction over *quo warranto* petitions is absolute and unrestrained, the *ponencia* claims that this jurisdiction may be enforced even against impeachable officers inasmuch as nothing in the language of Section 2, Article XI of the Constitution restricts the removal from office of these officials only to impeachment.[16] The provision reads:

> Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman **may be removed from office** on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

A.2.a Interpretation of the word "may" in the first sentence of Section 2, Article XI of the Constitution

The *ponencia* considers the word "may" in the first sentence of Section 2, Article XI of the Constitution as permissive, denoting "a mere possibility, an opportunity, or an option. x x x An option to remove by impeachment admits of an alternative mode of effecting removal."[17] Thus, it declares that the provision

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[16] *Ponencia,* pp. 45, 59.

[17] *Id*. at 59.

Supreme Court E-Library

does not foreclose a *quo warranto* proceeding against the impeachable officers.[18]

I disagree with the *ponencia's* construction of the provision.

The "'may' is permissive/'shall' is mandatory" rule is an established rule in statutory construction. Nonetheless, not every use of either of these words should automatically be interpreted as a permissive or mandatory directive, especially when statutory intent shows otherwise. Proof of this is the two provisions on impeachment in the 1935 Constitution, to wit:

Article IX Impeachment	**Article X Commission on Elections**
Section 1. The President, the Vice-President, the Justices of the Supreme Court, and the Auditor General, **shall be removed from office on impeachment** for any conviction of, culpable violation of the Constitution, treason, bribery, or other high crimes. [emphasis supplied]	Article X, Section 1. There shall be an independent Commission on Elections composed of a Chairman and two other Members x x x The Chairman and the other Members of the Commission on Elections **may be removed from office *only by impeachment*** in the manner provided in this Constitution. [emphasis supplied]

Although Article X, Section 1 used the word "may," the inclusion of the qualifying phrase "only by impeachment" erased any doubt that the intent was to restrict solely to impeachment the removal from office of the Commission of Elections (*Comelec*) Chairman and Commissioners. On the other hand, it is debatable if same intent can be inferred from the language of Article IX, Section that used "shall" but clearly omitted a qualifying phrase similar to that in Article X, Section 1. This ambiguity certainly could be settled by the mere application of the "may/shall" rule, necessitating resort to other rules of constitutional construction.

Indeed, the variance in the language of the two provisions above renders doubtful any inference that the shift from "shall" in the 1935 and 1973 Constitutions to "may" in the 1987

[18] *Id*. at 60.

Constitution reflected a corresponding shift in the framers' intent from a mandatory to permissive directive as to the exclusiveness of impeachment as a mode of removal.[19] The 1973 Constitution declared that:

> Article XIII, Section 2. The President, the Members of the Supreme Court, and the Members of the Constitutional Commissions **shall be removed from office on impeachment** for, and conviction of, culpable violation of the Constitution, treason, bribery, other high crimes, or graft and corruption. [emphasis supplied]

Article XIII, Section 2 of the 1973 Constitution is effectively a consolidation of the two provisions on impeachment in the 1935 Constitution. Since the 1935 Constitution had two related but differently-worded provisions on impeachment, it is unclear which of the two possible interpretations that the framers of the 1973 Constitution had in mind when they drafted Article XIII, Section 2. Given this ambiguity, it would be foolish to read too much in the change from "shall" in the previous Constitutions to "may" in the present one.

In determining the real meaning of "may" in Article XI, Section 2, the better rule to follow is the one which states that "a word used on the statute in a given sense is presumed to be used in the same sense throughout the law."[20] This rule finds application in the present case because of the similarity in manner in which the first and second sentences of the provision are couched, and the fact that both sentences use the modal verb "may." **Both sentences merely provide for the modes by which public officers *can be* removed from office**: for the enumerated officers, by impeachment; for all others, by other means provided by law except by impeachment. **The use of the word "may" was not meant to indicate exclusivity (or lack thereof) in the mode of removal of the enumerated public officers.** This is the context in which the word "may" in the provision should be understood; nothing more, nothing less.

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[19] Petitioner's Memorandum, pp. 19-20.

[20] Ruben Agpalo, *Statutory Construction*, p. 281 (2009).

Supreme Court E-Library

The only "exclusivity" that may be reasonably read from the wording of Section 2, Article XI of the Constitution is the list of impeachable officers and the grounds for which they may be impeached. This "exclusivity" is deducible, not from the use of the word "may," but from the enumeration of the officers and the grounds, following the rule of *expressio unius est exclusio alterius* in statutory construction.[21]

The respondent presents another interpretation of the word "may." She claims it refers to the imposable penalty at the conclusion of an impeachment trial. She argues that this interpretation is consistent with Section 3(7), Article XI of the Constitution which provides in part that "[j]udgment in cases of impeachment shall *not extend further than removal* from office and disqualification to hold any office under the Republic of the Philippines."[22] Although plausible, nowhere from the respondent's interpretation can it be read that impeachment was contemplated as the sole mode of removing from office the enumerated officials.

A.2.b Comparing the two constitutional provisions on impeachment

Additionally, observe that there are only two provisions on impeachment in Article XI of the Constitution, *i.e.*, Section 2 as quoted above, and Section 3, which states:

Section 3. (1) The House of Representatives shall have the **exclusive** power to initiate all cases of impeachment.

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution or endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee,

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[21] The rule states that the expression of one or more things of a class implies the exclusion of all others. See Ruben Agpalo, *Statutory Construction*, *supra* at 318-319.

[22] Respondent's Memorandum *Ad Cautelam*, p. 46.

Supreme Court E-Library

after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(5) **No impeachment proceedings shall be initiated against the same official more than once within a period of one year.**

(6) The Senate shall have the **sole power** to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(7) Judgment in cases of impeachment shall **not extend further** than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, according to law.

(8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section. [emphasis supplied]

Note that where there is intent to impose restrictions or limitations, the language employed, as in Section 3, Article XI of the Constitution, is categorical and unequivocal, *e.g.*, the House is given the *exclusive* power to initiate impeachment cases; the Senate is given the *sole* power to try and decide all impeachment cases; *no* impeachment proceeding shall be initiated against the same official more than once within a one-year period; judgment in impeachment cases shall *not extend further* than removal from office, etc. The same observation is noted with regard to the second sentence of Section 2, which authorizes

Supreme Court E-Library

the Congress to provide by law the mode of removal of other public officers and employees, "but not by impeachment."

Had the framers intended to restrict the mode of removal from office of the enumerated public officers *only* to impeachment in the first sentence of Section 2, they would have adopted a similar categorical and unequivocal language as they did in the second sentence of Section 2 and in Section 3. I believe that their deliberate omission to do so is a strong indication that **the framers recognized other modes by which impeachable public officers may be removed from office.**

A.3 Other modes of removal from office recognized in the Constitution

My reading of the Constitution reveals two other modes of removal from office aside from impeachment.

First, ***when an unfavorable decision in an election contest is rendered against the President or the Vice-President.***

The last paragraph of Section 4, Article VII of the Constitution authorizes election contests against the incumbent President or Vice-President. Certainly, a decision against the respondent in a presidential (or vice-presidential) electoral contest filed before the Supreme Court sitting as the Presidential Electoral Tribunal (*PET*) results in his/her removal from office. In fact, this is one scenario which the *ponencia* referred to in finding that impeachment is not the sole mode of removal recognized in the Constitution.

Second, ***when an* ad interim *appointment for the position of Chairman or Commissioner of any of the three Constitutional Commissions is disapproved or by-passed by the Commission on Appointments*** (*ComAppt*).

It is recognized that the President may extend *ad interim* appointments while Congress is in recess,[23] including

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[23] CONSTITUTION, Article VII, Section 16, which states that:

appointments for the positions of Chairman and Commissioners of the Comelec, Commission on Audit (*COA*), and the Civil Service Commission (*CSC*). In *Matibag v. Benipayo*,[24] the Court ruled that an *ad interim* appointment is a permanent appointment since "it takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office."[25] Since the appointment is permanent and takes effect immediately, it is valid but only until disapproved by the ComAppt or by-passed through its inaction:

> An *ad interim* appointment can be terminated for two causes specified in the Constitution. The first cause is the disapproval of his *ad interim* appointment by the Commission on Appointments. The second cause is the adjournment of Congress without the Commission on Appointments acting on his appointment. These two causes are resolutory conditions expressly imposed by the Constitution on all *ad interim* appointments. These resolutory conditions constitute, in effect, a Sword of Damocles over the heads of *ad interim* appointees. No one, however, can complain because it is the Constitution itself that places the Sword of Damocles over the heads of the *ad interim* appointees.[26]

Thus, when the ComAppt disapproves the *ad interim* appointment or fails to act on it upon the adjournment of Congress, the removal of the appointee from office follows.

With the exception of the President or the Vice-President impleaded as respondents in an election contest, **there is nothing in my reading of the Constitution that shows the framers recognized a *quo warranto* proceeding as a mode of removing from office the other impeachable officers, particularly on the ground of ineligibility.** Applying the other rules on

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The President shall have the power to make appointments during the recess of Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.

[24] 429 Phil. 554 (2002)

[25] *Id*. at 581.

[26] *Id*.

Supreme Court E-Library

constitutional construction, I shall explain in the succeeding parts why a *quo warranto* proceeding may not be used to oust from office the appointive impeachable officers.

B. The intent of the framers of the Constitution is to maintain the separation of powers and uphold independence of the constitutional offices

B.1 The underlying principles of separation of powers and independence of constitutional offices

Though not couched in express language, principles that embody and enhance the democratic and republican nature of our State permeate the Constitution. Foremost of these is the principle of separation of powers and its corollary principle of checks and balances. In *Angara v. Electoral Commission*,[27] we recognized these principles not by any express provision in the Constitution, but on account of the constitutional design dividing the governmental powers among the different branches and bodies of the government.[28] These constitutional offices are deemed co-equal and independent of each other, as it is only by recognizing their status as such that the underlying principles can be maintained. Particularly for the Supreme Court, the three Constitutional Commissions, and the Office of the Ombudsman, independence is viewed as vital and imperative for the effective and efficient discharge of their functions. Hence, the Constitution expressly decreed their status as independent, whether individually for its members[29] or collectively for their entire office.[30]

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[27] 63 Phil. 139 (1936).

[28] *Id*. at 156-157.

[29] CONSTITUTION, Article VIII, Section 7(3) for the Judiciary, and Article XI, Section 8 for the Ombudsman and his Deputies.

[30] CONSTITUTION, Article IX-A, Section 1 for the Constitutional Commissions.

Accordingly, the Constitution adopted mechanisms to safeguard the independence of these offices including: the conferment of powers which cannot be removed or reduced by statute[31]; the grant of fiscal autonomy[32]; the grant of security of tenure for their highest officials, which is ensured by fixing their term of office[33] or by providing a mandatory retirement age,[34] by prohibiting their reappointment or appointment in temporary or acting capacity,[35] by providing impeachment as a mode by which they may be removed from office,[36] etc. With specific regard to impeachment as a mode of removal, the Constitution provided for strict rules and a rigorous, difficult, and cumbersome process before removal can be effected.[37]

The clear intent behind these safeguards is to enable the officials of these bodies to carry out their constitutional mandates free from political influence and pressure.[38] Indeed,

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[31] CONSTITUTION, Article VIII, Section 2 for the Supreme Court; Article IX-D, Sections 2 and 3 for the COA; Article IX-C, Section 2 for the Comelec, Article IX-B, Section 3 for the CSC, and Article XI, Sections 7 and 13 for the Office of the Ombudsman.

[32] CONSTITUTION, Article VIII, Section 3 for the Judiciary; Article IX-A, Section 5 for the Constitutional Commissions; Article XI, Section 14 for the Office of the Ombudsman.

[33] CONSTITUTION, Article IX-D, Section 1(2) for the COA; Article IX-C, Section 1(2) for the Comelec, Article IX-B, Section 1(2) for the CSC, and Article XI, Section 11 for the Office of the Ombudsman.

[34] CONSTITUTION, Article VIII, Section 11 for the Judiciary.

[35] CONSTITUTION, Article VIII, Sections 11 and 12 for the Judiciary; Article IX-D, Section 1(2) for the COA; Article IX-C, Section 1(2) for the Comelec, Article IX-B, Section 1(2) for the CSC, and Article XI, Section 11 for the Office of the Ombudsman.

[36] CONSTITUTION, Article XI, Section 2.

[37] Such as limiting the grounds for impeachment only for offenses that are grave and serious in nature and providing for a stringent or rigorous procedure for the impeachment proceedings. See Constitution, Article XI, Section 3.

[38] *Carpio Morales v. Court of Appeals*, 772 Phil. 672, 725 (2015). See also *Funa v. Villar*, 686 Phil. 571.

Supreme Court E-Library

they are among the highest-ranking officials of the land burdened with the responsibility of running the government. Thus, in the interest of public service, it becomes imperative that they be insulated from political maneuverings, harassment, and vendetta when performing their functions. It is with this objective in mind that the Court has to evaluate the validity of acts and proceedings that could result in the impairment of the independence of these constitutional offices.

From an academic standpoint, I agree with the *ponencia* that an impeachment proceeding is distinct from a *quo warranto* proceeding.[39] That these proceedings are distinct, however, does not justify a ruling that they can proceed independently and simultaneously as the *ponencia* declared.[40] Such simplistic reasoning completely ignores the basic principles underlying our Constitution. I believe that the Court's assumption of jurisdiction over a *quo warranto* proceeding should be determined not merely on the basis of the theoretical differences between the two proceedings, but primarily from an appreciation of the constitutional intent behind the relevant provisions.

B.1 Allowing a quo warranto *proceeding against impeachable officers impairs the independence of the constitutional offices*

The *ponencia* reasons that, inasmuch as Section 2, Article XI of the Constitution did not foreclose other modes of removing from office the enumerated public officers and given that this Court has *quo warranto* jurisdiction, there is essentially nothing that prohibits their removal from office through a *quo warranto* proceeding before the Court.[41] I believe, however, that we ought to qualify to what extent this Court can assume *quo warranto* jurisdiction over impeachable officers.

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[39] *Ponencia*, pp. 50, 54.

[40] *Id*. at 52.

[41] *Id*. at 40, 50.

At this point, there is a need to identify the **two classes of impeachable officers in Section 2, Article XI of the Constitution**: (1) the **elective officers**, *i.e.*, the President and the Vice-President, and (2) the **appointive officers**, *i.e.*, the Members of the Supreme Court; the Chairman and the Commissioners of the COA, the Comelec, and the CSC; and the Ombudsman.

With particular regard to *appointive* impeachable officers, it is my humble submission that *quo warranto* petitions against them threaten the constitutionally-decreed independence of their offices. While the Constitution has granted this Court general jurisdiction over *quo warranto* petitions, this jurisdiction may not be asserted against appointive impeachable officers without compromising institutional independence which is intended to uphold core constitutional principles and values.

B.1.a* Gonzales *demonstrated how the powers conferred under the Constitution should be interpreted in accordance with underlying constitutional principles

As I have said, the Constitution does not operate in a vacuum. The application of a constitutional provision must take into account the context in which it is applied, and its interpretation must be consistent with the framers' intent and underlying principles of the Constitution. A case in point is *Gonzales v. Office of the President.*[42]

In *Gonzales*, the petitioner questioned the constitutionality of Section 8(2) of the Republic Act (*RA*) No. 6770 or the Ombudsman Act of 1989, which granted the President disciplinary authority over the Deputy Ombudsmen. Congress enacted this provision in accordance with the second sentence of Section 2, Article XI of the Constitution, which states that

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[42] 725 Phil. 380 (2014).

Supreme Court E-Library

Section 2. x x x All other public officers and employees may be removed from office **as provided by law**, but not by impeachment. [emphasis supplied]

Construing this constitutional provision, the Court noted that it did not grant Congress blanket authority to legislate the manner by which non-impeachable public officers and employees may be removed and the grounds for their removal, nor to lodge such power to remove on whichever body Congress deemed proper. Instead, any statute that Congress enacts pursuant to the provision "must still be consistent with constitutional guarantees and principles."[43] Expounding on this, the Court said:

[T]he congressional determination of the identity of the disciplinary authority is not a blanket authority for Congress to repose it on whomsoever Congress chooses without running afoul of the independence enjoyed by the Office of the Ombudsman and without disrupting the delicate check and balance mechanism under the Constitution. Properly viewed from this perspective, **the core constitutional principle of independence is observed and any possible absurdity resulting from a contrary interpretation is avoided**. In other words, **while the Constitution itself vested Congress with the power to determine the manner and cause of removal of all non-impeachable officials, this power must be interpreted consistent with the core constitutional principle of independence of the Office of the Ombudsman.**[44] [emphasis supplied]

To emphasize the point, I repeat that the interpretation of the provisions of the Constitution must be consistent with its underlying principles. *Gonzales* showed that, in the scale of constitutional values, the framers put a higher premium on upholding the independence of constitutional bodies. Hence, *Gonzales* ruled that a system devised to exact accountability from non-impeachable public officers (*i.e.,* the grant of disciplinary power over the Deputy Ombudsmen to the President)

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[43] *Id*. at 408-409.

[44] *Id*. at 409.

must remain consistent with the independence guaranteed to the Office of the Ombudsman.

The present *quo warranto* petition was instituted supposedly to ensure that "government authority is entrusted only to qualified individuals."[45] Accordingly, the *ponencia* declares that "*quo warranto* should be an available remedy to question the legality of appointments especially of impeachable officers x x x."[46] Taking heed of *Gonzales*, I do not subscribe to the said view. **I find the Court's assumption of *quo warranto* jurisdiction over impeachable officials alarming, *especially in light of the powers which the* ponencia *ascribes to the Solicitor General (SolGen) to have with respect to proceedings of this nature.***

B.2 The SolGen's imprescriptible power to commence* quo warranto *proceedings against the appointive impeachable officers threatens the independence of their offices

The SolGen's power to commence *quo warranto* proceedings is provided in Section 2, Rule 66 of the Rules of Court.[47] When the SolGen exercises such power, the *ponencia* declares that the one-year prescriptive period in Section 11 of the same Rule does not apply since, in filing the petition, the SolGen is not claiming an individual right to a particular office, but is asserting a public right to question the exercise of an authority unlawfully asserted by an ineligible public officer.[48] In other words, **the**

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[45] *Ponencia*, p. 52.

[46] *Id*.

[47] RULES OF COURT, Rule 66, Section 2 provides:

Sec. 2. *When Solicitor General or public prosecutor must commence action*. – The Solicitor General or a public prosecutor. When directed by the President of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in the preceding section can be established by proof, must commence such action.

[48] *Ponencia*, p. 63.

Supreme Court E-Library

***ponencia* proclaims the SolGen's power to commence *quo warranto* proceedings to be imprescriptible.** In such a case, therefore, the SolGen's exercise of the power is practically subject to no restriction other than the exercise of his/her sound discretion. **If, as the *ponencia* posits, this unfettered power of the SolGen is allowed to be exerted against impeachable officers, the independence of these constitutional offices will effectively be undermined.**

The SolGen is a presidential appointee[49] whose office is attached to the Department of Justice[50] and is under the Executive Department. As a non-impeachable public officer, the SolGen is subject to the Ombudsman's disciplinary authority pursuant to Section 21 of the Ombudsman Act. It is not a stretch to claim that the Ombudsman's impartiality and independence when exercising his/her disciplinary power may be compromised if the SolGen can threaten the Ombudsman's claim to his/her position by commencing a *quo warranto* petition. A similar predicament can arise in the context of a disbarment proceeding against the SolGen filed before the Supreme Court if the SolGen can initiate proceedings for removal of the Members of this Court.

In advancing this position, I refer again to the Court's ruling in *Gonzales*,[51] which is relevant as it presented a parallel issue. In *Gonzales*, the Court ruled that the grant of disciplinary power to the President over the Deputy Ombudsmen imperiled the Office of the Ombudsman's independence as guaranteed by the Constitution, and accordingly voided the provision. We declared that:

subjecting the Deputy Ombudsman to discipline and removal by the President, whose own alter egos and officials in the Executive Department are subject to the Ombudsman's disciplinary authority, cannot but seriously place at risk the independence of

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[49] ADMINISTRATIVE CODE, Book IV, Chapter 12, Section 36.

[50] ADMINISTRATIVE CODE, Book IV, Chapter 12, Section 34.

[51] *Supra* note 42.

the Office of the Ombudsman itself. The Office of the Ombudsman, by express constitutional mandate, includes its key officials, all of them tasked to support the Ombudsman in carrying out her mandate. Unfortunately, intrusion upon the constitutionally-granted independence is what Section 8(2) of RA No. 6770 exactly did. By so doing, **the law directly collided not only with the independence that the Constitution guarantees to the Office of the Ombudsman, but inevitably with the principle of checks and balances that the creation of an Ombudsman office seeks to revitalize.**

What is true for the Ombudsman must be equally and necessarily true for her Deputies who act as agents of the Ombudsman in the performance of their duties. The Ombudsman can hardly be expected to place her complete trust in her subordinate officials who are not as independent as she is, if only because they are subject to pressures and controls external to her Office.

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The mere fact that a statutorily-created sword of Damocles hangs over the Deputy Ombudsman's head, by itself, opens up all the channels for external pressures and influence of officialdom and partisan politics. The fear of external reprisal from the very office he is to check for excesses and abuses defeats the very purpose of granting independence to the Office of the Ombudsman.[52] [emphasis in the original; underscoring supplied]

We also noted in *Gonzales* the absurdity resulting from the tangled web of disciplinary powers over non-impeachable officers between the President and the Ombudsman that could effectively erode the delicate system of checks and balance under the Constitution, to wit:

the Executive power to remove and discipline key officials of the Office of the Ombudsman, or to exercise any power over them, would result in an *absurd* situation wherein the Office of the Ombudsman is given the duty to adjudicate on the integrity and competence of the very persons who can remove or suspend its members. Equally relevant is the impression that would be given to the public if the rule were otherwise. A complainant with a grievance against a high-ranking official of the Executive, who appears to enjoy

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[52] *Supra* note 42 at 403, 410.

Supreme Court E-Library

the President's favor, would be discouraged from approaching the Ombudsman with his complaint; the complainant's impression (even if misplaced), that the Ombudsman would be susceptible to political pressure, cannot be avoided. To be sure, such an impression would erode the constitutional intent of creating an Office of the Ombudsman as champion of the people against corruption and bureaucracy.[53] [emphasis in the original; underscoring supplied]

Much in the same way, the independence of this Court, the Constitutional Commissions, and the Office of the Ombudsman can be unduly compromised if the SolGen can, at any time and subject to no other guarantee than the exercise of his/her sound discretion, commence *quo warranto* proceedings against the heads of these offices. **Given the powers that the *ponencia* proposes to endow the SolGen with as regards *quo warranto* petitions against appointive impeachable officers,**[54] **the SolGen can effectively remake the composition of this Court by causing the removal of its Members** – a matter which Justice Leonen similarly noted during the oral arguments.

Whether the SolGen's filing of a *quo warranto* petition against an appointive impeachable officer is based on meritorious grounds or not becomes irrelevant as the evils that the framers intended to avoid by guaranteeing the independence of these constitutional offices can already occur. In *Gonzales*, we stated that the mere filing of an administrative case against the Deputy Ombudsman before the Office of the President could lead to his/her suspension and cause interruption in the performance of his/her functions to the detriment of public service.

It is therefore clear that **the grant to the SolGen of unrestricted and imprescriptible power to institute *quo warranto* petitions against appointive impeachable officers poses serious risks to the independence of constitutional offices declared to be independent**. In *Bengzon v. Drilon*,[55]

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[53] *Supra* note 42 at 405.

[54] *Ponencia*, p. 46.

[55] 284 Phil. 245 (1992).

we ruled that "[t]he Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties."[56] They "should be free to act as their conscience demands, without fear of retaliation or hope [of] reward."[57] **With the SolGen wielding a *quo warranto* sword of Damocles over the heads of these officers, the Filipino people cannot be assured that they will discharge their constitutional mandate and functions without fear or favor. Without such assurance, there can be no guarantee that the primordial interest of the sovereign people is promoted.**

In advancing this view, I do not aim to cast doubt on the competence and professionalism of the SolGen, incumbent or future ones. Rather, taking into consideration the constitutional design, I believe that **the SolGen's *quo warranto* power is not the "check and balance" that the framers intended for the impeachable officers who fail to meet the constitutional qualifications.**

The reality is that the SolGen is a presidential appointee who serves at the pleasure of the President.[58] As such, it would be incongruous for the SolGen to question the exercise of the President's power to appoint officials to the constitutional offices, particularly the choice of an appointee, unless it is upon the orders of the appointing President himself or his successor.[59]

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[56] *Id*. at 269.

[57] *Supra* note 4 at 600-601.

[58] The Administrative Code does not provide a fixed term for the SolGen. Following the general rule that the power to appoint includes the power to remove, it can be said that the SolGen serves at the pleasure of the President.

[59] Rules of Court, Rule 66, Section 2 provides:

SEC. 2. *When Solicitor General or public prosecutor must commence action*. — The Solicitor General or a public prosecutor, **when directed by the President of the Philippines**, or when upon complaint or otherwise he has good reason to believe that any case specified in the preceding Section can be established by proof, **must commence such action.** [emphasis supplied]

Supreme Court E-Library

Neither should this view be construed as shielding from review the appointment of one who is otherwise unqualified for the position or whose appointment is tainted with irregularity. When the Court declines to assume jurisdiction in these proceedings, it neither cleanses the appointment of any defect, nor denies the people a remedy to correct a "public wrong," as the *ponencia* insinuates.[60] Taking into account the overall constitutional design, I believe that mechanisms have been put in place to allow for such a review to take place, though these may not necessarily be judicial in nature. After all, the exercise of appointing power (and all proceedings related to it) is not within the judiciary's exclusive domain. I discuss these review mechanisms next.

C. The Constitution has put in place mechanisms for the review of the eligibility of appointees to impeachable offices or the invalidity of their appointments

C.1 The Court's* quo warranto *jurisdiction against elective impeachable officers is by virtue of a specific constitutional provision

In arguing that impeachment is not the only mode for the removal of impeachable officers, the SolGen cites the *2010 Rules of the Presidential Electoral Tribunal,*[61] which authorizes the filing of election contests against the President or the Vice-President. As an election contest (filed either as an election protest or a *quo warranto* petition) before the PET could result in the ouster of an impeachable official, the SolGen contends that the PET Rules essentially recognize the availability of a

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[60] *Ponencia*, p. 61.

[61] A.M. No. 10-4-9-SC.

Supreme Court E-Library

writ of *quo warranto* against an impeachable officer. The *ponencia* agrees with the SolGen's reasoning.[62]

I agree with the *ponencia* but only to the extent **that, under the 1987 Constitution, electoral contests under the PET Rules prove that impeachment is not the sole mode of removing from office impeachable officers**. This is one of the other modes of removal that I referred to in Part A of this Dissent. That a particular class of impeachable officers, *i.e.*, the *elective* ones, may be ousted from office through *quo warranto* proceedings, however, does not warrant extending the same rule to the *appointive* impeachable officers.

The Court's *quo warranto* jurisdiction over *elective* impeachable officials obtains, not on the basis of the general grant of jurisdiction under Section 5(1), Article VIII of the Constitution, but on the specific grant under the last paragraph of Section 4, Article VII of the Constitution, which reads:

Section 4. x x x

The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate rules for the purpose. [emphasis supplied]

Given this *specific constitutional mandate,* there is practically no discretion[63] left for the Court but to assume jurisdiction over *quo warranto* petitions against (and only against) this particular class of impeachable officials. Conversely, when jurisdiction is asserted on the basis of the general grant under Section 5(1), Article VIII of the Constitution, the Court ought to tread more carefully as there may be equally, if not more, compelling constitutional principles at play.

Parenthetically, there can be no equal protection issues that may arise in this regard as it is the Constitution itself that provides

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[62] *Ponencia*, p. 57.

[63] Except when the grounds for the summary dismissal of the election contests, as provided in Rule 21 of the 2010 PET Rules, obtain.

Supreme Court E-Library

for a different treatment as far as *elective* impeachable officers are concerned by giving this Court exclusive jurisdiction over presidential electoral contests. It is also for this reason that I defend my position from any insinuation that it carves out a special rule for appointive impeachable officers by effectively clothing them with immunity against *quo warranto* petitions.

In plain and simple terms, **it is the Constitution itself which vests this Court (sitting as the PET) jurisdiction over *quo warranto* proceedings against *elective* impeachable officers**. Given the specific constitutional grant of *quo warranto* jurisdiction over *elective* impeachable officers, the 2010 PET Rules should not be used as authority to claim a similar jurisdiction over *appointive* impeachable officers.

C.1.a The cited* quo warranto *cases against the President, an impeachable officer, are jurisprudentially irrelevant to this case

It is for this reason that I find the SolGen's reliance on *Lawyers League for a Better Philippines v. Aquino*[64] and *Estrada v. Arroyo* misplaced.[65] The SolGen claims these cases prove that this proceeding is not the first time the Court entertained a *quo warranto* petition against an impeachable officer.[66]

***Quo warranto* is a recognized mode for removal of the President or the Vice-President *only within the context of electoral contests*.** Significantly, neither *Lawyers League*[67] nor *Estrada* involved presidential elections. These cases were filed in the aftermath of turbulent times in our country's history, the 1986 EDSA People Power and the 2001 EDSA People Power,

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[64] G.R. No. 73748, May 22, 1986.

[65] 406 Phil. 1 (2001).

[66] Petitioner's Memorandum, p. 15.

[67] The petition questioned the legitimacy of the Aquino government by claiming that it is illegal because it was not established pursuant to the 1973 Constitution, *supra* 64.

respectively, both of which resulted in the removal of incumbent presidents. Indeed, it is this special circumstance – the uncommon way of removing a sitting President from office and installing a new one by a mode other than election[68] – that renders these cases jurisprudentially irrelevant as far as the present proceeding is concerned.

C.1.b Other consequences when* quo warranto *jurisdiction against impeachable officers is allowed

The *ponencia* also fails to explain the inconsistent and absurd consequences of a ruling allowing *quo warranto* petitions against appointive impeachable officers.

There is nothing to indicate that the Constitution allowed two types of *quo warranto* proceedings that may be commenced against the President or Vice-President: one within the context of an electoral contest under Section 4, Article VII of the Constitution, and another outside of it pursuant to Section 5(1), Article VIII of the Constitution. Assuming this is what the *ponencia* contemplated in declaring that the general *quo warranto* jurisdiction may be asserted against impeachable officers, how then do we reconcile the conflict between the express general grant of jurisdiction over *quo warranto* petitions to this Court and the implied immunity recognized in favor of the President who is made respondent thereto? May the President even assert his/her immunity against claims that he/she is ineligible for office in the first place? From this standpoint, it can be seen that the *ponencia's* position opens up a possibility of a constitutional crisis.

Another complication is the concurrent jurisdiction that this Court, the Court of Appeals (CA), and the Regional Trial Courts (RTC) have over *quo warranto* petitions. By allowing *quo warranto* proceedings against impeachable officers, the *ponencia*

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[68] Edsa I involved the overthrow of the whole Marcos government, while EDSA II involved the resignation of President Estrada and the succession of then Vice-President Arroyo, *supra* 65 at 44-45.

Supreme Court E-Library

grants an RTC judge or CA justices the power to order the removal of a Member of this Court. This could render ineffective the Court's constitutional power to discipline judges of lower courts[69] and result in the perversion of the doctrine of hierarchy of courts.

The *ponencia* distinguishes impeachment from *quo warranto* to justify a ruling that the pendency of one proceeding did not preclude the commencement of the other.[70] It reasons that "[i]t is not legally possible to impeach or remove a person from an office that he/she, in the first place, does not and cannot legally occupy."[71] In contract law terms, the *ponencia* likens an appointment nullified through a *quo warranto* writ to a contract that is void *ab initio*.

Nevertheless, the *ponencia* also acknowledges that "[t]he remedies available in **a *quo warranto* judgment do not include a correction or reversal of acts taken under the ostensible authority of an office** or franchise. **Judgment is limited to the ouster or forfeiture** and may not be imposed retroactively upon prior exercise of official or corporate duties."[72] The result of a *quo warranto* judgment is therefore no different from a judgment of conviction in an impeachment: the removal of the public officer.[73] In both cases, the acts of the ousted officer remain valid on account of his/her ostensible authority. Thus, there is no significance in making a distinction between the two proceedings when the result and practical effect of both is the same. I explain more of these in Part D of this Dissent and why, despite the clear overlap between *quo warranto* and impeachment, it is the latter proceeding that must prevail.

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[69] CONSTITUTION, Article VIII, Section 11.

[70] *Ponencia*, p. 52.

[71] *Id*. at 55.

[72] *Ibid*. Emphasis supplied.

[73] CONSTITUTION, Article XI, Section 3(7).

C.2 The review of the qualifications of impeachable officials is precisely the function of the PET, the ComAppt, and the JBC

Under Section 4, Article VII of the Constitution, the PET is the sole judge of all contests relating to the election, returns, and *qualifications* of the President or Vice-President. The creation of the PET is necessitated by the fact that there is no body that conclusively passes upon the qualifications of presidential and vice-presidential candidates. The Comelec initially reviews the candidates's qualifications when it receives their certificates of candidacy (*CoCs*) for these positions, but this review is not binding particularly since the Comelec only has a ministerial duty of receiving the CoCs.[74]

Along the same lines, the Constitution has tasked the Judicial and Bar Council (*JBC*) and the ComAppt to perform a similar function with respect to appointees to the other constitutional offices, specifically, the JBC for the Members of the Supreme Court[75] and the Ombudsman,[76] and the ComAppt for the Chairmen and Commissioners of the CSC, the Comelec, and the COA.[77] Indeed, the JBC's nominations and the ComAppt's confirmations are critical for the exercise of the President's appointment power that their absence or disregard renders the appointment invalid.

Corollary, the JBC and the ComAppt's functions serve as a check on the exercise of the President's appointing power. The JBC, in particular, is an innovation of the 1987 Constitution to remove, if not diminish, the highly political nature of

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[74] OMNIBUS ELECTION CODE, Section 76.

[75] CONSTITUTION, Article VIII, Section 9.

[76] CONSTITUTION, Article XI, Section 9.

[77] CONSTITUTION Article IX-B, Section 1(2), Article IX-C, Section 1(2), and Article IX-D, Section 1(2), respectively.

Supreme Court E-Library

presidential appointments.[78] This Court, in *De Castro v. JBC*,[79] noted that

> [t]he experience from the time of the establishment of the JBC shows that even candidates for judicial positions at any level backed by people influential with the President could not always be assured of being recommended for the consideration of the President, because **they first had to undergo the vetting of the JBC and pass muster there**. [emphasis supplied]

In constituting the PET, the JBC, and the ComAppt, the framers of the Constitution intended that there be a "vetting agency" in charge of reviewing the eligibility and qualifications of those elected as President and Vice-President, and those appointed to the other constitutional offices. The determination of an elected candidate or an appointee's eligibility and qualification is therefore primarily a function that the Constitution decreed is to be discharged by the PET, the JBC, and the ComAppt. We said as much in *Jardeleza v. Sereno*[80] with respect to the JBC's role:

> The purpose of the JBC's existence is indubitably rooted in the categorical constitutional declaration that "[a] member of the judiciary must be a person of proven competence, integrity, probity, and independence." To ensure the fulfillment of these standards in every member of the Judiciary, **the JBC has been tasked to screen aspiring judges and justices, among others, making certain that the nominees submitted to the President are all qualified and suitably best for appointment.** In this way, the appointing process itself is shielded from the possibility of extending judicial appointment to the undeserving and mediocre and, more importantly, to the ineligible or disqualified. [emphasis supplied]

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[78] See *Chavez v. JBC*, 709 Phil. 478,485-486 (2013).

[79] 629 Phil. 629, 697 (2010).

[80] 741 Phil. 492 (2014).

Indeed, both the JBC[81] and the ComAppt[82] have provided in their respective rules the means by which to ascertain an applicant's qualification in order for them to fulfill their respective mandates. As far as possible, their screening process is made comprehensive and rigorous to ensure that not only the qualified but also the best applicant for the position is nominated or confirmed. Again, with respect to the JBC, this Court stated in *Jardeleza* that:

> The JBC then takes every possible step to verify an applicant's track record for the purpose of determining whether or not he is qualified for nomination. It ascertains the factors which entitle an applicant to become a part of the roster from which the President appoints.[83]

At this point, I would like to inject a realistic perspective on appointments to constitutional offices. Appointments to this Court, the Constitutional Commissions, and the Office of the Ombudsman are matters of public concern and generate a significant amount of public interest and media coverage. Under the screening procedure adopted by the JBC and the ComAppt, applicants to these positions are subjected to intense scrutiny by the members of these bodies, the stakeholders, and the media. A premise that an appointee has *grave and serious* eligibility issues that may be uncovered only after his/her nomination or confirmation and assumption to office so as to justify allowing *quo warranto* proceedings against the impeachable officers blissfully disregards the above reality. That the vetting agency may have failed in one instance to do its job does not warrant opening up a whole new remedy to rectify the error.

Of course, it is probable that an ineligible appointee to these high-ranking positions can slip through the vetting process. If, as I propose, a *quo warranto* proceeding is not available

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[81] See JBC No. 2016-01 or the Revised Rules of the Judicial and Bar Council.

[82] See New Rules of the Commission of Appointments and the Rules of Standing Committees.

[83] *Supra* note 80 at 505.

Supreme Court E-Library

against an appointive impeachable officer, are we bereft of any remedy or recourse against the officer who was able to slip through the cracks in the constitutional design? The answer obviously is no. The remedy lies in the existing review mechanisms provided by the Constitution as part of the system of checks and balance.

If, for example, the nomination or confirmation was made notwithstanding the JBC or the ComAppt's knowledge of the ineligibility or ground for disqualification, a *certiorari* petition may be resorted to invoking, not the *certiorari* jurisdiction under Section 5(1), Article VIII of the Constitution, but the expanded power of judicial review under the second paragraph of Section 1, Article VIII of the Constitution.[84] The petition should implead the JBC or the ComAppt, as the case may be, since the central issue is whether or not the agency committed grave abuse of discretion amounting to lack or excess of jurisdiction for nominating or confirming an ineligible appointee. A *certiorari* petition against the vetting agency or the appointing authority does not violate the rule that title to public office may not be contested, except directly, by *quo warranto* proceedings.[85] The Court has already explained the distinction between the two proceedings in *Aguinaldo v. Aquino*.[86]

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[84] *Id*. at 491.

[85] *Topacio v. Ong*, 595 Phil. 491, 503 (2008).

[86] *Aguinaldo v. Aquino*, G.R. No. 224302, November 29, 2016, where the Court declared:

In *Topacio*, the writs of *certiorari* and prohibition were sought against Sandiganbayan Associate Justice Gregory S. Ong on the ground that he lacked the qualification of Filipino citizenship for said position. In contrast, the present Petition for *Certiorari* and Prohibition puts under scrutiny, not any disqualification on the part of respondents Musngi and Econg, but the act of President Aquino in appointing respondents Musngi and Econg as Sandiganbayan Associate Justices without regard for the clustering of nominees into six separate shortlists by the JBC, which allegedly violated the Constitution and constituted grave abuse of discretion amounting to lack or excess of jurisdiction. This would not be the first time that the Court, in the exercise of its expanded power of judicial review, takes cognizance of a petition for *certiorari* that challenges a presidential appointment for being unconstitutional or for having been done in grave abuse of discretion.

This Court may also review the JBC's acts pursuant to its supervisory authority over the Council[87] to determine whether or not JBC complied with the laws and rules.[88] Relatedly, the *ponencia* claims that the Court, while "*[w]earing its hat of supervision*,"[89] is "empowered to inquire into the processes leading to [the] respondent's nomination for the position of Chief Justice x x x and to determine whether, along the line, the JBC committed a violation x x x."[90] To me, it seems rather odd for the Court to exercise its supervisory power over the JBC *in a quo warranto proceeding*, all the more so when *the JBC itself was not impleaded in the case*.

Assuming that the ground for disqualification is discovered only after the applicant has been nominated or confirmed and has already assumed office, then resort may be had through that ultimate process of exacting accountability from the highest officials of our land: *impeachment*.

D. Impeachment is the remedy to unseat ineligible appointees to the constitutional offices

Impeachment is essentially a measure to exact accountability from a public officer.[91] As the *ponencia* puts it, impeachment is "a political process meant to vindicate the violation of a public's trust."[92]

The impeachable offenses are limited to six: culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, and betrayal of public trust.[93] Treason, bribery,

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[87] CONSTITUTION, Article VIII, Section 8(1).

[88] *Supra* note 80 at 489-490.

[89] *Ponencia*, p. 82.

[90] *Id*.

[91] After all, it is placed under Article XI of the Constitution on "Accountability of Public Officers."

[92] *Ponencia*, pp. 48-49.

[93] CONSTITUTION, Article XI, Section 2.

Supreme Court E-Library

graft and corruption are easily understandable concepts particularly when we refer to relevant statutory provisions, but culpable violation of the Constitution, other high crimes, and betrayal of public trust all elude precise definition.[94] In fact, the last ground – betrayal of public trust – was deemed to be a catch-all phrase to cover any misconduct involving breach of public trust.[95] Thus, the determination of what acts (or omissions) may constitute an impeachable offense is one of the few purely political questions that is left to Congress' determination and is beyond the pale of judicial review.

Nevertheless, it is neither improbable nor illogical to suppose that a public officer's ineligibility for office (whether for lack of qualification or possession of grounds for disqualification) can be considered an act which constitutes an impeachable offense. The *ponencia* itself recognizes this.[96] Although "culpable violation of the Constitution," "other high crimes," and "betrayal of public trust" escape precise definitions, their common denominator is that they "obviously pertain to 'fitness for public office.'"[97] Thus, it can be said that a public officer who does not possess the minimum constitutional qualifications for the office commits a violation of the Constitution that he/she has sworn to uphold or, at the very least, betrays the public trust when he/she assumes the position without the requisite eligibility. **Impeachment then becomes the mode by which we exact accountability from the public officer who assumes a constitutional office notwithstanding his/her ineligibility.**

When an appointive impeachable officer is alleged to be ineligible, it makes no sense to distinguish between an impeachment proceeding and a *quo warranto* proceeding because the latter proceeding is subsumed in the former. After all,

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[94] *Supra* note 2 at 913.

[95] Vol. II, Records of the Constitutional Commission, p. 272.

[96] *Ponencia*, p. 65.

[97] *J.* Vitug's Separate Opinion in *Francisco v. House of Representatives*, *supra* note 2 at 958-959.

"**qualifications for public office are *continuing requirements*** and must be possessed not only at the time of appointment or assumption of office but during the officer's entire tenure."[98] If a public officer was ineligible upon assumption of office (either upon appointment or upon election), then he/she carries this ineligibility throughout his/her tenure and is unfit to continue in office. **Thus, an appointive impeachable officer who fails to meet the constitutional qualifications in the first place also commits an act that may amount to an impeachable offense.**

Consider the usual example of an impeachable public officer who, during his/her incumbency, is discovered to be holding foreign citizenship. That the public officer is able to cure or rectify his/her ineligibility (*e.g.*, by renouncing the foreign citizenship) is of no moment, as he/she had already committed an act that may amount to an impeachable offense by assuming a public office without the requisite constitutional qualification. Therefore, any attempt to determine which proceeding to commence based on when the ground for disqualification or ineligibility existed[99] is irrelevant.

From this perspective, **there clearly exists an overlap between impeachment and *quo warranto* when the ground pertains to the public officer's ineligibility**. If illustrated, *quo warranto* would be the small circle fully enclosed within the bigger impeachment circle, their common element being the impeachable officer's ineligibility, whether continuing or not. Indeed, this is precisely the situation for the respondent.

The first article in the Articles of Impeachment charges the respondent with culpable violation of the Constitution and/or betrayal of public trust for non-filing and non-disclosure of her Sworn Statements of Assets, Liabilities and Net Worth (*SALN*).[100] Allegedly, this act/omission proves that she is not

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[98] *Frivaldo v. Comelec*, 255 Phil. 934, 944 (1989).

[99] *Ponencia*, p. 77.

[100] Respondent's *Ad Cautelam* Manifestation/Submission, Annex 25 – Resolution setting forth the Articles of Impeachment against Supreme Court Chief Justice Ma. Lourdes P.A. Sereno, pp. 16-17.

Supreme Court E-Library

of proven integrity and is thus ineligible for the position of Chief Justice.[101] This same ineligibility is the ground raised by the SolGen in the present *quo warranto* petition. Inasmuch as the ground for the *quo warranto* may be (and is in fact) raised also as ground for impeachment, it is the latter proceeding that should prevail.

D.1 This Court is precluded from assuming jurisdiction because Congress has primary jurisdiction

Even supposing that I am not averse to this Court having *quo warranto* jurisdiction over impeachable officers, I believe **this Court is still precluded from assuming jurisdiction based on the doctrine of primary jurisdiction.** Although the doctrine is primarily within the realm of administrative law,[102] it may be applied by analogy in this case.

The matter of the respondent's ineligibility is already before the Congress as one of the charges in the Articles of Impeachment. The House Committee on Justice overwhelmingly ruled, by a vote of 33-1, in favor of finding probable cause to impeach the respondent. The Articles of Impeachment have been transmitted to the Committee on Rules so that the matter may be calendared and submitted to the plenary for its vote. That it is speculative whether the respondent may be held accountable because no impeachment has yet taken place[103] is beside the point. The impeachment proceeding has commenced,[104] and Congress has taken cognizance thereof with its finding of probable cause. Thus, it behooves this Court to exercise judicial restraint and accord respect to the processes that the Constitution has lodged

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[101] *Id*., pp. 14-16.

[102] *Lim v Gamosa*, 774 Phil. 31, 48 (2015).

[103] *Ponencia*, p. 69.

[104] In accordance with the ruling in *Francisco v. House of Representatives*, *supra* note 2 at 932-933.

within the powers of a co-equal department. The impeachment proceedings should be allowed to take its due course.

For this Court to assume jurisdiction over *quo warranto* proceedings against an appointive impeachable officer would be to effectively deny Congress's exclusive authority over impeachment proceedings. As the *ponencia* itself acknowledged, both impeachment and *quo warranto* proceedings result in the removal from office of the public officer. A successful *quo warranto* petition resulting in the ouster of the public officer would therefore render any further impeachment proceeding futile. By assuming jurisdiction, this Court would commit an impermissible interference with Congress' power to hold a public officer accountable and to remove him/her for failure to live up to the oath of upholding and defending the Constitution.

D.2 Impeachment is the delicate mechanism provided by the Constitution to balance compelling interests

Between a *quo warranto* proceeding and an impeachment proceeding available as remedies against an appointive impeachable officer who is alleged not to possess the required constitutional qualifications for his/her office, the choice is an easy one to make. In our scheme of constitutional values, the separation of powers, the independence of constitutional bodies, and the system of checks and balance are placed on a higher plane. Precisely in order to uphold these principles, the framers have provided a strict, difficult, and cumbersome process in the Constitution for their removal from office. The *ponencia* turns constitutional logic in its head by justifying resort to *quo warranto* because impeachment is a long and arduous process that may not warrant Congress' time and resources particularly when the respondent public officer "*may clearly* be unqualified under existing laws and case law."[105] A *quo warranto* proceeding against an impeachable officer thus becomes nothing more than an impermissible short cut.

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[105] *Ponencia*, p. 66. Emphasis mine.

Supreme Court E-Library

Impeachment is the delicate balancing act the Constitution has put in place to ensure two compelling interests are promoted: the need to guarantee the independence of constitutional bodies in the discharge of their mandate on one hand, and the need to enforce accountability from public officers who have failed to remain faithful to their oath to uphold and defend the Constitution on the other. Throwing *quo warranto* into the milieu unsettles the constitutional design and may ultimately end up throwing off the system that the Constitution has put in place.

In instituting this *quo warranto* proceeding, the SolGen urges this Court to take the road not taken. I am not inclined to take part in any constitutional adventurism, and I intend to remain within the clearly confined course that the framers of our Constitution have delineated.

For these reasons, I vote to **DISMISS** the petition.

SEPARATE OPINION

PERLAS-BERNABE, *J.*:

At the core of this matter is our touchstone of integrity. Inasmuch as it puts into issue respondent's personal integrity, this case of first impression raises novel questions of law which test the integrity of the Judiciary as an institution. Amidst its theoretical complexity and the controversy surrounding the same, my principles stand firm: while authority may be indeed wrested from the ineligible, things must be done in accordance with the prevailing constitutional order.

I.

For the first time in our nation's history, a petition for *quo warranto*[1] has been filed by the Solicitor General (also referred to as the Office of the Solicitor General [OSG]) directly before this Court seeking to oust one of its members, let alone its

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[1] See Petition dated March 2, 2018.

head, the Chief Justice, an impeachable official. Briefly stated, the thesis of the Solicitor General is as follows: respondent Maria Lourdes P. A. Sereno (respondent) – appointed by former President Benigno S. Aquino III as the 24th Chief Justice of the Supreme Court of the Philippines[2] – is not qualified to hold such post and therefore, should be ousted, because she is not a person of "proven integrity" in view of her failure to file – as well as to submit before the Judicial and Bar Council (JBC or the Council) – her Statement of Assets, Liabilities, and Net Worth (SALN) as prescribed by law.

The OSG's postulate rests on Section 7 (3), Article VIII of the 1987 Constitution, which states that "[a] **Member of the Judiciary** must be a person of **proven** competence, **integrity**, probity, and independence."[3] As worded, the requirement of "integrity" applies not only to magistrates of the High Court but generally, to all members of the Judiciary. In *Samson v. Caballero*,[4] the Court characterized integrity as "[t]he most fundamental qualification of a member of the [J]udiciary."[5]

However, "**integrity**" **– same as** "**competence**," "**probity**," **and** "**independence**" **– remains to be an innately subjective term**. Notably, the Constitution itself does not provide for an exact definition of the term "integrity." In our jurisprudence, "integrity" has been amorphously described as "**the quality of [a] person's character**";[6] it is "closely related to, or if not, approximately equated to an applicant's good reputation for honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards."[7] Meanwhile, the New

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[2] <http://jbc.judiciary.gov.ph/index.php/about-the-jbc/jbc-members/58> (visited May 9, 2018).

[3] Emphases and underscoring supplied.

[4] 612 Phil. 737 (2009).

[5] *Id*. at 746.

[6] *Jardeleza v. Sereno*, 741 Phil. 460, 496 (2014); emphasis supplied.

[7] *Id*. at 495.

Supreme Court E-Library

Code of Judicial Conduct for the Philippine Judiciary[8] only states:

CANON 2
INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

Section 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

Section 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Section 3. Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

While it is true that integrity is "not a new concept in the vocation of administering and dispensing justice,"[9] nor a "complex concept necessitating esoteric philosophical disquisitions to be understood,"[10] the fact remains that the interpretation of what constitutes integrity – more so, as a qualification for nomination to a judgeship post – is fundamentally relative and at times, arbitrary. In this relation, it may not be amiss to point out that the Constitution itself qualifies that these virtues need not only reside in a person, but they must also be "proven:" "[i]f something is proven, it has been shown to be true."[11] To be "proven" is "to subject to a test, experiment, comparison, analysis, or the like, to determine quality, amount, acceptability, characteristics, *etc*."; "to show

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[8] A.M. No. 03-05-01-SC, promulgated on April 27, 2004.

[9] *Ponencia*, p. 1.

[10] *Id*.

[11] <https://dictionary.cambridge.org/us/dictionary/learner-english/proven> (visited May 5, 2018).

(oneself) to have the character or ability expected of one, especially through one's actions."[12]

This being so, one is then bound to discern: in "proving" one's integrity, what do we look for in a person? How does one say that a candidate has proven his or her integrity to be qualified for the position? Ultimately, against what rubric of values and principles do we judge him or her? The literature on the subject matter muses:

> Is judicial integrity a norm? The debates on judicial integrity seem to suggest that integrity is a norm that can be violated. In the debates on safeguarding integrity, it seems to be a kind of overriding principle, which governs professional ethics for judges. But is integrity then, as Simon Lee once put it, merely '**a catch-all for more or less everything that is good in judicial thought**,' **or is there more to it**?[13] (Emphasis and underscoring supplied)

Thus, is integrity – as the *ponencia* aims to impress – as simple as "[a] qualification of being honest, truthful, and having steadfast adherence to moral and ethical principles";[14] of being "consistent – **doing the right thing in accordance with the law and ethical standards [every time]**"?[15] If so, then should a person – as was somewhat sardonically interjected during the oral arguments[16] – caught cheating during college or in law school be already disqualified to become a judge? How about someone who mistakenly inputs the actual valuation of his or her property in a tax return, or misses a few payments on due and demandable government exactions? Do we ban for appointment someone who had, once or twice, given in to sexual

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[12] <http://www.dictionary.com/browse/proven> (visited May 2, 2018).

[13] Soeharno, *J.*, (2007). *Is judicial integrity a norm? An inquiry into the concept of judicial integrity in England and the Netherlands*. Utrecht Law Review. 3 (1), p. 22. DOI: <http://doi.org/10.18352/ulr.34> (visited May 2, 2005).

[14] *Ponencia*, pp. 1-2.

[15] *Id.*; emphasis and underscoring supplied.

[16] See TSN, April 10, 2018, pp. 199-201.

Supreme Court E-Library

infidelity or had, at one point in time, an extramarital affair? Do we look at frequency or gravity? If so, then how frequent, or how grave should the misdemeanor be?

With all these in mind, ***is the determination of "integrity" really then that simple?*** *Do we account for* ***context, depth, and perception?*** *Do we give leeway for* ***acts of remorse or reformation?*** *Do we factor in the person's* ***"good faith"*** *or examine* ***the difficulty of a particular legal question?*** In the final analysis, the jarring question is that: ***in our appreciation of a person befitting of the office of a judge, do we demand perfection?***

Truly, because of its inherently subjective nature, the determination of "integrity," as well as such similar qualifications, is easily susceptible to varied interpretation. As illustrated above, there are multifarious factors that go into the determination of the subjective qualifications of a judge. Thus, there lies the need of a central authority that would, among others, standardize the criteria to determine whether or not a person possesses these subjective qualifications and hence, render him or her eligible for appointment to the Judiciary. By deliberate constitutional design, this central authority is no other than the JBC.

In *Jardeleza v. Sereno (Jardeleza)*,[17] this Court declared that: "**[t]he purpose of the JBC's existence is indubitably rooted in the categorical constitutional declaration that '[a] member of the judiciary must be a person of proven competence, integrity, probity, and independence**.'"[18] Section 8 (5), Article VIII of the 1987 Constitution mandates that "[t]he [Judicial and Bar] Council shall have the principal function of recommending appointees to the Judiciary." In line with its mandate, the JBC is necessarily tasked to "screen aspiring judges and justices, among others, **making certain that the nominees submitted to the President are all qualified** and suitably best for appointment. In this way, the appointing process itself is

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[17] *Supra* note 6.

[18] *Id*. at 492; emphasis and underscoring supplied.

shielded from the possibility of extending judicial appointment to the undeserving and mediocre and, **more importantly, to the ineligible or disqualified**."[19]

In *Villanueva v. Judicial and Bar Council* (*Villanueva*),[20] the Court held that the JBC's "**discretion is freed from legislative, executive or judicial intervention to ensure that [it] is shielded from any outside pressure and improper influence**."[21] Tracing its genesis, the creation of a "separate, competent and independent body to recommend nominees to the President" was "[p]rompted by the clamor to rid the process of appointments to the Judiciary [of the evils of] political pressure and partisan activities."[22] As explained in the constitutional deliberations, the Council was institutionalized to ensure that judges and justices will be chosen for their confidence and their moral qualifications, rather than based on favor or gratitude to the appointing power, *viz*.:

> MR. CONCEPCION: The Judicial and Bar Council is no doubt an innovation. But it is an innovation made **in response to the public clamor in favor of eliminating politics in the appointment of judges**.
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> MR. COLAYCO: x x x
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> x x x x x x x x x
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> Third, the Commission on Appointments is not as sincere in its mission to censor the qualifications of the appointees to the Judiciary as has been mentioned by the Honorable Rodrigo because many appointees who had to pass through the Commission on Appointments were witnesses to the fact that some members of the Commission on Appointments had used it to force the appointments of other people as a compromise for the approval of those who have been already designated by the President. This was an open secret.

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[19] *Id*.; emphasis supplied.

[20] 757 Phil. 534 (2015).

[21] *Id*. at 556; emphasis supplied.

[22] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 188 (2012).

Supreme Court E-Library

So, we felt that **the creation of this Council would ensure more the appointment of judges and justices who will be chosen for their confidence and their moral qualifications, rather than to favor or to give something in return for their help in electing the President**.[23] (Emphases supplied)

As may be seen from the various provisions in the Constitution, the independence of the JBC is reified by the following features: ***first***, it is composed of representatives from various sectors such as the Executive, Legislative, and Judicial departments, as well as from the legal community and private sector;[24] ***second***, it is subject only to the supervision, not control, of the Court;[25] ***third***, the President can only appoint someone from among those included in the JBC's list of nominees and thus, acts as a check-and-balance on the Chief Executive;[26] and ***fourth***, the President's appointment based on the JBC's list no longer requires confirmation.[27]

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[23] I RECORD, CONSTITUTIONAL COMMISSION (July 14, 1986), pp. 487-488; emphases supplied.

[24] Section 8 (1), Article VIII of the 1987 CONSTITUTION states:

Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired member of the Supreme Court, and a representative of the private sector.

[25] *Id*.

[26] See Associate Justice Marvic M.V.F. Leonen's Separate Opinion in *Aguinaldo v. Aquino* III (*ponencia* on the MR) (G.R. No. 224302, February 21, 2017, 818 SCRA 310, 372-373), quoted in on pages 34-35 below.

[27] Section 9, Article VIII of the 1987 CONSTITUTION states:

Section 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. **Such appointments need no confirmation**.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list. (Emphasis supplied)

In order to fulfill its constitutional mandate, "**the JBC had to establish a set of uniform criteria in order to ascertain whether an applicant meets the minimum constitutional qualifications and possesses the qualities expected of him and his office**."[28] As earlier stated, while the Constitution requires that every member to be appointed to the Judiciary must be a person of proven competence, integrity, probity, and independence, there are no precise definitions for these terms. Thus, the JBC has to concretize these qualifications into operable standards, through demandable submissions and institutional checks; otherwise, their determination would be – as abovementioned – highly-subjective and more so, inexecutable because of their obscurity.

In the "whereas clauses" of the Rules of the Judicial and Bar Council (JBC-009)[29] – which were the guidelines that applied to respondent when she applied for the position of Associate Justice in 2010, as well as for the position of Chief Justice in 2012 – the JBC had explicitly recognized the difficulty of ascertaining these "virtues and qualities" in a person because they are "not easily determinable as they are developed and nurtured through the years";[30] nevertheless, the Council expressed that certain guidelines and criteria may be prescribed therefor:

> WHEREAS, the Council is thus vested with a delicate function and burdened with a great responsibility; **its task of determining who meets the constitutional requirements to merit recommendation for appointment to the Judiciary is a most difficult and trying duty because the virtues and qualities of competence, integrity, probity and independence are not easily determinable as they are developed and nurtured through the years**; and it is self-evident that, to be a good Judge, one must have attained sufficient mastery of the law and legal principles, be of irreproachable character and must possess unsullied reputation and integrity, should consider his office as a sacred public trust; and,

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[28] *Villanueva v. JBC, supra* note 20, at 549; emphasis supplied.

[29] (December 1, 2000).

[30] See 5th whereas clause, JBC-009.

Supreme Court E-Library

above all, he must be one whose loyalty to law, justice and the ideals of an independent Judiciary is beyond doubt;

x x x x x x x x x

WHEREAS, while it is **not possible or advisable to lay down ironclad rules** to determine the fitness of those who aspire to become a Justice, Judge, Ombudsman or Deputy Ombudsman, **certain guidelines or criteria may be prescribed to ascertain if one seeking such office meets the minimum constitutional qualifications and possesses qualities of mind and heart expected of a member of the Judiciary, or an Ombudsman or Deputy Ombudsman**[.] (Emphases and underscoring supplied)

In *Villanueva*, this Court characterized the JBC's authority to set these standards as one which is **flexible**.[31] Accordingly, this mirrors the JBC's observation in JBC-009 that it is "not possible or advisable to lay down ironclad rules to determine the fitness of those who aspire to become a Justice [or] Judge."[32] In the same case, this Court described the JBC's "license to act" as "**sufficient**" but nonetheless, exhorted that the same is "**not unbridled**:"

The functions of searching, screening, and selecting are necessary and incidental to the JBC's principal function of choosing and recommending nominees for vacancies in the judiciary for appointment by the President. However, the Constitution did not lay down in precise terms the process that the JBC shall follow in determining applicants' qualifications. **In carrying out its main function, the JBC has the authority to set the standards/criteria in choosing its nominees for every vacancy in the judiciary, subject only to the minimum qualifications required by the Constitution and law for every position**. **The search for these long held qualities necessarily requires a degree of flexibility in order to determine who is most fit among the applicants**. Thus, the JBC has **sufficient but not unbridled** license to act in performing its duties.[33] (Emphases and underscoring supplied)

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[31] See *Villanueva v. JBC*, *supra* note 20, at 549.

[32] See 7th whereas clause, JBC-009.

[33] *Villanueva v. JBC*, *supra* note 20, at 549.

Moreover, the Court ruled that "the JBC has the authority to determine how best to perform [its] constitutional mandate."[34] In *Aguinaldo v. Aquino III* (*Aguinaldo*),[35] it was further declared that "[t]he JBC, as a constitutional body, enjoys independence, and as such, it may change its practice from time to time in accordance with its wisdom."[36]

In view of the JBC's independence and integral role under the Constitution, it can therefore be concluded that ***the interpretation, treatment, and application of its guidelines and criteria set to determine the subjective qualifications of a Judiciary candidate are – as will be further expounded below – policy matters that are solely within its sphere of authority and hence, generally non-justiciable, absent any showing of grave abuse of discretion***.

II.

Rule 4 of JBC-009 prescribes the guidelines and criteria in determining the integrity of candidates who, among others, applied for the position of Chief Justice in 2012:

RULE 4
INTEGRITY

Section 1. *Evidence of integrity*. – The Council shall **take every possible step** to **verify** the applicant's **record of and reputation for honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards**. For this purpose, the applicant shall submit to the Council certifications or testimonials thereof from reputable government officials and non-governmental organizations, and clearances from the courts, National Bureau of Investigation, police, and from such other agencies as the Council may require.

Section 2. *Background check*. – The Council may **order a discreet background check on the integrity, reputation and character of**

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[34] *Id*. at 556.

[35] *Supra* note 26.

[36] *Id*. at 321.

Supreme Court E-Library

the applicant, and receive feedback thereon from the public, which it shall **check or verify to validate** the merits thereof.

Section 3. *Testimony of parties*. – The Council may receive **written opposition** to an applicant on ground of his moral fitness and [in] its discretion, the Council may receive the testimony of the oppositor at a hearing conducted for the purpose, with due notice to the applicant who shall be allowed to cross-examine the oppositor and to offer countervailing evidence.

Section 4. *Anonymous complaints*. – **Anonymous complaints** against an applicant shall not be given due course, unless there appears on its face a probable cause sufficient to engender belief that the allegations may be true. In the latter case the Council may either direct a discreet investigation or require the applicant to comment thereon in writing or during the interview.

Section 5. *Disqualification*. – The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman or Deputy Ombudsman:

1. Those with pending criminal or regular administrative cases;

2. Those with pending criminal cases in foreign courts or tribunals; and

3. Those who have been convicted in any criminal case; or in an administrative case, where the penalty imposed is at least a fine of more than ₱10,000, unless he has been granted judicial clemency.

Section 6. *Other instances of disqualification.* – Incumbent judges, officials or personnel of the Judiciary who are facing administrative complaints under informal preliminary investigation (IPI) by the Office of the Court Administrator may likewise be disqualified from being nominated **if, in the determination of the Council, the charges are serious or grave** as to affect the fitness of the applicant for nomination.

For purposes of this Section and of the preceding Section 5 insofar as pending regular administrative cases are concerned, the Secretary of the Council shall, from time to time, furnish the Office of the Court Administrator the name of an applicant upon receipt of the application/recommendation and completion of the required papers; and within ten days from the receipt thereof the Court Administrator shall report in writing to the Council whether or not the applicant is facing a regular administrative case or an IPI case and the status

thereof. In regard to the IPI case, the Court Administrator shall attach to his report copies of the complaint and the comment of the respondent. (Emphases and underscoring supplied)

As may be gleaned from the foregoing, the JBC entasked itself to "take every possible step to verify the applicant's record of and reputation for honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards."[37] Cogent with this objective, the JBC's determination of integrity was not confined solely to the documentary requirements submitted by the applicant before it; in fact, the guidelines show that the JBC implements a rigorous screening process, which includes the conduct of a discreet background check, as well as the receipt of written oppositions and anonymous complaints against a candidate, if any. Moreover, in its appreciation of what constitutes integrity, the JBC set certain grounds which would disqualify an applicant outright.

Pertinent to this case, a perusal of Rule 4 of JBC-009 shows that the candidate's submission of a SALN was not required for the JBC to assess an applicant's integrity. The submission of a SALN has, in fact, not been required in the present iteration of the JBC Rules.[38] However, as respondent herself points out, the JBC had separately required the submission of a SALN for the first time in 2009 for "candidates for appellate magistracy who were from the private sector"; and also, in February 2011, the JBC required the submission of the applicant's SALNs for the past two (2) years.[39]

Similarly, in its June 5, 2012[40] Announcement for applications to the position of Chief Justice *vice* former Chief Justice Renato

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[37] See Section 1, Rule 4, JBC-009.

[38] See the REVISED RULES OF THE JUDICIAL AND BAR COUNCIL (JBC No. 2016-01) (October 24, 2016).

[39] See Respondent's Memorandum *Ad Cautelam* dated April 20, 2018, p. 14, citing the Comment of then member of the JBC, Justice Aurora Santiago Lagman in A.M. Nos. 17-11-12-SC and 17-11-17-SC; Annex "24" of the *Ad Cautelam* Manifestation/Submission dated April 10, 2018.

[40] See Annex "H" of the Petition.

Supreme Court E-Library

C. Corona, the JBC directed all applicants in the government service to submit, in addition to the usual documentary requirements,[41] **all their previous SALNs (up to December 2011)**:

1. **[SALN]**
   a. for those in the government: all previous SALNs (up to 31 December 2011)
   b. for those from the private sector: SALN as of 31 December 2011
2. Waiver in favor of the JBC of the confidentiality of local and foreign bank accounts under the Bank Secrecy Law and Foreign Currency Deposits Act.[42]

The JBC's June 5, 2012 Announcement also included a note that "[a]pplicants with incomplete or out of date documentary requirements will not be interviewed or considered for nomination."[43]

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[41] The JBC's Announcement dated June 5, 2012 listed the usual documentary requirements, as follows: "[a]pplicants or recommendees must submit the following documents within fifteen (15) days from the aforementioned deadlines for submission of applications: [*a*] Clearances from the National Bureau of Investigation [(NBI)], Ombudsman, Integrated Bar of the Philippines [(IBP)], Police from place of residence, Office of the Bar Confidant [(OBC)], and employer[; *b*] Transcript of School Records[; *c*] Certificate of Admission to the Bar (with Bar rating) [; *d*] Income Tax Return for the past two (2) years[; *e*] Proofs of age and Filipino Citizenship[; *f*] Cert. of Good Standing or latest official receipt from the IBP[; *g*] Certificate of Compliance with, or Exemption from, Mandatory Continuing Legal Education [(MCLE)][; *h*] [SALNs] for the past two (2) years (for Legal Education Board [LEB] candidates)[; *i*] Certification as to the number of years in the teaching of law (for LEB candidates only)[; and *j*] Results of medical examination and sworn medical certificate with impressions on such results, both conducted/issued within 2 months prior to the filing of application[.]" (See *id*.)

[42] See also June 4, 2012 Announcement; Annex "G" of the Petition.

[43] See Annex "H" of the Petition.

When respondent applied for the position of Chief Justice in 2012, it is undisputed that she submitted, among others,[44] her SALNs **only for the years 2009, 2010, and 2011** which were filed while she was serving as Associate Justice of the Supreme Court.[45] Nonetheless, it appears that respondent was not the only one who failed to completely comply with the said requirement.

Records show that a number of respondent's co-applicants for the same position in 2012 were similarly unable to submit all their previous SALNs while in government service. This was reflected in the "matrix" contained in the July 20, 2012 Report[46] of the JBC's Office of the Recruitment, Selection and Nomination (ORSN), which data may be tabulated as follows:[47]

Candidate for the position of Chief Justice of the Supreme Court	*Years in government service*	*Number of SALNs submitted to the JBC*
Abad, Roberto A.	21	6
Bautista, Andres B.	6	3
Brion, Arturo D.	22	10
Cagampang-De Castro, Soledad M.	9	1
Carpio, Antonio T.	16	14
De Lima, Leila M.	11	6

[44] Respondent also allegedly submitted to the JBC, as evidence of her integrity, these certifications from various government agencies: the OBC, the IBP, the NBI, the Cainta Police Station, and the Office of the Ombudsman to evince that she had no pending criminal or administrative case (See Comment *Ad Cautelam* dated March 16, 2018, p. 7 and respondent's Memorandum *Ad Cautelam*, p. 16).

[45] See Petition, p. 6. See also Annex "E" of the Petition.

[46] See Annex "37" of Respondent's Memorandum *Ad Cautelam.*

[47] See also Respondent's Memorandum *Ad Cautelam*, pp. 18-19.

Supreme Court E-Library

Legarda, Maria Carolina T.	9	1
Leonardo-De Castro, Teresita J.	39	15
Pangalangan, Raul C.	28	8
Sarmiento, Rene V.	22	1
Sereno, Maria Lourdes P.A.	22	3
Siayngco, Manuel DJ.	25	18
Valdez, Amado D.	13	1
Zamora, Ronaldo B.	43	1

Despite the JBC's note regarding the submission of incomplete or out of date documentary requirements, records bear out that the JBC nonetheless adopted a policy of substantial compliance, at least with respect to the SALN requirement. The Minutes of the JBC's July 20, 2012 *En Banc* Meeting[48] disclose that the JBC deliberated on the matter regarding the non-submission of complete SALNs and in this relation, took into consideration, *inter alia*, the fact that certain candidates expressed difficulties in locating all their previous SALNs, much more timely producing them for submission to the Council.[49] Also, in the July 20, 2012 Minutes, it has been indicated that the following candidates were deemed to have "**substantially complied**" with the SALN requirement despite their failure to submit all their SALNs: Retired Associate Justices Roberto A. Abad and Arturo D. Brion, Senior Associate Justice Antonio T. Carpio, Associate Justice Teresita J. Leonardo-De Castro, and former Department of Justice Secretary Leila M. De Lima.[50]

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[48] Annex "18" of Respondent's Comment *Ad Cautelam*.

[49] See the July 20, 2012 Minutes as to the discussions on Justice Abad and Dean Pangalanan's respective cases; Annex "18" of Respondent's Comment *Ad Cautelam*, pp. 8-9 and 11. See also Respondent's Memorandum *Ad Cautelam*, pp. 19-20.

[50] See Annex "18" of Respondent's Comment *Ad Cautelam*, pp. 8-11 and Respondent's Memorandum *Ad Cautelam*, pp. 18-19. As to Dean Raul C. Pangalanan's case: while the July 20, 2012 Minutes indicated that Justice

As regards respondent, the JBC noted that she had not submitted her SALNs for a period of ten (10) years from 1986 to 2006, when she was employed in the University of the Philippines (UP) College of Law.[51] As such, the JBC inquired[52] as to her SALNs for the years 1995 to 1999, to which she responded with a **Letter**[53] **dated July 23, 2012**, stating that, "[c]onsidering that most of [her] government records in the academe are more than fifteen years old, **it is reasonable to consider it infeasible to retrieve all of those files**,"[54] and that nevertheless, UP had already cleared her of all academic and administrative accountabilities as of June 1, 2006.[55] However, as petitioner points out, there is no showing that respondent's request was ever approved by the JBC.[56]

This notwithstanding, the JBC included respondent's name in the August 13, 2012 shortlist[57] of qualified nominees for the Chief Justice position submitted to the President. The shortlisted candidates (vis-à-vis their votes received, as well as the status of their compliance with the SALN requirement) were:

Lagman moved that his submission of his SALNs be considered substantial compliance, said record was silent on the action taken on the said motion (see Annex "18" of Respondent's Comment *Ad Cautelam*, p. 11).

[51] See Annex "18" of Respondent's Comment *Ad Cautelam*, p. 11. See also Respondent's Memorandum *Ad Cautelam*, p. 21.

[52] Through a phone call by Judge Richard O. Pascual, then Chief of Office of the ORSN-JBC. See Respondent's Memorandum *Ad Cautelam*, pp. 14 and 22.

[53] See Annex "11" of Respondent's Comment *Ad Cautelam*.

[54] *Id*.; emphasis supplied.

[55] *Id*.

[56] See OSG's Memorandum dated April 20, 2018, p. 7.

[57] See Annex "17" of Respondent's Comment *Ad Cautelam*.

Supreme Court E-Library

Short-listed candidate for the position of Chief Justice of the Supreme Court	*Votes received from the JBC*[58]	*Remark on compliance with JBC's requirement to submit all SALNs*[59]
1. Carpio, Antonio T.	7 votes	Substantially complied
2. Abad, Roberto A.	6 votes	Substantially complied
3. Brion, Arturo D.	6 votes	Substantially complied
4. Jardeleza, Francis H.	6 votes	Complied
5. Sereno, Maria Lourdes P.A.	6 votes	No explicit mention that she substantially complied. However, there is a note that "[t]he Executive Officer informed the Council that she had not submitted her SALNs for a period of ten (10) years, that is, from 1986 to 2006."[60]
6. Zamora, Ronaldo B.	6 votes	Lacking SALNs and MCLE certificate
7. Leonardo-De Castro, Teresita J.	5 votes	Substantially complied
8. Villanueva, Cesar L.	5 votes	Lacking requirements

As it turned out, respondent was appointed[61] by President Aquino III as Chief Justice of the Supreme Court on August 24,

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[58] See *id*.

[59] See Annex "18" of the Comment *Ad Cautelam*, pp. 8-11.

[60] In the ORSN Report dated July 24, 2012, it was indicated that respondent has submitted "complete requirements" with notation "Letter 7/23/12 – considering that her government records in the academe are more than 15 years old, it is reasonable to consider it infeasible to retrieve all those file[s]." (see Annex "38" of Respondent's Memorandum *Ad Cautelam).*

[61] See Annex "K" of the Petition.

2012.[62] Five (5) years after, or on August 30, 2017, an impeachment complaint was filed[63] against her; and later on, the present *quo warranto* petition.

III.

As above-mentioned, the Solicitor General disputes the eligibility of respondent through this petition for *quo warranto*, claiming that she is not a person of "proven integrity" because she had not only failed to submit all her SALNs as required by the JBC, but more so, failed to file her SALNs in accordance with law.[64] The OSG even paints a picture of misrepresentation as it further argues that respondent had the legal obligation to disclose her failure to file her SALNs at least eleven (11) times, and that had she informed the Council of such fact then she should not have been included in the shortlist in the first place.[65] In this relation, the OSG discussed the relevance of faithfully submitting one's SALN on the determination of a person's integrity:

> 132. The function of the SALNs as a measure of a person's integrity cannot be downplayed. As declared by the Court in *Jardeleza v. Sereno* [(supra note 5)], one facet of integrity is "fidelity to sound moral and ethical standards." If an applicant proves that she has performed her duty to file SALNs in accordance with the manner and frequency required by law, the JBC can use this to determine whether she possessed the integrity required of members of the Judiciary.
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> 137. Considering that the submission of correct SALNs is imposed by the Constitution, the Anti-Graft and Corrupt Practices Act (R.A. No. 3019)[[66]], and Code of Conduct and Ethical Standards for Public

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[62] For reference, respondent's inclusive years in government employment *vis-à-vis* the SALNs filed by her and available on record were tabulated on pages 6-8 of the *ponencia*.

[63] Petition, p. 7.

[64] See OSG's Memorandum, pp. 44 and 49.

[65] See *id*. at 46.

[66] See Section 7 of RA 3019 (August 17, 1960).

Supreme Court E-Library

Officials and Employees (R.A. No. 6713)[67], compliance with such legal obligation is an indispensable measure of the constitutional qualification of *integrity* under Section 7(3), Article VIII of the 1987 Constitution. Put differently, even without the JBC's requirement to submit SALNs as part of her application as Chief Justice, Respondent had the positive legal obligation to religiously file her SALNs and her failure to do so marred her integrity, rendering her unqualified for appointment in the Judiciary.[68]

While the OSG conveys valuable insights, it is my view that the determination of a candidate's "integrity" as a subjective qualification for appointment lies within the discretion of the JBC. As thoroughly discussed above, the JBC was created precisely to screen the qualifications of Judiciary candidates, and in line therewith, promulgates its own guidelines and criteria to ascertain the same. It should therefore be given the sole prerogative to determine the import of a requirement bearing on an applicant's subjective qualification (such as the submission of all SALNs for those in the government service) as it is after all, the authority who had imposed this requirement based on its own criteria for the said qualification.

Likewise, it is within the JBC's sphere of authority to determine if non-compliance with the legal requirements on the filing of SALNs – assuming that respondent had indeed failed to file her SALNs as prescribed by law – is *per se* determinative of one's lack of "proven integrity." While it is true that the 1987 Constitution states that "[a] public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth,"[69] it is not sufficiently clear

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[67] See Section 8 of RA 6713, entitled "AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES," approved on February 20, 1989.

[68] OSG's Memorandum, pp. 45-46.

[69] Section 17, Article XI of the 1987 CONSTITUTION.

that the solitary breach of this requirement would virtually negate one's integrity as a qualification for appointment to the Judiciary. According to jurisprudence, the filing of a public official's SALN is a measure of transparency that is "aimed particularly at curtailing and minimizing, the opportunities for official corruption and maintaining a standard of honesty in the public service."[70] In line with this policy to exact transparency, the non-submission of the SALN is penalized as a crime. It is, however – as the *ponencia* itself classifies – *malum prohibitum*, and not *malum in se*.[71] In *Dungo v. People*,[72] this Court explained that "[c]riminal law has long divided crimes into acts wrong in themselves called acts *mala in se*; and **acts which would not be wrong but for the fact that positive law forbids them, called acts *mala prohibita***."[73] As illumined by this Court, crimes which are classified as *mala prohibita* are to be distinguished from crimes that are *mala in se* in that the latter is inherently immoral or vile, while the former is not but is only penalized by reasons of public policy:

> The better approach to distinguish between *mala in se* and *mala prohibita* crimes is the determination of the inherent immorality or vileness of the penalized act. If the punishable act or omission is immoral in itself, then it is a crime *mala in se*; on the contrary, if it is not immoral in itself, but there is a statute prohibiting its commission by reasons of public policy, then it is *mala prohibita*. In the final analysis, whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the statute.[74]

Lest it be misunderstood, the foregoing characterization should not downplay the value of a SALN. As mentioned, it ought to

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[70] *Office of the Ombudsman v. Racho*, 656 Phil. 148, 160 (2011); citing *Carabeo v. Court of Appeals*, 622 Phil. 413, 429 (2009); further citing *Ombudsman v. Valeroso*, 548 Phil. 688, 698 (2007).

[71] *Ponencia*, p. 98.

[72] 762 Phil. 630 (2015).

[73] *Id*. at 658; emphasis and underscoring supplied.

[74] *Id*. at 659.

Supreme Court E-Library

be recognized as an important requirement in the overall scheme of measures designed to exact transparency from public officials pursuant to the State's policy on accountability. This notwithstanding, it remains questionable that the non-filing of one's SALN is, by and of itself, enough to discredit one's integrity, and in such regard, render ineligible an applicant to – much more, an already appointed member of – the Judiciary. Frankly speaking, ***there is simply both a lack of established authority, as well as rational soundness for this Court to adjudge – at least, at this point – that the non-filing of a SALN is on the plane of constitutional or ethical non-negotiables that ought to wipe out all good deeds, credentials, or acclaim which a Judiciary aspirant had worked so hard for all throughout his or her professional career***. Moreover, there may be numerous circumstances that could demonstrate the candidate's good faith, or reasons which would altogether justify his or her non-compliance with the SALN requirement. Without going into the merits, respondent asserts the following defenses:

3.90 In sum, the facts and circumstances in this case show that, independent of the presumption of innocence and regularity, the Chief Justice had, **in fact**, been **complying** with her duties and obligations under the applicable SALN laws. That said, there were actually periods during her stint with the U.P. College of Law when she was **not even required** to file a **SALN**.

3.90.1. Section 8(A), R.A. No. 6713 provides that those serving in an "honorary capacity, laborers and casual or **temporary** workers" are **not** required to file SALNs. Since R.A. No. 6713 is a penal law, its provisions on exemptions apply retroactively. As mentioned, the "status" and "appointment" of the Chief Justice was merely "**temporary**" from 2 November 1986 to 31 December 1991. Accordingly, from 1986 to 1991, the Chief Justice was **not required** to file a SALN. It was therefore unnecessary for her to file SALNs for the years **1985, 1989, 1990** and **1991.** That she filed those SALNs, of course, does not change the fact that she was *not required* to filed them.

3.90.2. The Chief Justice was also not required to file SALNs during the years when she was on leave and **did not receive compensation** as a U.P. Professor (i.e., the years **2001**, **2004**, **2005**, and **2006**).

3.90.2.1. Section 1, Rule VII of the IRR of R.A. No. 6713 states that "those who serve in an official honorary capacity, **without service credit or pay**, temporary laborers and casual or temporary and contractual workers," are also **exempted** from the SALN requirement.

3.90.2.2. Under the last paragraph, item (5) of Section 8(A) of R.A. No. 6713 among those mandated to file SALNs are "(a)ll other public officials and employees, **defined in Republic Act No. 3019**, as amended." This is essentially the catch-all phrase for all public officers required to file a SALN. However, under Section 2(b), R.A. No. 3019, a "public officer" is defined as "elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service, **receiving compensation**, *even nominal*, *from the government* as defined in the preceding subparagraph."[75]

True, the fact that non-compliance *per se* may result into penal or administrative sanctions;[76] however, I am unable to jump to the conclusion that the filing of one's SALN, being in the nature of *malum prohibitum*, should be considered as a ground to *per se* obliterate the integrity of a candidate to – or a duly appointed member of – the Judiciary. At the very least, should this Court make such a determination, then it must first accord participation to the JBC in the proper proceeding therefor, commenced through a petition for *certiorari* as will be expounded below. **This is not only in due deference to the JBC's role in our constitutional order, it is also because the JBC – in this case – appears to have not accorded strict compliance with the SALN requirement which thus, tends to show that it was not that crucial in assessing the candidate's subjective qualifications**. As the records disclose, despite its initial statement that "[a]pplicants with incomplete or out of date documentary requirements will not be interviewed or considered for nomination,"[77] the JBC still allowed substantial compliance

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[75] See Respondent's Memorandum *Ad Cautelam*, pp. 107-108.

[76] See Section 9 (b) of RA 3019 and Section 11 (a) and (b) of RA 6713.

[77] See Annex "H" of the Petition.

Supreme Court E-Library

to not one, but several, candidates who applied for the 2012 Chief Justice post. Among other reasons, the JBC considered the candidate's difficulty in producing dated SALNs, as well as the time constraints in submitting them. In her Comment[78] dated March 23, 2018 in A.M. No. 17-11-12-SC and A.M. No. 17-11-17-SC,[79] Justice Aurora Santiago Lagman, a regular member of the JBC and member of the Executive Committee in 2012, disclosed that an "attempt to comply" with the SALN requirement was the Council's "parameter for substantial compliance:"

> It must be recalled that without any objection from the other JBC Members, the *Ex Officio* Member who was the proponent of the requirement of all previous SALNs of candidates from the government sector defined the "**parameter of substantial compliance**" as an "**attempt to comply with the particular requirement**;" and that if indeed those with lacking documents are "serious with their application, they should inform the JBC as to the reason for failing to comply with certain requirements."[80] (Emphases and underscoring supplied)

Further, there is no gainsaying that the submission of SALNs is but one of the several documentary requirements[81] asked of

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[78] Annex "24" of the *Ad Cautelam* Manifestation/Submission dated April 10, 2018.

[79] Entitled "*Re: Impeachment Case No. 002-2017 (Re: In the Matter of the Verified Complaint for Impeachment Against Supreme Court Chief Justice Maria Lourdes P. A. Sereno filed by Atty. Lorenzo G. Gadon and Endorsed by Twenty-Five [25] House Members); and (Re: Letter dated November 23, 2017 of Representative Reynaldo V. Umali, Chairman, Committee on Justice, House of Representatives, to Associate Justice Teresita J. Leonardo-De Castro, Re: Invitation to Attend the Hearing of the Committee on Justice in the Matter of the Verified Complaint for Impeachment against Supreme Court Chief Justice Maria Lourdes P. A. Sereno)*."

[80] *Id*.

[81] While the JBC *En Banc* maintained its previous ruling that "incumbent Justices would not be required to submit other documentary requirements, particularly, clearances" (see Minutes of the JBC Meeting on June 25, 2012; and respondent's Memorandum *Ad Cautelam*, pp. 15-16), respondent, aside from the SALNs, waiver, medical certificate and laboratory results, and updated personal data sheet (PDS), likewise submitted certifications from

Chief Justice aspirants in 2012. In fact, the submission of "all previous SALNs" does not even appear to be a staple requirement consistently required of candidates in the government service by the JBC throughout the years. To add, it should be borne in mind that the Council, as per JBC-009, undertook to take every possible step to verify the applicants' records and reputation. In so doing, the JBC implemented a rigorous screening process that goes beyond the scrutiny of documentary requirements, but includes the implementation of other mechanisms, such as the conduct of public interviews and background checks, to determine the applicant's "proven integrity," among other subjective qualifications necessary for the office.

At this juncture, it is apt to point out that "integrity," as well as the other subjective qualifications of "competence," "probity," and "independence," are personal qualities that are hardly determinable from the facts on record. Unless they are first concretized into operable guidelines and criteria, the determination of the same would be clearly subject to varied interpretation. **The nature of these subjective qualifications starkly contrasts with the qualifications of age, natural-born citizenship, and years of legal practice,**[82] **which are inherently objective in nature**. Logically speaking, the presence or absence of any of these objective qualifications may be readily established based on the evidence submitted by the parties. Thus, while it is true that the JBC may prescribe the type of document needed to prove the presence of an objective qualification (*i.e.*, a birth certificate, personal data sheet [PDS], or the like), the

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various government agencies: the OBC, the IBP, the NBI, the Cainta Police Station, and the Office of the Ombudsman to evince that she had no pending criminal or administrative case (See Comment *Ad Cautelam* dated March 16, 2018, p. 7 and respondent's Memorandum *Ad Cautelam*, p. 16).

[82] Section 7 (1), Article VIII of the 1987 Constitution provides:

(1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines. (Underscoring supplied)

Supreme Court E-Library

determination thereof may still be made without any prior need of interpretation.

On the other hand, **there is an unavoidable and imperative need to set definable criteria before one may be able to establish the presence or absence of a subjective qualification**; in fact, **the enterprise of interpretation is intrinsically linked to the nature of a subjective qualification**. This is because one cannot ascertain if a candidate is of proven integrity, competence, probity or independence, unless these personal qualities are first interpreted into demonstrable standards therefor. Based on these premises, it is therefore my view that when the JBC imposes a requirement that bears on an applicant's subjective qualification, such as integrity, it ineluctably engages in the enterprise of interpretation. **In so doing, the JBC exercises an inherent policy function and perforce, the treatment and application of said requirement – being a concrete embodiment of the JBC's interpretation – should be deemed as "political questions," which, as earlier stated, are generally non-justiciable, unless tainted with grave abuse of discretion**.

While it is true that the "political question doctrine" is commonly applied to acts of the political branches of government,[83] by no means should the concept be confined to the Executive or Legislative Departments. "[T]he term '**political question**' **connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy**."[84] In the classic case of *Baker v. Carr*,[85] a political question is said to exist when there is found, among others, "the impossibility of

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[83] "The exercise of the discretionary power of the legislative or executive branch of government **was often the area where the Court had to wrestle with the political question doctrine**." See former Chief Justice Reynato S. Puno's Separate Opinion in *Integrated Bar of the Philippines v. Zamora* (103 Phil. 1051, 1067 [2000]), citing Bernas, Joaquin G., SJ., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, p. 859 (1996); emphasis and underscoring supplied.

[84] *Tañada v. Cuenco*, 103 Phil. 1051, 1067 (1957); emphasis and underscoring supplied.

[85] 369 U.S. 186, 218 (1962).

Supreme Court E-Library

deciding without an initial policy determination of a kind clearly for non-judicial discretion." In *The Diocese of Bacolod v. Commission on Elections*,[86] citing *Tañada v. Cuenco*,[87] this Court stated:

> What is generally meant, when it is said that a question is political, and not judicial, is that it is a matter which is to be exercised by the people in their primary political capacity, or **that it has been specifically delegated to some other department or particular officer of the government, with discretionary power to act.**[88] (Emphasis and underscoring supplied)

The true authors of the Constitution are the people,[89] and the structure of power conferred to the other constitutionally-created bodies, such as the Constitutional Commissions, as well as the JBC, is but an expression of the people's will. Hence, it is conceptually sound to apply the political question doctrine to certain inherent policy functions of bodies which have been conferred with the discretionary power to act.

To illustrate, respondent aptly cites the cases of *Luego v. Civil Service Commission*,[90] *Mauna v. Civil Service Commission*,[91] and *Medalla, Jr. v. Sto. Tomas*,[92] which show that the political question doctrine has been applied by the Court in "ruling on the extent of the appointive powers of public officers

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[86] 751 Phil. 301 (2015).

[87] *Supra* note 84.

[88] *The Diocese of Bacolod v. Commission on Elections*, *supra* note 86, at 336-337.

[89] "The Constitution is truly a public document in that it was ratified and approved by a direct act of the People[.]" (*David v. Senate Electoral Tribunal* (G.R. No. 221538, September 20, 2016, 803 SCRA 435).

[90] 227 Phil. 303 (1986).

[91] 302 Phil. 410 (1994).

[92] 284 Phil. 488 (1992).

Supreme Court E-Library

not belonging to either the executive or legislative branches."[93] In all three (3) cases, it was consistently observed:

> Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. **This is a political question involving considerations of wisdom which only the appointing authority can decide**.[94] (Emphasis supplied)

In any event, the cross-sectoral composition of the JBC, with, among others, "the Secretary of Justice, and a representative of Congress as *ex officio* Members," makes it a quasi-political body whose policy functions may fall within the ambit of the political question doctrine.

In this case, if this Court were to rule that non-compliance with a particular requirement – such as the filing of SALNs – would negate the "integrity" of an applicant, then it would effectively be making its own interpretation of "integrity" as an eligibility qualification, and in so doing, arrogate unto itself a policy function constitutionally committed to the JBC. As earlier discussed, a subjective qualification must be first interpreted into definable criteria before a certain candidate may be said to possess or not possess the same. As typified by this case, should this Court assess the import of a particular requirement which bears on one's subjective qualification, it would then be – practically speaking – performing an "initial policy determination" and hence, traversing a "political" (or policy) question that can only be scrutinized under the lens of grave abuse of discretion duly raised in a petition for *certiorari*.

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[93] Respondent's Memorandum *Ad Cautelam*, p. 76.

[94] *Luego v. Civil Service Commission, supra* note 90, at 307; *Mauna v. Civil Service Commission, supra* note 91, at 417; and *Medalla, Jr. v. Sto. Tomas*, *supra* note 92, at 495.

IV.

It is well-settled that political questions are not completely beyond the realm of justiciability. In the seminal case of *Marcos v. Manglapus*,[95] it was therein qualified that the Constitution limits the adjudication of political questions to the issue of grave abuse of discretion for the precise reason that the Court cannot substitute its judgment on a matter which by nature or by law is for the latter to decide, *viz.*:

> When political questions are involved, **the Constitution limits the determination to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned**. If grave abuse is not established, the Court will not substitute its judgment for that of the official concerned and decide a matter which by its nature or by law is for the latter alone to decide.[96] (Emphasis and underscoring supplied)

As commonly known, the legal anchorage of the Court's expanded power of judicial review to determine the existence of grave abuse of discretion on the part of any branch or instrumentality of government (such as the JBC) is Section 1, Article VIII of the 1987 Constitution:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**. (Emphasis supplied)

Under our prevailing jurisprudence, the recognized mode of invoking the ground of grave abuse of discretion against the

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[95] 258 Phil. 479 (1989).

[96] *Id*. at 506-507.

Supreme Court E-Library

act of an instrumentality of government is a petition for *certiorari* filed for the purpose.

In *Araullo v. Aquino III*,[97] it was explained that a writ of *certiorari* with respect to the Court "may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, [Article VIII of the 1987 Constitution]."[98]

Further, in *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.* (*Association of Medical Clinics*),[99] this Court elucidated:

> Meanwhile that no specific procedural rule has been promulgated to enforce [the] "expanded" constitutional definition of judicial power and because of the commonality of "grave abuse of discretion" as a ground for review under Rule 65 and the courts' expanded jurisdiction, **the Supreme Court – based on its power to relax its rules – allowed Rule 65 to be used as the medium for petitions invoking the courts' expanded jurisdiction**[.][100] (Emphasis and underscoring supplied)

Notably, since a petition for *certiorari* assailing the act of the JBC would not constitute an attack against a "judgment, order or resolution" of a "tribunal, board or officer exercising judicial or quasi-judicial functions,"[101] it is therefore apparent

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[97] 737 Phil. 457 (2014).

[98] *Id*. at 531.

[99] G.R. Nos. 207132 and 207205, December 6, 2016, 812 SCRA 452.

[100] *Id*. at 479; citation omitted.

[101] See Section 1, Rule 65 of the RULES OF COURT, which states:

Section 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess

that the sixty (60)-day filing period under Section 4,[102] Rule 65 of the Rules of Court would not apply. As worded, the period thereunder is reckoned from "notice of the judgment, order or resolution" of said tribunal, which circumstance does not obtain in this case. Hence, similar to cases where *certiorari* was filed assailing a non-judicial or non-quasi-judicial act of government,[103] the sixty (60)-day period under Rule 65 was not applied, or if at all, based on *Association of Medical Clinics*, may be relaxed.

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its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

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[102] Section 4. *When and where to file the petition*. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not [later] than sixty (60) days counted from the notice of the denial of the motion.

[103] Jurisprudence is replete with cases wherein the Court took cognizance of petitions for *certiorari* assailing a non-judicial or non-quasi-judicial act of government without observing the sixty-(60) day period to file under Rule 65.

For instance, in *Araullo v. Aquino III* (see *supra* note 98), the Court took cognizance of nine (9) petitions filed in October and November 2013 assailing the constitutionality of the Disbursement Acceleration Program (DAP) as implemented through National Budget Circular No. 541 as of June 30, 2012, and all other related executive issuances. The DAP had been instituted in 2011 but the petitions were filed only in 2013.

In *Belgica v. Ochoa* (see 721 Phil. 416 [2013]), the Court similarly gave due course to the petitions filed in August and September 2013 questioning the constitutionality of the pork barrel system, which may be traced to various provisions of previous General Appropriations Acts dating to the Priority Development Assistance Fund in 2000 and even its previous iterations implemented way back.

Supreme Court E-Library

All things considered, it is my opinion that a petition for *certiorari* is the proper remedy to assail the subjective qualifications of a Judiciary appointee. This is because a Judiciary appointee's subjective qualification should always be determined relative to the interpretation, treatment, and application of the standards employed by the JBC. Being the body specifically tasked by the Constitution to recommend appointees to the Judiciary, due deference should be given to the JBC's nomination of a particular candidate. It is understood that when the JBC submits its shortlist of candidates, it has screened those included therein and have so resolved that they have presumably met all the minimum constitutional requirements, including the subjective qualification of "proven integrity." The screening and shortlisting of candidates for appointment are all official acts of the JBC. **Thus, as in all official acts of government, a candidate's full qualification for appointment – which is manifested by his or her JBC nomination – should be accorded with the presumption of validity**[104] and hence, should prevail until nullified on the ground of grave abuse of discretion duly raised in a petition for *certiorari*. Simply put, until that act is set aside in the proper proceeding therefor, the same should be regarded as valid.

Besides, a petition for *certiorari* is not only the proper mode of invoking grave abuse of discretion against the act of any instrumentality of government. Based on recently decided cases, it is also the proper vehicle for invoking the Court's supervisory power over the JBC.

Section 8 (1), Article VIII of the 1987 Constitution decrees that the JBC is "created under the supervision of the Supreme Court." According to jurisprudence, supervision only pertains to the mere oversight over an inferior body. In *Aguinaldo*,[105]

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[104] "As a general rule, official acts enjoy a presumed validity. In the absence of clear and convincing evidence to the contrary, the presumption logically stands." (*Philippine Association of Service Exporters, Inc. v. Drilon*, 246 Phil. 393, 400 [1988].)

[105] *Aquinaldo v. Aquino III* (main *ponencia*), *supra* note 26, G.R. No. 224302, November 29, 2016, 811 SCRA 304, citing *Bito-onon v. Yap Fernandez*, 403 Phil. 693 (2001).

the concept of supervision was distinguished from the power of control as follows:

> Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body. Officers in control lay down the rules in the doing of an act. If they are not followed, it is discretionary on his part to order the act undone or re-done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. **Supervising officers merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them.** If the rules are not observed, he may order the work done or re-done to conform to the prescribed rules. He cannot prescribe his own manner for the doing of the act.[106] (Emphasis supplied)

In *Jardeleza*, this Court granted the petition for *certiorari* filed by therein petitioner Associate Justice Francis H. Jardeleza, "seeking to compel the JBC to include him in the list of nominees for Supreme Court Associate Justice *vice* Associate Justice Abad, on the grounds that the JBC and Chief Justice Sereno acted in grave abuse of discretion amounting to lack or excess of jurisdiction in excluding him, despite having garnered a sufficient number of votes to qualify for the position."[107] In said case, the Court held, *inter alia*, that "[b]ased on [Section 8(1), Article VIII of the 1987 Constitution], the supervisory authority of the Court over the JBC covers the overseeing of compliance with its rules [and that] Justice Jardeleza's principal allegations in his petition merit the exercise of this supervisory authority."[108] Eventually, the Court resolved that Justice Jardeleza should be deemed included in the shortlist submitted to the President for consideration as an Associate Justice of the Supreme Court *vice* Justice Abad. Further, it directed the JBC to review and adopt rules relevant to the observance of due process in its proceedings, particularly JBC-009 and JBC-010, subject to the

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[106] *Aquinaldo v. Aquino III*, *id*. at 370-371.

[107] *Supra* note 6, at 480-481.

[108] *Id*. at 490.

Supreme Court E-Library

approval of the Court.[109] In one of his opinions, Justice Arturo D. Brion identified the approach utilized by this Court in *Jardeleza*:

> A very recent case before this Court involving the JBC (which the *ponencia* cited in its earlier draft) is *Jardeleza v. Sereno* [(supra note 5)], where the Court, for the first time since the enactment of the 1987 Constitution, nullified an action by the JBC. **In so doing, the Court exercised both its expanded jurisdiction to review acts of government agencies amounting to grave abuse of discretion, and its supervisory jurisdiction over the JBC**.[110] (Emphasis and underscoring supplied)

Similarly, in the case of *Villanueva*, this Court took cognizance of the petition for *certiorari* filed by therein petitioner Presiding Judge Ferdinand R. Villanueva "to assail the policy of the Judicial and Bar Council (JBC), requiring five [(5)] years of service as judges of first-level courts before they can qualify as applicant to second-level courts, on the ground that it is unconstitutional, and was issued with grave abuse of discretion."[111] On the tenability of the remedy of *certiorari*, it was instructively pronounced:

> In this case, it is clear that the JBC does not fall within the scope of a tribunal, board, or officer exercising judicial or quasi-judicial functions. In the process of selecting and screening applicants, the JBC neither acted in any judicial or quasi-judicial capacity nor assumed unto itself any performance of judicial or quasi-judicial prerogative. However, since the formulation of guidelines and criteria, including the policy that the petitioner now assails, is necessary and incidental to the exercise of the JBC's constitutional mandate, a determination must be made on whether the JBC has acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing and enforcing the said policy.

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[109] *Id*. at 516.

[110] See Associate Justice Arturo D. Brion's Separate Concurring Opinion in *Villanueva v. JBC*, *supra* note 20, at 558.

[111] *Id*. at 541.

Besides, the Court can appropriately take cognizance of this case by virtue of the Court's power of supervision over the JBC. x x x

Following this definition, the supervisory authority of the Court over the JBC is to see to it that the JBC complies with its own rules and procedures. Thus, when the policies of the JBC are being attacked, then the Court, through its supervisory authority over the JBC, has the duty to inquire about the matter and ensure that the JBC complies with its own rules.[112] (Underscoring supplied)

As exhibited above, settled jurisprudence experientially validates the premise that *certiorari* is a valid mode of assailing the acts of the JBC, both in the supplication of the Court's expanded power of judicial review, as well as its supervisory authority over said governmental body.

As demonstrated in *Jardeleza*, this Court may, through a petition for *certiorari*, modify the act of the JBC (*i.e.*, alter Justice Jardeleza's exclusion from the shortlist and instead, deem him to be included) based on fundamental considerations of due process in view of the well-settled rule that a flagrant violation of due process constitutes grave abuse of discretion,[113] which is correctible through *certiorari*. To note, the Court therein pronounced that "[t]he JBC, as the sole body empowered to evaluate applications for judicial posts, exercises full discretion on its power to recommend nominees to the President. The *sui generis* character of JBC proceedings, however, is not a blanket authority to disregard the due process under JBC-010."[114] As it was ultimately concluded, "[J]ardeleza was deprived of his right to due process when, contrary to the JBC rules, he was neither formally informed of the questions on his integrity nor was provided a reasonable opportunity to prepare his defense."[115]

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[112] *Id*. at 544-545.

[113] See *Villa-Ignacio v. Ombudsman Gutierrez*, G.R. No. 193092, February 21, 2017.

[114] *Jardeleza v. Sereno*, *supra* note 6, at 513-514.

[115] *Id*. at 514.

Supreme Court E-Library

Nonetheless, the Court cautiously circumscribed its authority to act on issues concerning the JBC's policies, *viz.*:

> With the foregoing, the Court is compelled to rule that Jardeleza should have been included in the shortlist submitted to the President for the vacated position of Associate Justice Abad. This consequence arose not from the unconstitutionality of Section 2, Rule 10 of JBC-009, *per se*, but from the violation by the JBC of its own rules of procedure and the basic tenets of due process. By no means does the Court intend to strike down the "unanimity rule" as it reflects the JBC's policy and, therefore, wisdom in its selection of nominees. Even so, the Court refuses to turn a blind eye on the palpable defects in its implementation and the ensuing treatment that Jardeleza received before the Council. True, Jardeleza has no vested right to a nomination, but this does not prescind from the fact that the JBC failed to observe the minimum requirements of due process.[116] (Underscoring supplied)

Meanwhile, in *Villanueva*, the Court dismissed the petition for lack of merit since it was not shown that the policy of the JBC requiring judges to serve five (5) years in first-level courts before they can qualify as applicants to second-level courts was unconstitutional. In arriving at this conclusion, the Court had to thresh out issues concerning the equal protection clause,[117] as well as – same as in *Jardeleza* – due process considerations.[118] Furthermore, the Court resolved that "petitioner argued but failed

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[116] *Id*.

[117] On this point, the Court held that "[t]he JBC does not discriminate when it employs number of years of service to screen and differentiate applicants from the competition. The number of years of service provides a relevant basis to determine proven competence which may be measured by experience, among other factors." (*Villanueva v. JBC*, *supra* note 20, at 551.)

[118] On this point, the Court declared that although "publication is also required for the five-year requirement because it seeks to implement a constitutional provision requiring proven competence from members of the judiciary[,] x x x the JBC's failure to publish the assailed policy has not prejudiced the petitioner's private interest x x x since the possession of the constitutional and statutory qualifications for appointment to the Judiciary may not be used to legally demand that one's name be included in the list of candidates for a judicial vacancy." (*Id*. at 555.)

to establish that the assailed policy violates the constitutional provision under social justice and human rights for equal opportunity of employment."[119]

Thus, guided by these cases, should the JBC **(*a*)** commit an obvious due process violation – for instance, by clearly discriminating on the application of its promulgated rules against a certain applicant in favor of others – or **(*b*)** issue a policy that unquestionably transgresses the Constitution – for example, by setting criteria that violates the equal protection clause or perhaps, by qualifying a candidate who undeniably lacks integrity for committing egregious crimes or ethical violations (*e.g.*, plunder, rape, murder, and the like) – then this Court, as it had in the past, would not hesitate to wield its supervisory authority over the JBC, much more its expanded power of judicial review, being the institutional check against grave abuse of discretion committed by any government instrumentality as mandated by the Constitution. As eruditely illustrated by Justice Brion in his opinion in *Jardeleza*, the distinct interplay of power between the Court and the JBC operates as follows:

B. Relationship with the JBC

As has earlier been discussed, the Court exercises two points of entry in assuming jurisdiction over the present petition. **The first is its supervision over the JBC, while the second is the exercise of**

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[119] On this point, the Court quoted with approval the OSG's explanation that "[t]he questioned policy does not violate equality of employment opportunities. The constitutional provision does not call for appointment to the Judiciary of all who might, for any number of reasons, wish to apply. As with all professions, it is regulated by the State. The office of a judge is no ordinary office. It is imbued with public interest and is central in the administration of justice x x x. Applicants who meet the constitutional and legal qualifications must vie and withstand the competition and rigorous screening and selection process. They must submit themselves to the selection criteria, processes and discretion of respondent JBC, which has the constitutional mandate of screening and selecting candidates whose names will be in the list to be submitted to the President. So long as a fair opportunity is available for all applicants who are evaluated on the basis of their individual merits and abilities, the questioned policy cannot be struck down as unconstitutional." (*Id*. at 555-556.)

Supreme Court E-Library

its expanded judicial power. Both of these powers are constitutional in nature.

The JBC is under the supervision, not just of a member of the Supreme Court but of this Court as a collegial body. Since the JBC's main function is to recommend appointees to the judiciary, this constitutional design was put in place in order to reinforce another constitutional mandate granted to this Court: its administrative supervision over all courts and personnel thereof.

In *Ambil, Jr. v. Sandiganbayan and People* [(669 Phil. 32)], we characterized what makes up the power of supervision:

> On the other hand, the power of supervision means "overseeing or the authority of an officer to see to it that the subordinate officers perform their duties." If the subordinate officers fail or neglect to fulfill their duties, the official may take such action or step as prescribed by law to make them perform their duties. Essentially, the power of supervision means no more than the power of ensuring that laws are faithfully executed, or that subordinate officers act within the law. The supervisor or superintendent merely sees to it that the rules are followed, but he does not lay down the rules, nor does he have discretion to modify or replace them.

This ruling shows that the power of supervision is both normative and proactive. The supervisor not only ensures that the subordinate acts within the bounds of its law-laden duties and functions; he may also compel a subordinate to perform such duties and functions, whenever it becomes clear that the subordinate has already acted in disregard of it.

That the JBC is granted the full discretion to determine its own rules and select the nominees it deems qualified is beyond question. This discretion, however, like all other exercise of discretion, comes with the limitation that the JBC rules should not violate the fundamental rights of third parties as well as the provisions of the Constitution. Whenever any such violation occurs, the Supreme Court may step in wearing its second hat in its relationship with the JBC – exercising its power to correct grave abuse of discretion under Section 1, Article VIII of the Constitution.[120] (Emphasis supplied)

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[120] See Associate Justice Arturo D. Brion's Separate Concurring Opinion in *Jardeleza v. Sereno*, *supra* note 6, at 584-585.

V.

Unlike in those cases, the OSG in this case purports no due process violation or any other serious constitutional violation on the part of the JBC. **In fact, the Solicitor General has voluntarily admitted**[121] **that the JBC's grave abuse of discretion is not at all an issue. This is further magnified by the fact that the JBC was not even impleaded as a party to these proceedings**. As it has been oftentimes repeated, this case is a petition for *quo warranto* directly assailing the eligibility of respondent for her alleged lack of "proven integrity." The OSG explains the nature of a petition for *quo warranto*, which as well constitutes the reason as to why the JBC was not even impleaded herein:

V.a. The JBC need not be impleaded.

123. In *Aguinaldo v. Aquino*, the Court explained that a case which puts under scrutiny the qualifications of a person holding a public office is properly the subject of a petition for *quo warranto*. Applying *Topacio v. Ong*, the Court held that a *quo warranto* petition "is brought against the person who is alleged to have usurped, intruded into, or unlawfully held or exercised the public office."

124. **Inasmuch as the present Petition only disputes the eligibility of Respondent to become Chief Justice, and not the acts of either the President or the JBC, the Solicitor General correctly instituted a petition for *quo warranto* and impleaded only Sereno as respondent to Section 1**[122]

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[121] TSN, April 10, 2018, p. 16.

[122] Section 1, Rule 66 of the RULES OF COURT states:

Section 1. *Action by Government against individuals.* — An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:

(a) **A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;**

(b) A public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office; [or]

Supreme Court E-Library

of Rule 66.[123] (Emphasis supplied)

Heavily intertwined with the OSG's position on *quo warranto* is its refutation of – on the other side – respondent's unyielding stance that "[a] Member of this Honorable Court may be removed only by impeachment."[124] The reasons of respondent therefor are best encapsulated in this statement:

> 3.3.6 Impeachment was chosen as the means for removal of high government officers for a public purpose – to shield such officers from harassment suits which would prevent them from performing their functions which are vital to the continued operations of government. Such purpose would be defeated if the first sentence of Section 2, Article XI of the Constitution would not be construed as providing exclusive means for removal of impeachable officers. It would be absurd for the framers to provide a very cumbersome process for removing said officers, only to allow less difficult means to remove them.[125]

In response, the OSG argues that *quo warranto* is a remedy which is separate and distinct from impeachment: "*quo warranto* ousts a public officer for ineligibility, or failing to meet the qualifications for such public office at the time of appointment, while impeachment can result in the removal of a validly-appointed or elected impeachable officer for the commission of any of the impeachable offenses while in office."[126] Further, *quo warranto*, which is to be filed and later resolved by courts of law, is judicial in nature, whereas impeachment, which proceedings are taken before the Senate sitting as an impeachment court, is political in character. Withal, the OSG submits that "[a]n impeachment case against a Supreme Court Justice for

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(c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act. (Emphasis supplied)

[123] See OSG's Memorandum, p. 43.

[124] See Respondent's Memorandum *Ad Cautelam*, p. 40.

[125] *Id*. at 42.

[126] See OSG's Memorandum, p. 25.

an impeachable offense presupposes a valid appointment of that Justice. In contrast, a *quo warranto* petition asserts that the appointment of [said Justice] is void *ab initio*."[127]

The OSG's arguments are partially tenable.

The roots of the Philippine's concept of impeachment – as was adopted in the 1935 Constitution and carried over to the 1987 Constitution – can be traced to the Constitution of the United States (US),[128] which was, in turn, borrowed from English law.[129] As manifested in the statements of the Founding Fathers, an impeachment proceeding was intended to try offenses which are denominated as "political" in character.

In the Federalist No. 65, Alexander Hamilton wrote:

A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. **The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust**. They are **of a nature** which may with peculiar propriety be **denominated POLITICAL,** as they relate chiefly to injuries done immediately to the society itself. x x x

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[127] *Id*.

[128] Section 4, Article II of the US Constitution reads:

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

[129] In the Federalist No. 65 (The Powers of the Senate Continued, From the New York Packet, March 7, 1788), Alexander Hamilton recognized that the drafters of the US Constitution "borrowed" the model of impeachment from English Law, in this wise: "The model from which the idea of this institution has been borrowed, pointed out that course to the convention. In Great Britain, it is the province of the House of Commons to prefer the impeachment, and the House of Lords to decide upon it. Several of the State constitutions have followed the example. x x x" See also Romney, Matthew R., *The Origins and Scope of Presidential Impeachment,* HINCKLEY JOURNAL OF POLITICS, 67-72 (Spring 2000).

Supreme Court E-Library

Meanwhile, James Wilson stated:[130]

In the United States and in Pennsylvania, impeachments are **confined to political characters, to political crimes and misdemeanors, and to political punishments.** The president, vice president, and all civil officers of the United States; the governour and all other civil officers under this commonwealth, are liable to impeachment.

In the opinion of former Chief Justice Renato C. Corona in *Francisco v. House of Representatives*,[131] the concept of impeachment under our Constitution was characterized as "a remedy for serious political offenses against the people, [which] runs parallel to that of the U.S. Constitution," *viz.*:

Impeachment under the Philippine Constitution, as a remedy for serious political offenses against the people, runs parallel to that of the U.S. Constitution whose framers regarded it as a political weapon against executive tyranny. It was meant to "fend against the incapacity, negligence or perfidy of the Chief Magistrate." Even if an impeachable official enjoys immunity, he can still be removed in extreme cases to protect the public. Because of its peculiar structure and purpose, impeachment proceedings are neither civil nor criminal:

James Wilson described impeachment as "confined to political characters, to political crimes and misdemeanors, and to political punishment." According to Justice Joseph Story, in his *Commentaries on the Constitution*, in 1833, **impeachment applied to offenses of a political character**[.][132] (Emphases supplied)

In its present formulation, the impeachment clause in our Constitution enumerates the following grounds to impeach certain high-ranking public officials, which hew with its political nature based on its origins as above-discussed:

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[130] Gerhardt, Michael J., *The Lessons of Impeachment History*. Faculty Publications (1999), p. 978. <http://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1077&context=faculty_publications> (visited on May 8, 2018).

[131] 460 Phil. 830 (2003).

[132] *Id*. at 1007-1008.

Section 2, Article XI of the 1987 Constitution

Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, **culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.** All other public officers and employees may be removed from office as provided by law, but not by impeachment. (Emphasis supplied)

As provided, the grounds for impeachment under the 1987 Constitution are: **(1)** culpable violation of the Constitution; **(2)** treason; **(3)** bribery; **(4)** graft and corruption; **(5)** other high crimes; and **(6)** betrayal of public trust. Palpably, the common thread amongst these grounds is that they are all serious political offenses that bear on one's fitness to continue with the discharge of his or her public office. As they are in the nature of "offenses," they essentially presume intent or negligence on the part of the wrongdoer, which need not obtain when one fails to meet the minimum qualifications for eligibility as prescribed by law. To be sure, the ground of "culpable violation of the Constitution" – as the name itself implies – requires a showing of "culpa," which is defined as "actionable negligence or fault."[133] Meanwhile, the grounds of "treason" and "bribery" constitute felonies that are well-defined under the provisions of the Revised Penal Code, whereas the term "graft and corruption" refers to the complement of crimes that are penalized under RA 3019, or the "Anti-Graft and Corrupt Practices Act." As regards the ground of "betrayal of public trust," the constitutional deliberations characterize the same to be:

MR. DE LOS REYES: The reason I proposed this amendment is that during the Regular *Batasang Pambansa* when there was a move to impeach then President Marcos, there were arguments to the effect that there is no ground for impeachment because there is no proof that President Marcos committed criminal acts which are punishable,

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[133] <https://www.merriam-webster.com/dictionary/culpa> (visited May 8, 2018).

Supreme Court E-Library

or considered penal offenses. And so the term "betrayal of public trust," as explained by Commissioner Romulo, is **a catchall phrase to include all acts which are not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in office. It includes betrayal of public interest, inexcusable negligence of duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance, cronyism, favoritism, etc. to the prejudice of public interest and which tend to bring the office into disrepute. That is the purpose, Madam President**.

Thank you.[134] (Emphasis and underscoring supplied)

In similar fashion, the ground of "other high crimes" was meant to include "any act, omission or conduct that renders an official unworthy to remain in office," *viz*.:

MR. CONCEPCION: Thank you. Madam President.

We have been discussing the grounds for impeachment in the apparent belief that the actual provisions on impeachment are not sufficiently embracing. There is this all-embracing phrase in the Constitution which says: "other high crimes." As Commissioner Romulo stated, this is a political matter more than a legal one. And **jurisprudence has settled that "other high crimes" does not even have to be a crime, but it is any act, omission or conduct that renders an official unworthy to remain in office.** My apprehension is that the more we particularize the grounds for impeachment, the more we reduce its ambit because we would be subject to the rule: *expressio unius est exclusio alterius*. I would prefer if the enumeration ended with the phrase "other high crimes" because this phrase includes anything that in the opinion of the impeaching body renders the subject of impeachment unworthy to remain in office.

Thank you, Madam President.[135] (Emphasis supplied)

Owing to both the "political" and "offense-based" nature of these grounds, I am thus inclined to believe that impeachment is not the sole mode of "removing" impeachable officials as it would be clearly absurd for any of them to remain in office

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[134] II RECORD, CONSTITUTIONAL COMMISSION (July 28, 1986), p. 272.

[135] *Id*. at 315-316.

Supreme Court E-Library

despite their failure to meet the minimum eligibility requirements, which failure does not constitute a ground for impeachment. Sensibly, there should be a remedy to oust all our public officials, no matter how high-ranking they are or critical their functions may be, upon a determination that they have not actually qualified for election or appointment. While I do recognize the wisdom of insulating impeachable officials from suits that may impede the performance of vital public functions, ultimately, this concern cannot override the basic qualification requirements of public office. ***There is no doubt that qualification should precede authority***. Every public office is created and conferred by law;[136] hence, its inherent conditions should be faithfully adhered to. On this score, the *ponencia* aptly rationalizes:

> The courts should be able to inquire into the validity of appointments even of impeachable officers. To hold otherwise is to allow an absurd situation where the appointment of an impeachable officer cannot be questioned even when, for instance, he or she has been determined to be of foreign nationality or, in offices where Bar membership is a qualification, when he or she fraudulently represented to be a member of the Bar. Unless such an officer commits any of the grounds for impeachment and is actually impeached, he can continue discharging the functions of his office even when he is clearly disqualified from holding it. Such would result in permitting unqualified and ineligible public officials to continue occupying key positions, exercising sensitive sovereign functions until they are successfully removed from office through impeachment. This could not have been the intent of the framers of the Constitution.[137]

This notwithstanding, I am still unable to agree that *quo warranto* – as the OSG argues – should be the proper remedy *under the circumstances of this case*.

Quo warranto is a prerogative writ sourced from common law used to inquire into the legality of the claim which a party asserts to an office and to oust him if the claim is not well-

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[136] See *Laurel v. Desierto*, 430 Phil. 658, 672 (2002).

[137] *Ponencia*, p. 61.

Supreme Court E-Library

founded.[138] **By nature, it partakes of a direct attack to the title of one's office**. Way back in 1949, this Court, in the case of *Nacionalista Party v. De Vera*[139] (*Nacionalista*), spoke about the "direct" nature of *quo warranto* as opposed to a writ of prohibition:

> The title of a *de facto* officer cannot be indirectly questioned in a proceeding to obtain the writ of a prohibition to prevent him from doing an official act, nor in a suit to enjoin the collection of a judgment rendered by him. Having at least colorable right to the office his title can be determined only in a *quo warranto* proceeding or information in the nature of a *quo warranto* at suit of the sovereign.[140]

In its memorandum, the OSG claims that a *quo warranto* petition is the proper remedy to oust an ineligible impeachable official; it is distinct from the other special civil actions under the Rules of Court. Under Rule 66 of the Rules of Court, it is the precise remedy to oust a usurper (*i.e.*, someone who is appointed to public office despite his or her ineligibility), and the action does not require other parties to be impleaded for the suit to prosper. On the other hand, a remedy like a petition for *certiorari* under Rule 65 is directed against a judge or court, quasi-judicial agency, tribunal, etc. Thus, the Court can grant petitioner complete relief although the JBC was not impleaded.[141]

To my mind, the fundamental flaw in the OSG's position on *quo warranto* is its failure to consider that the qualification being assailed in this petition is a subjective qualification that has been priorly determined based on certain criteria set by the JBC. As may be gathered throughout this discourse, **it could not have been intended that the subjective qualifications of any judge or justice be directly assailed before a court of law**; otherwise, that court would be basically supplanting the

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[138] See *id*. at 49-50. See also Spelling, Thomas. *Treatise on Injunctions and Other Extraordinary Remedies* (1901), pp. 1435-1439.

[139] 85 Phil. 101 (1949).

[140] *Id*. at 132.

[141] See OSG's Memorandum, p. 27.

Supreme Court E-Library

Council's determination thereof, and in so doing, effectively assume the latter's role incongruous to and disruptive of the current structure of the Constitution. This is not to say that the JBC's determination of an appointee's integrity, competence, probity, and independence is completely insulated from judicial intervention. Again, in the proper scheme of things, the JBC's official acts are presumed to be valid and hence, assailable only on the ground of grave abuse of discretion coursed through a petition for *certiorari.* As per our existing procedural framework, grave abuse of discretion is not an available ground under the rules on *quo warranto*; more so, the Solicitor General had expressly admitted that it considers immaterial the issue of grave abuse of discretion. Thus, if grave abuse of discretion has not been asserted nor was it attributed against the JBC, which was not even made a party to this case, then the qualification of respondent, as embodied in her shortlisting by the JBC, should be maintained. For these reasons, the present petition for *quo warranto* is infirm.

The OSG cites *Nacionalista* as basis to prove that impeachable officials (such as the Chairman of the Commission on Elections in that case) may be removed not only through impeachment, but through *quo warranto*. While it is true that the Court in *Nacionalista* had declared that *quo warranto* is the proper remedy to inquire into the validity of the appointment of the Chairman of the Commission on Elections, who was indeed an impeachable officer then,[142] it bears emphasizing that *Nacionalista* was decided in 1949 when the 1935 Constitution was still in effect; at that time, the Court did not have its expanded *certiorari* jurisdiction. Thus, the ruling in *Nacionalista* is not binding under the present Constitution. In fact, in the more recent case of *Funa v. Villar*,[143] the Court found that the use of its expanded *certiorari* jurisdiction was proper to inquire into whether the appointment of another impeachable officer, the Chairman of the Commissioner on Audit, infringed the Constitution or amounted to grave abuse of

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[142] See Section 1, Article X of the 1935 CONSTITUTION, as amended (May 14, 1935).

[143] 686 Phil. 571 (2012).

Supreme Court E-Library

discretion. Moreover, as above-explained, in the recent cases of *Jardeleza* and *Villanueva*, this Court recognized that *certiorari* is not only the proper remedy to invoke its expanded power of judicial review against the act of any branch or instrumentality of government, it is likewise the vehicle by which it could exercise its power of supervision over the JBC.

Besides, Rule 66 of the Rules of Court only mirrors the primeval concept of *quo warranto* and thus, partakes of a remedy to test the title of an alleged **usurper** to a public office. As such, time and again, writs of *quo warranto* have been issued as a means to determine which of two claimants is entitled to an office.[144] In this specific instance, the OSG, however, questions respondent's integrity as an eligibility qualification; this exact qualification had already been resolved by the constitutional body particularly tasked for the purpose. Hence, until the JBC's resolution is validly assailed, an appointee's title to office carries with it constitutional imprimatur and thus, he or she cannot – as of yet – be tagged as a "usurper." This peculiar scenario properly extricates this case and cases similar thereto from the pale of *quo warranto*.

Consequently, given that impeachment and *quo warranto* are not the proper remedies under these circumstances, it is therefore unnecessary to address the other ancillary issues related to these remedies, among others, the issue of prescription.

VI.

As a final point of discussion, allow me to briefly address the issue of misrepresentation as *allegedly* committed by respondent not only in her application before the JBC, but also with respect to the filing of her SALNs.

The *ponencia* asserts that "[r]espondent chronically failed to file her SALNs and thus violated the Constitution, the law, and the Code of Judicial Conduct."[145] On this score, the *ponencia*

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[144] See *ponencia*, p. 34.

[145] *Id*. at 98.

ruminates that *had respondent duly filed her SALNs as she claims, then why has she not submitted these missing SALNs before the Court?* It points out:

> **Respondent could have easily dispelled doubts as to the filing or non-filing of the unaccounted SALNs by presenting them before the Court**. Yet, respondent opted to withhold such information or such evidence, if at all, for no clear reason. Respondent likewise manifests having been successful in retrieving most of the "missing" SALNs and yet withheld presentation of such before the Court, except for a photocopy of her 1989 SALN submitted only in the morning of the Oral Argument and allegedly sourced from the "drawers of U.P." Only in respondent's Memorandum *Ad Cautelam* did she attach the SALNs she supposedly recovered. But the SALNs so attached, except for the 1989 SALN, were the same SALNs priorly offered by the Republic. Other than offering legal or technical justifications, respondent has not endeavored to convince this Court of the *existence* of the still unaccounted SALNs. As she herself stated in her July 23, 2012 letter to the JBC, only some, but not all, of her SALNs are infeasible to retrieve. Thus, this Court is puzzled as to why there has been no account of respondent's more recent SALNs, particularly those from 2000, 2001, 2003, 2004, 2005 and 2006.[146] (Emphasis and underscoring supplied)

In this relation, the *ponencia* further details that "[o]n its face, the SALNs filed by respondent covering her years of government service in U.P., appear to have been executed and filed under suspicious circumstances;"[147] and that "[t]he SALNs that she submitted in support of her application for Chief Justice bear badges of irregularities."[148] Accordingly, these circumstances exhibit "respondent's intention to falsely state a material fact and to practice deception in order to secure for herself the appointment as Chief Justice."[149]

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[146] *Id*. at 99.

[147] See *id*. at 109-110.

[148] See *id*. at 110-111.

[149] *Id*. at 111-112.

Supreme Court E-Library

While the facts on record and respondent's own statements cast shadows of doubt on her claim that she indeed faithfully filed *all her SALNs* in full compliance with the law, the bottom line is that this Court cannot altogether conclude – without the JBC as party to this case – that respondent's non-filing of her SALNs would have affected the JBC's determination as regards her integrity and perforce, result in her non-inclusion in the shortlist of qualified appointees. *Misrepresentation is always relative to the fact being misrepresented*; hence, it is for the JBC to determine if indeed any misrepresentation with respect to the filing of her SALNs (or for that matter, the incomplete submission thereof before the Council) would have been material to its appreciation of respondent's "proven integrity." In fact, the need to ascertain the JBC's official take on the matter gains greater force when one considers that the JBC had accorded substantial compliance on the SALN requirement, which shows its liberal treatment therefor.

This is not to say that the JBC has absolute free-will in resolving an issue of misrepresentation. As the *ponencia* exclaims, it is beyond cavil that the JBC cannot bargain away qualifications under the Constitution.[150] However, whatever would be its resolution on an issue of misrepresentation, it remains imperative that the JBC be made a party in a *certiorari* case duly filed for the purpose. This is because this Court would necessarily have to nullify a standing nomination by the JBC, which carries with it an effective attestation that the person so nominated had met all the subjective qualifications to be appointed to the position. To rule on this issue absent the JBC's participation would inevitably result in either one of two things: (1) this Court would be making an assumption that the JBC was misled; or (2) it would be directly assuming the role of the JBC, irrespective of the JBC's stand on the matter. Either way, to proceed as such would dangerously supplant the JBC's functions and altogether disregard its role pursuant to the Constitution. There is no denying that fraudulent

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[150] See *id*. at 71.

misrepresentation is indeed a serious ethical violation. However, until this allegation is threshed out in the proper forum, the JBC's determination on respondent's integrity ought to prevail. ***Again, this case deals with the issue of integrity as an eligibility qualification, and not as an act that bears on one's fitness to continue in public office***. The latter may be classified as an offense triable through impeachment, whereas the former is always rooted in the context of the JBC's pre-qualification process which act can only be nullified on the ground of grave abuse of discretion.

Conclusion

A wise man once said that there is "[a] place for everything, [and] everything in its place."[151]

Integrity is not all about personal qualities; it also bespeaks of a state of cohesion; a social value that evokes a becoming respect for structure and order. The Constitution is our bedrock of legal structure and order. It is the basic and paramount law wherein the contours of authority are drawn, and the power of government flows. Section 8, Article VIII is a pillar of this foundation. By virtue of which, the Judicial and Bar Council was created and given the principal function of recommending appointees to the judiciary. In pursuit of this function, the Council – barring any grave abuse of discretion – has the preeminence to determine their qualifications.

This unique screening and nomination process is not only designed for convenience; rather, it is a necessary innovation. The JBC – in the invaluable words of Justice Marvic M.V.F. Leonen – was intended to be a "fully independent constitutional body functioning as a check-and-balance on the President's power of appointment." It is "a constitutional organ participating in the process that guides the direction of the Judiciary." "More than a technical committee, it has the power to examine the

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[151] Attributed to Benjamin Franklin. See <https://www.phrases.org.uk/meanings/14400.html> (visited May 9, 2018).

Supreme Court E-Library

judicial philosophies of the applicants and make selections, which it submits to the President."[152] Accordingly, "[n]othing in the Constitution diminishes the fully independent character of the [Council]. It is a separate constitutional organ, x x x x which functions as a check on the President's power of appointment, and called for judicial restraint."[153]

For the plentiful reasons discussed herein, it is my humble yet resolute view that *quo warranto* is not the proper remedy to assail the determination of a Judiciary appointee's integrity, which is a subjective qualification that is essentially bound to the interpretation, treatment, and application of the standards set by the JBC. This interpretation is inherently a policy question

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[152] The full quote reads:

The Judicial and Bar Council was created under the 1987 Constitution. It was intended to be a fully independent constitutional body functioning as a check-and-balance on the President's power of appointment.

Before the existence of the Judicial and Bar Council, the executive and legislative branches had the exclusive prerogative of appointing members of the judiciary, subject only to confirmation by the Commission on Appointments. However, this appointment process was highly susceptible to political pressure and partisan activities and eventually prompted the need for a separate, competent, and independent body to recommend to the President nominees to the Judiciary.

The Judicial and Bar Council is not merely a technical committee that evaluates the fitness and integrity of applicants in the Judiciary. It is a constitutional organ participating in the process that guides the direction of the Judiciary. Its composition represents a cross section of the legal profession, retired judges and Justices, and the Chief Justice. More than a technical committee, it has the power to examine the judicial philosophies of the applicants and make selections, which it submits to the President. The President may have the final discretion to choose, but he or she chooses only from that list.

This is the complex relationship mandated by the sovereign through the Constitution. It ensures judicial independence, checks and balances on the Judiciary, and assurance for the rule of law. (*Aguinaldo v. Aquino III* (*ponencia* on the MR), *supra* note 26, at 372-373.)

[153] *Aguinaldo v. Aquino III* (main *ponencia*), *supra* note 105, at 376-377.

that can only be nullified on the ground of grave abuse of discretion, which may be coursed only through a petition for *certiorari*. To allow a direct resort to *quo warranto* would amount to bypassing the JBC, and in consequence, render vulnerable the integrity of the Judiciary as an institution. Indeed, it could not have been intended that the OSG could simply come in at any time and ask the Supreme Court to re-assess the subjective qualifications of any Judiciary appointee when the same had already been determined by the body specifically created therefor.

Lest it be misunderstood, I make no claim that respondent is or is not a person of integrity. In fact, if there is one thing that is glaringly apparent from these proceedings, it is actually the lack of respondent's candor and forthrightness in the submission of her SALNs. Nevertheless, I am impelled, through this opinion, to drive one inexorable point: that the issue of a person's integrity, as a qualification for appointment to the Judiciary, must be threshed out in the appropriate case for *certiorari* as above-explained. In the final analysis, it is my hope that this be not mistaken as overzealousness for procedural technicalities, but rather objectively viewed as a substantive compulsion by no other than the fundamental law.

WHEREFORE, I vote to **DISMISS** the petition for *quo warranto* on the sole ground that it is an improper remedy under the circumstances of this case.

DISSENTING OPINION

LEONEN, *J.*:

I dissent.

This Petition should have been dismissed outright and not given due course. It does not deserve space in judicial deliberation within our constitutional democratic space. Even if the Chief Justice has failed our expectations, quo warranto, as a process to oust an impeachable officer and a sitting member of the Supreme Court, is a legal abomination. It creates a precedent that gravely diminishes judicial independence and

Supreme Court E-Library

threatens the ability of this Court to assert the fundamental rights of our people. We render this Court subservient to an aggressive Solicitor General. We render those who present dissenting opinions unnecessarily vulnerable to powerful interests.

Granting this Petition installs doctrine that further empowers the privileged, the powerful, and the status quo.

A better reading of the Constitution requires us to read words and phrases in the context of the entire legal document. Thus, the general grant of original jurisdiction for quo warranto actions to this Court in Article VIII, Section 5(1)[1] should be read in the context of the provisions of Article XI, Sections 2[2] and 3,[3]

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[1] CONST., Art. VIII, Sec. 5 provides:

Section 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

[2] CONST., Art. XI, Sec. 2 provides:

Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

[3] CONST., Art XI, Sec. 3 provides:

Section 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of

Supreme Court E-Library

as well as the principles of judicial independence and integrity inherent in a constitutional order implied in Article VIII, Sections 1, 3, 4, 7, 8, 9, 10, 11, 12, and 13[4] of the Constitution.

Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.
(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.
(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.
(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.
(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment according to law.
(8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.

[4] CONST., Art. VIII, Secs. 1, 3, 4, 7, 8, 9, 10, 11, 12 and 13 provide:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Section 3. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

Section 4. (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or in its discretion, in divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.

(2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and all other cases which under the Rules of Court are required to be heard *en banc*, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions,

Supreme Court E-Library

The solution to address the problems relating to a Chief Justice is for this Court to call her out or for her to be tried using the

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ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.
(3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc*: Provided, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*.

Section 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

(2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.
(3) A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.

Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

(2) The regular Members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.
(3) The Clerk of the Supreme Court shall be the Secretary *ex officio* of the Council and shall keep a record of its proceedings.
(4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.
(5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

impeachment process if any of her actions amounts to the grave offenses enumerated in the Constitution.

She also has the alternative to have the grace and humility to resign from her office to protect the institution from a leadership which may not have succeeded to address the divisiveness and the weaknesses within.

Granting a Petition for Quo Warranto against the Chief Justice—an impeachable officer—is not the right way to address her inability to gain the respect of the branch of government that she was entrusted to lead. This is clear from a deliberate, impartial, conscious, and contextual reading of the entirety of the text of the Constitution. This is the unclouded conclusion if this Court appreciates the true value of judicial independence.

Section 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation. For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

Section 10. The salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be decreased.

Section 11. The Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reached the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court *en banc* shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

Section 12. The Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions.

Section 13. The conclusions of the Supreme Court in any case submitted to it for decision *en banc* or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Member who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor. The same requirements shall be observed by all lower *collegiate* courts.

Supreme Court E-Library

Granting the Quo Warranto Petition as the majority proposes, is tantamount to empowering the Solicitor General, a repeat litigant representing the current political administration, far more than any other constitutional officer. The Solicitor General will be granted the competence to what amounts to a reconsideration of the determination of the Judicial and Bar Council and the President as to the qualifications of any appointed judge or justice.

I

The majority attempts to make a distinction between the determination of the qualifications of an applicant to a judicial position and his or her acts after his or her appointment. For acts in relation to the presentation of qualifications, the majority argues that quo warranto may be a remedy. For acts after his or her appointment, it is proposed that impeachment and conviction may be the vehicle for an impeachable officer's removal.

Quo warranto is, therefore, presented as not exclusive of impeachment. This is a distinction which cannot be found in the Constitution. It is likewise contrary to its principles.

Tecson v. Commission on Elections[5] defined quo warranto proceedings as "an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office."

A petition for quo warranto under Rule 66 of the Rules of Court is required to be brought under the name of the Republic of the Philippines through a verified petition.[6] It may be instituted by an individual claiming a right to an office in his or her own name[7] or by the Solicitor General or public prosecutor.[8] The relevant provisions of the Rules of Court state:

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[5] 468 Phil. 421, 461-462 (2004) [Per *J.* Vitug, *En Banc*].

[6] RULES OF COURT, Rule 66, Sec. 1.

[7] RULES OF COURT, Rule 66, Sec. 5.

[8] RULES OF COURT, Rule 66, Sec. 3.

RULE 66
Quo Warranto

Section 2. When Solicitor General or Public Prosecutor Must Commence Action. — The Solicitor General or a public prosecutor, when directed by the President of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in the preceding section can be established by proof, must commence such action.

Section 3. When Solicitor General or Public Prosecutor May Commence Action with Permission of Court. — The Solicitor General or a public prosecutor may, with the permission of the court in which the action is to be commenced, bring such an action at the request and upon the relation of another person; but in such case the officer bringing it may first require an indemnity for the expenses and costs of the action in an amount approved by and to be deposited in the court by the person at whose request and upon whose relation the same is brought.

. . . . . .

Section 5. When An Individual May Commence Such An Action. — A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name.[9]

Quo warranto, as used in this case, will amount to a "removal" of an impeachable public officer. Thus, Article VIII, Section 5(1) should be read alongside Article XI, Section 2 of the Constitution. The distinction relating to when offenses were committed is not relevant for purposes of the process for removal. Concededly, actions prior to the assumption of office may amount to a crime. However, it is only upon the end of the tenure of the impeachable officer or after her removal may she be held to account.

The Constitutional design is to balance the accountability of an impeachable public officer with the necessity for a degree of immunity while in service that will assure the independence inherent in a republican government.

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[9] RULES OF COURT, Rule 66, Secs. 2, 3, and 5.

Supreme Court E-Library

The gist of the present majority opinion is that respondent may be removed from her position as Chief Justice via quo warranto proceedings and that this Court can take cognizance of the present petition for quo warranto pursuant to Article VIII, Section 5(1), which provides:

> Section 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.[10]

Then it proceeds to a narrow version of *verbal legis* or plain reading of Article XI, Section 2 to propose that there is possibly no other interpretation other than the removal of the President, Vice President, Members of the Supreme Court, Members of the Constitutional Commissions, and the Ombudsman by impeachment is merely permissive.

I disagree.

II

It is true that Article XI, Section 2 of the Constitution uses the phrase "may be removed," thus:

> Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman *may be removed from office,* on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees *may be removed from office* as provided by law, but not by impeachment.[11] (Emphasis supplied)

Fundamentally, when construing the meaning of the Constitution, it is not only the literal meaning of words and phrases that should be taken into consideration.

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[10] CONST., Art. VIII, Sec. 5(1).

[11] CONST., Art. XI, Sec. 2.

Since it is the Constitution that we are reading, the context of the words and phrases (1) within the entire document, (2) in the light of the textual history as seen in past Constitutions ratified by our people, (3) within the meaning of precedents of this Court, and (4) in the light of contemporary circumstances, which may not have been in the contemplation of those who ratified the Constitution, as well as those who participated in the deliberation and decision of those who voted precedents in the light of their written opinions, must likewise be considered.

David v. Senate Electoral Tribunal,[12] thus, stated:

> Reading a constitutional provision requires awareness of its relation with the whole of the Constitution. A constitutional provision is but a constituent of a greater whole. It is the framework of the Constitution that animates each of its components through the dynamism of these components' interrelations. What is called into operation is the entire document, not simply a peripheral item. The Constitution should, therefore, be appreciated and read as a singular, whole unit — *ut magis valeat quam pereat*. Each provision must be understood and effected in a way that gives life to all that the Constitution contains, from its foundational principles to its finest fixings.[13]

David also underscored that jurisprudence over the text under consideration must also be taken into account, as judicial decisions that interpret law and the Constitution become part of our legal system.[14]

The Constitution is not just an ordinary legal document. It frames our legal order. The changes in its phraseology reflect the historical adjustments of the values of the sovereign. While admittedly, large portions of the document are consistent with our colonial history, many of the words have already been interpreted in the light of our own indigenous wisdom. Likewise,

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[12] G.R. No. 221538, September 20, 2016, 803 SCRA 435 [Per *J.* Leonen, *En Banc*].

[13] *Id*. at 478-479.

[14] G.R. No. 221538, September 20, 2016, 803 SCRA 435 [Per *J.* Leonen, *En Banc*].

Supreme Court E-Library

many of the fundamental rights of individuals, groups, and identities find resonance with normative formulations in the international sphere, which provide this Court with persuasive guidance.

To focus on the dictionary meaning of the word "may" precludes the importance of the entire document. It provides a myopic and unhistorical view of the framework on which our legal order rests. It supplants sovereign intent to the linguistic whims of those who craft dictionaries.

Of course, no judicial interpretation, which is not supported by any textual anchor, should be allowed. Otherwise, we unreasonably endow ourselves with a power not ours. Instead of interpreting, we create new norms. This is a constitutional power not granted to this Court.

Definitely, the framers of the Constitution did not use the words "SHALL be removed." Clearly, this would not have been possible because it would have communicated the inference that removal through impeachment and conviction was mandatory. Thus, the word "may" should mean that it was an option to remove, in the sense that it was not mandatory to remove an impeachable officer. After all, most should be expected to serve out their term with "utmost responsibility, integrity, loyalty, and efficiency," acting "with patriotism and justice" and leading "modest lives."[15]

Neither did the framers use the phrase "may ALSO be removed from office . . ." This would have clearly stated the intent that there were processes other than impeachment and conviction that would remove a sitting Chief Justice.

Admittedly, the framers also did not use the phrase "may ONLY be removed from office . . ." However, the absence of the word "only" should not immediately lead to the conclusion that another process—like Quo Warranto—was possible. The context of the provision should be taken into consideration.

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[15] CONST., Art. XI, Sec. 1.

First, the process of removal through impeachment and conviction is reserved only for some officials, notably:

(1) The President;
(2) The Vice President;
(3) Members of the Supreme Court;
(4) Members of the Constitutional Commissions; and
(5) The Ombudsman.[16]

This list is exclusive. For all other public officers, the Constitution allows a process that may be provided by law—not by impeachment.

The officers enumerated head significant Constitutional organs, hence, the need to be independent of other Constitutional organs.

In the same manner, the President enjoys immunity from suit so that he may be able to exercise his duties and functions without any hindrance or distraction, thereby giving his office and the country the undivided attention that they deserve.[17]

A more complete picture will be seen if the process of removal of a member of the Senate or the House of Representatives is taken into consideration, thus, in Article VI:

Section 16. . . .

(3) Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds of all its members, suspend or expel a member. A penalty of suspension, when imposed, shall not exceed sixty days.[18]

This provision emphasizes the independence of Congress, which, under the provisions of our Constitution, impeaches and convicts the officers mentioned in Article XI, Section 2 of the Constitution.

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[16] CONST., Art. XI, Sec. 2.

[17] *Soliven v. Makasiar*, 249 Phil. 394 (1988) [*Per Curiam*, *En Banc*].

[18] CONST., Art. VI, Sec. 16 (3).

Supreme Court E-Library

Second, the process of removal is deliberately cumbersome. Article XI, Section 3 provides:

Section 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(6) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(7) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(8) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment according to law.

(9) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.[19]

Clearly, the power to remove an impeachable official, while involving the interpretation of the Constitution, is not assigned to the Judiciary. It is an exclusive function of the House of Representatives and the Senate. The House acts as prosecutor while the Senate will act as the body to try the case; that is, to receive evidence and vote for conviction or acquittal.

The votes needed are also specified. One-third of all the members of the House of Representatives is required to impeach, and thus, to file the Articles of Impeachment. Two-thirds of all the members of the Senate are required to convict.

There are also required timetables in the impeachment process. This includes a period of one (1) year after the last impeachment attempt before any new impeachment charge is brought.

The purpose of the one (1)-year time bar for impeachment is intended not only to avoid harassment suits against the impeachable officer, but also to prevent the disruption of public service. If numerous impeachment complaints are filed one after the other, impeachable officers would be unable to do their official functions and duties. Important legislative work would be delayed in order to be able to process the complaints. *Gutierrez v. House of Representatives*[20] explains:

> The Court does not lose sight of the salutary reason of confining only one impeachment proceeding in a year. Petitioner concededly cites Justice Adolfo Azcuna's separate opinion that concurred with the *Francisco* [*v. House of Representatives*] ruling. Justice Azcuna stated that the purpose of the one-year bar is two-fold: to prevent undue or too frequent harassment; and 2) to allow the legislature to do its principal task [of] legislation, with main reference to the records of the Constitutional Commission, that reads:

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[19] CONST., Art. XI, Secs. 3(1) to (8).

[20] 658 Phil. 322 (2011) [Per *J.* Carpio Morales, *En Banc*].

Supreme Court E-Library

> MR. ROMULO. Yes, the intention here really is to limit. This is not only to protect public officials who, in this case, are of the highest category from harassment but also to allow the legislative body to do its work which is lawmaking. Impeachment proceedings take a lot of time. And if we allow multiple impeachment charges on the same individual to take place, the legislature will do nothing else but that.

It becomes clear that the consideration behind the intended limitation refers to the element of time, and *not* the number of complaints. The impeachable officer should defend himself in only one impeachment *proceeding*, so that he will not be precluded from performing his official functions and duties. Similarly, Congress should run only one impeachment proceeding so as not to leave it with little time to attend to its main work of law-making. The doctrine laid down in *Francisco* that initiation means filing *and* referral remains congruent to the rationale of the constitutional provision.[21] (Emphasis and underscoring in the original)

The numbers required from a collective body were clearly designed to ensure that the removal of the impeachable public officers requires a modicum of political will from the elected representatives in both Congressional chambers. This, again, was a process to shield the heads of the Constitutional departments, Constitutional Commissions, and the Ombudsman with an added layer of assurance against suits that could be maliciously filed by disgruntled parties, and therefore, diminish the independence and resolve of the impeachable officers.

The process of impeachment was designed as a measure of accountability for public officials who are not otherwise burdened by the pressures of maintaining electability. For this reason, the constitutional provisions on impeachment are placed under Article XI, on the Accountability of Public Officers, and not under Article VI on the Legislative Department,[22] emphasizing

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[21] *Id*. at 400-401 *citing J.* Azcuna, Separate Opinion in *Francisco v. House of Representatives*, 460 Phil. 830 (2003) [Per *J.* Carpio Morales, *En Banc*].

[22] *See also* the Separate Opinion of Justice Azcuna in *Francisco v. House of Representatives*, 460 Phil. 830 (2003) [Per *J.* Carpio Morales, *En Banc*].

that the process is not merely a check and balance of government branches but rather a process to hold the highest public officials accountable to the people.

Third, the grounds for impeachment are weighty and serious, thus:

(1) Culpable violation of the Constitution;
(2) Treason;
(3) Bribery;
(4) Graft and Corruption; and
(5) Betrayal of the Public Trust.[23]

Again, the list is exclusive. The process does not allow removal for any other crime or misdemeanor. It is not left wholly to the discretion of the members of Congress. The evidence must infer facts which amount to the offenses mentioned.

In excluding other crimes, the intent to shield the impeachable officers from malicious or bothersome suits is palpable. Clearly, mistakes will be made by public officials. But, while in office, it is indisputable that some level of immunity is given to the official.

Again, the rationale is plain. Difficult decisions will be made by the President, members of the Supreme Court, members of the Constitutional Commissions, and the Ombudsman. In their decisions, there will be powerful perhaps even moneyed individuals who will be affected adversely. Certainly, the ideal should be that all the impeachable officers will decide on the basis of both principle and public good without fear of the detriment that will be felt by the losing parties. Structurally, the Constitution should be read as providing the incentive for them to do their duties. Thus, "may be removed" should be read in the light of this principle. That is, that impeachment and conviction is the only process. It simply signifies that there may be an attempt to impeach and it may be successful if the Senate convicts.

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[23] CONST., Art. XI, Sec. 2.

Supreme Court E-Library

Granting this petition as a circumvention of the constitutionally mandated impeachment process will have the deleterious effect of allowing untrammeled incursions into our judicial independence. Without the mantle of judicial independence to protect us, the Judiciary will be substantially diminished with the courts subject to possible harassment during the performance of their duties.

III

Even assuming that this Court can take cognizance of the petition, an action for quo warranto is limited in time regardless of who institutes the action. It can only be instituted within one (1) year after the cause of action arises.[24]

Rule 66, Section 11 of the Rules of Court is clear and leaves no room for interpretation:

> Section 11. Limitations. — *Nothing contained in this Rule shall be construed to authorize an action against a public officer or employee for his ouster from office unless the same be commenced within one (1) year after the cause of such ouster, or the right of the petitioner to hold such office or position, arose*; nor to authorize an action for damages in accordance with the provisions of the next preceding section unless the same be commenced within one (1) year after the entry of the judgment establishing the petitioner's right to the office in question.[25] (Emphasis supplied)

It is in the public's best interest that questions regarding title to public office be resolved and laid to rest as soon as possible. This is the rationale behind the one (1)-year prescriptive period. Public service demands stability and consistency.

In the same manner, public officers cannot rest easy with the threat of being unseated at any time looming over their heads. The right of civil servants to occupy their seats must

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[24] *Villegas v. De La Cruz*, 122 Phil. 1102 (1965) [Per *J.* Bautista Angelo, *En Banc*]; *Cristobal v. Melchor*, 168 Phil. 328 (1977) [Per *J.* Muñoz Palma, First Division].

[25] RULES OF COURT, Rule 66, Sec. 11.

not be subjected to constant uncertainty. A public officer cannot afford to be distracted from his or her duties. When public officers cannot do their work effectively, it is not just the office that deteriorates. The nature of the office is such that it is the public that is inconvenienced and ultimately suffers.

It is, thus, imperative that a quo warranto petition be filed within the one (1)-year prescriptive period so as to establish immediately and with finality any nagging questions regarding title to public office.

In *Villegas v. De la Cruz*,[26] this Court stated that "it is not proper that the title to a public office be subjected to continued uncertainty for the people's interest requires that such right be determined as speedily as possible."[27]

The public policy behind the prescriptive period for quo warranto proceedings was emphasized in *Unabia v. City Mayor*:[28]

> [I]n actions of quo warranto involving right to an office, the action must be instituted within the period of one year. This has been the law in the island since 1901, the period having been originally fixed in Section 216 of the Code of Civil Procedure (Act No. 190). We find this provision to be an expression of policy on the part of the State that persons claiming a right to an office of which they are illegally dispossessed should immediately take steps to recover said office and that if they do not do so within a period of one year, they shall be considered as having lost their right thereto by abandonment. There are weighty reasons of public policy and convenience that demand the adoption of a similar period for persons claiming rights to positions in the civil service. *There must be stability in the service so that public business may be unduly retarded; delays in the statement of the right to positions in the service must be discouraged*.[29] (Emphasis supplied)

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[26] 122 Phil. 1102 (1965) [Per *J.* Bautista Angelo, *En Banc*].

[27] *Id*. at 1105.

[28] 99 Phil. 253 (1956) [Per *J.* Labrador, *En Banc*].

[29] *Id*. at 257.

Supreme Court E-Library

Unabia also emphasized the importance of protecting public funds, hence, the government cannot compensate an unqualified officer:

> Further, the Government must be immediately informed or advised if any person claims to be entitled to an office or a position in the civil service as against another actually holding it, so that the Government may not be faced with the predicament of having to pay two salaries, one, for the person actually holding the office, although illegally, and another, for one not actually rendering service although entitled to do so.[30]

The importance of protecting public funds and maintaining stability in the government is reiterated in *Pinullar v. President of the Senate*[31] and *De la Cerna v. Osmeña*.[32]

In *Pinullar*:

> While the court exhorts the institution of the corresponding action for the redress of wrong or unlawful act committed either by a private person or an official of the Government, and discourages laches and inaction, such relief must be sought for within a reasonable period; otherwise any remedy to which he may be entitled would be denied him for his apparent loss of interest, or waiver, or even acquiescence on his part (Mesias *vs.* Jover, 97 Phil., 899; 51 Off. Gaz [12] 6171). The rationale of this doctrine is given when this Court said:
>
> > ". . ., the Government must be immediately informed or advised if any person claims to be entitled to an office or a position in the civil service as against another actually holding it, so that the Government may not be faced with the predicament of having to pay two salaries, one, for the person actually holding the office, although illegally, and another, for one not actually rendering service although entitled to do so . . ."[33]

In *De la Cerna*:

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[30] *Id*. at 257-258.

[31] 104 Phil. 131 (1958) [Per *J*. Felix, *En Banc*].

[32] 105 Phil. 774 (1959) [Per *J*. Montemayor, *En Banc*].

[33] 104 Phil. 131, 135 (1958) [Per *J*. Felix, *En Banc*].

Supreme Court E-Library

In his petition for mandamus, dated May 5, 1956, as well as in his amended petition, dated June 26, 1956, petitioner-appellant alleged that Administrative Case No. 22 of the municipal board of the City of Cebu was still pending investigation and awaiting judgment or decision. On the other hand, in their answer to his petition for mandamus, respondents therein equally alleged that in said Administrative Case No. 22, petitioner-appellant was found guilty of the charges and as a result the municipal board dismissed him from the service. For lack of evidence, we are unable to make a finding on this controverted point, not knowing which of the conflicting allegations should be accepted. However, it is a fact that appellant's position was duly abolished and that due to said abolitions, he was separated from the service on October 10, 1953, and as already stated, he filed this action for reinstatement and for the payment of back salaries, only on May 10, 1956, after a period of almost three years.

Following the doctrine laid down in the case of Unabia *vs*. City Mayor, *supra*, and other cases, where we held that "any person claiming right to a position in the civil service should also be required to file his petition for reinstatement within the period of one year, otherwise he is thereby considered as having abandoned his office", we find no error in the two appealed orders, and, consequently, hereby affirm the same.[34] (Citation omitted)

An action for quo warranto should be promptly filed and persons who claim a right to the office occupied by a supposed usurper should do so within the provided period, lest they be deemed to have abandoned[35] their right.

The majority refers to Article 1108(4) of the Civil Code to support their stand that the prescriptive period for filing the quo warranto petition has not yet prescribed and will never prescribe because prescription does not lie against the State.

I cannot agree.

Article 1108(4) of the Civil Code provides:

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[34] 105 Phil. 774, 776 (1959) [Per *J*. Montemayor, *En Banc*].

[35] *Castro v. Del Rosario,* 125 Phil. 611 (1967) [Per *J*. Makalintal, *En Banc*].

Supreme Court E-Library

Article 1108. Prescription, both acquisitive and extinctive, runs against:

(1) Minors and other incapacitated persons who have parents, guardians or other legal representatives;
(2) Absentees who have administrators, either appointed by them before their disappearance, or appointed by the courts;
(3) Persons living abroad, who have managers or administrators;
(4) *Juridical persons, except the State and its subdivisions.*

Persons who are disqualified from administering their property have a right to claim damages from their legal representatives whose negligence has been the cause of prescription.[36] (Emphasis supplied)

However, Article 1108(4) refers to acquisitive and extinctive prescription as regards the acquisition or ownership of real rights, and not prescription in general. Article 1108 can be found in Book III of the Civil Code which relates to the *different modes of acquiring ownership*.

The ownership referred to in Book III of the Civil Code is ownership of real property, personal property, and intellectual creations. It is preposterous to include the position of Chief Justice within the coverage of Book III of the Civil Code, since a public office is not a property right, hence, no proprietary title can attach to it.[37]

Furthermore, a quick review of jurisprudence[38] shows that the phrase "Prescription does not lie against the State" was

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[36] CIVIL CODE, Art. 1108.

[37] *Civil Service Commission v. Javier,* 570 Phil. 89 (2008) [Per *J.* Austria-Martinez, *En Banc*] citing *Montesclaros v. Commission on Elections,* 433 Phil. 620 (2002) [Per *J.* Carpio, *En Banc*].

[38] *Republic of the Philippines v. Animas,* 155 Phil. 470 (1974) [Per *J.* Esguerra, First Division]; *Republic v. Court of Appeals,* 253 Phil. 698 (1989) [Per *J.* Melencio-Herrera, Second Division]; *Reyes v. Court of Appeals,* 356 Phil. 606 (1998) [Per *J.* Martinez, Second Division]; *Republic of the Philippines v. Court of Appeals,*327 Phil. 852 (1996) [Per *J.* Davide, Jr., Third Division]; *Dela Cruz v. Court of Appeals,* 349 Phil. 898 (1998) [Per *J.* Romero, Third Division]; *East Asia Traders Inc. v. Republic of the Philippines,* 477 Phil. 848 (2004) (Per *J.* Sandoval-Gutierrez, Second Division); *Pelbel Manufacturing Corporation v. Court of Appeals,* 529 Phil. 192 (2006)

limited to actions of reversion to the public domain of lands which were fraudulently granted to private individuals and not in all actions instituted by the State, as the majority has mistakenly concluded.

Republic v. Court of Appeals[39] emphasized that the State's action *to recover its own property* is imprescriptible:

> And in so far as the timeliness of the action of the Government is concerned, it is basic that prescription does not run against the State (Article 1108, Civil Code; Republic vs. Rodriguez, L-18967, January 31, 1966, 16 SCRA 53). The case law has also been:
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> > "When the government is the real party in interest, and is proceeding mainly to assert its own rights and recover its own property, there can be no defense on the ground of limitation or limitation" (Government of the U.S. vs. Judge of First Instance of Pampanga, 49 Phil. 495, 500; Republic vs. Grijaldo, L-20240, December 31, 1965, 15 SCRA 681).
> >
> > "*Public land fraudulently included in patents or certificates of title may be recovered or reverted to the State in accordance with Section 101 of the Public Land Act. Prescription does not lie against the State in such cases for the Statute of Limitations does not run against the State. The right of reversion or reconveyance to the State is not barred by prescription.*"[40] (Emphasis supplied)

If we were to follow the majority's argument of altogether excusing the State from the limiting effects of time, then we would be encouraging and giving our imprimatur to indolence and mediocrity within government service. This must not be

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[Per *J.* Puno, Second Division); *Heirs of Parasac v. Republic of the Philippines,* 523 Phil. 164 (2006) [Per *J.* Chico-Nazario, First Division]; *Samahan ng Masang Pilipino sa Makati, Inc. v. Bases Conversion Development Authority,* 542 Phil. 86 (2007) [Per *J.* Velasco, Jr., Second Division); *Land Bank of the Philippines v. Republic of the Philippines,* 567 Phil. 427 (2008) [Per *J.* Reyes, R.T., Third Division]; *Yu Chang v. Republic,* 659 Phil. 176 (2011) [Per *J.* Villarama, Jr., Third Division].

[39] 253 Phil. 698 (1989) [Per *J.* Melencio-Herrera, Second Division].

[40] *Id*. at 713.

Supreme Court E-Library

the case and we must always expect more from our public officers, especially the Solicitor General who holds the honor of representing the State.

IV

The history of impeachment enlightens us on the balance of values which have been considered in the removal of the class of public officers mentioned in Article XI, Section 2 of the Constitution.

Impeachment as a mode of removal of public officers was introduced in this jurisdiction through the 1935 Constitution. It was carried over from the American Constitution, which in turn, was carried over from English practice.[41] In 14th century England, impeachment was used by Parliament to gain authority over the King's ministers who were thought to be above the law. The proceeding was widely used until the 19th century, when the doctrine of ministerial responsibility was established and the Parliament, with a mere vote of no confidence, could oust an erring official.[42]

While it was virtually obsolete in England, the United Constitution adapted the proceeding as a "method of national inquest into the conduct of public men."[43] The American Founding Fathers, however, were careful to distinguish their proceeding from that of the English.[44] The English form of impeachment applied to any private citizen or commoner for treason or high crimes and to the high-born lords for any crime, and thus, was considered a criminal proceeding.[45] The American

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[41] *See J.* Vitug, Separate Opinion in *Francisco v. House of Representatives*, 460 Phil. 830 (2003) [Per *J.* Carpio Morales, *En Banc*].

[42] *Id. citing* Michael Nelson, ed., *THE PRESIDENCY A TO Z, WASHINGTON D.C. CONGRESSIONAL QUARTERLY* (1998).

[43] *Id.*

[44] *Id. citing* Michael J. Gerhardt, *The Constitutional Limits to Impeachment and its Alternatives*, 68 TEX. L. REV. 1 (November 1989).

[45] *Id. citing* Michael Nelson, ed., *THE PRESIDENCY A TO Z, WASHINGTON D.C. CONGRESSIONAL QUARTERLY* (1998).

form, however, narrowly restricted its applicability to only "the chief of state, members of the cabinet and those in the judiciary" and the impeachable offenses to "treason, bribery, or other high crimes and misdemeanors." Hence, the proceeding was treated differently from any other proceeding.[46]

This American form of impeachment was, thus, adopted by the framers of our 1935 Constitution, which provided:

ARTICLE IX.—IMPEACHMENT

Section 1. The President, the Vice-President, the Justices of the Supreme Court, and the Auditor General, shall be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, or other high crimes.

In its current iteration, the provision in the Constitution reads:

ARTICLE XI.

ACCOUNTABILITY OF PUBLIC OFFICERS

. . . . . .

Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

Section 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its members, shall submit its report to the House within sixty session days from such referral,

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[46] *Id*. *citing* Michael J. Gerhardt, *The Constitutional Limits to Impeachment and its Alternatives*, 68 TEX. L. REV. 1 (November 1989).

Supreme Court E-Library

together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial and punishment according to law.

(8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.

Impeachment is characterized as a *sui generis* proceeding that is both legal and political in nature. It is legal in the sense that like criminal cases, it requires basic evidentiary rules and due process.[47] As in administrative proceedings, it results in the removal and disqualification of the official.[48] It is political

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[47] See *J.* Vitug, Separate Opinion in *Francisco v. House of Representatives*, 460 Phil. 830 (2003) [Per *J.* Carpio Morales, *En Banc*].

[48] *Id. citing* Akhil Reed Amar, *On Impeaching Presidents*, 28 HOFSTRA L. REV. 2 (Winter 1999).

in the sense that it is used as "a constitutional measure designed to protect the State from official delinquencies and malfeasance, the punishment of the offender being merely incidental."[49] While the proceeding itself is nonpartisan, the powers to initiate impeachment and to conduct trial are exercised by Congress, a political body that may be susceptible to partisan influence.[50] The sanction also carries with it "the stigmatization of the offender."[51]

Impeachment is designed for occasional use, not to be invoked lightly, but reserved only for the most serious of offenses enumerated under the Constitution:

> [I]mpeachment is the heaviest piece of artillery in the congressional arsenal, but because it is so heavy it is unfit for ordinary use. It is like a hundred-ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to aim at.[52]

Due to its complex nature, "impeachment is the most difficult and cumbersome mode of removing a public officer from office."[53] Factors that must be examined and considered include "the process required to initiate the proceeding; the one-year limitation or bar for its initiation; the limited grounds for impeachment; the defined instrumentality given the power to try impeachment cases; and the number of votes required for a finding of guilt."[54] Proceedings stall legislative work, are

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[49] *J.* Vitug, Separate Opinion in *Francisco v. House of Representatives*, 460 Phil. 830, 957 (2003) [Per *J.* Carpio Morales, *En Banc*].

[50] *Id*. *citing* UP Law Center Constitutional Revision Project, Manila (1970).

[51] *Id*. *citing* Akhil Reed Amar, *On Impeaching Presidents*, 28 HOFSTRA L. REV. 2 (Winter 1999).

[52] Lecture by United States Court of Appeals Chief Judge Irving R. Kaufman, *Chilling Judicial Independence*, Benjamin N. Cardozo Memorial Lectures, delivered on November 1, 1978, New York, 1002.

[53] See *Gonzales III v. Office of the President of the Philippines*, 75 Phil. 380 (2014) [Per *J.* Brion, *En Banc*].

[54] *Id*.

Supreme Court E-Library

costly to prosecute, and result in the divisiveness of the nation.[55] Thus, impeachment is limited "only to the officials occupying the highest echelons of responsibility in our government."[56]

In recognition of the immense responsibility reposed upon the highest officers of the land, the Constitution has decreed that they may only be removed via impeachment providing them with a level of immunity while in office but accountable after retirement, resignation, or removal.

This intention was reflected in the 1935 Constitution which provided:

ARTICLE IX.—IMPEACHMENT

Section 1. The President, the Vice-President, the Justices of the Supreme Court, and the Auditor General, shall be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, or other high crimes.

Impeachment was also reproduced in the succeeding Constitutions, with the 1975 Constitution providing:

Article XIII- Accountability of Public Officers

. . . . . .

Section 2. The President, the Justices of the Supreme Court, and the Members of the Constitutional Commissions shall be removed from office on *impeachment* for, and conviction of, culpable violation of the Constitution, treason, bribery, other high crimes, or graft and corruption. (Emphasis supplied)

And the 1987 Constitution stating:

Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on *impeachment* for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public

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[55] *Id*.

[56] *Id*.

trust. All other public officers and employees may be removed from office as provided by law, but not by *impeachment*. (Emphasis supplied)

An exception is provided for in the 2010 Rules of the Presidential Electoral Tribunal.[57] Rule 16 provides:

Rule 16. Quo warranto. — A verified petition for quo warranto contesting the election of the President or Vice-President on the ground of ineligibility or disloyalty to the Republic of the Philippines may be filed by any registered voter who has voted in the election concerned within ten days after the proclamation of the winner.

To the majority, the existence of this rule does not preclude the availability of a petition for quo warranto to remove impeachable officers.[58] This ignores that among the impeachable officers, the President and the Vice President are the only ones elected by the public. The rest are appointed officials.

Due to the highly politicized nature of an impeachment proceeding, it may be more difficult to initiate proceedings against elective officials who are members of the ruling political party in Congress. This was alluded to in the deliberations of the Constitutional Commission where a delegate suggested that the removal of the President should be by a nonpolitical judicial tribunal:

On impeachment,; Mr. Guingona stated that elective officials are difficult to impeach, particularly the President, as he may be a member of the ruling party in the Senate. He advanced the view of the 1971 Constitutional Revision Project by stating that impeachment cases should be heard by a nonpolitical and highly qualified judicial tribunal, citing instances to prove his point.[59]

Another point to consider would be the vast difference in the qualifications required of each office. In order to be qualified

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[57] A.M. No. 10-4-29-SC (2010).

[58] *Majority opinion*, pp. 48-50.

[59] 1986 Constitutional Deliberations, Journal No. 40, Vol. I, July 26, 1986.

Supreme Court E-Library

to run as President or Vice President, the candidates must possess the following qualifications:

> Section 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.
>
> Section 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. He may be removed from office in the same manner as the President.[60]

The Constitution does not provide any other qualifications. Thus, any person who fulfills these *minimum* requirements will be considered a candidate. Otherwise, former President Joseph E. Estrada, who was not a college graduate, and former President Corazon C. Aquino, who had no political experience,[61] would not have even been allowed on the ballot.

Furthermore, the process of presenting a protest against the President and Vice President is uniquely provided by the Constitution. Thus in Article VII, Section 4, paragraph 7:

> The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

V

In contrast, Members of the Supreme Court and the Ombudsman must not only possess the minimum requirements

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[60] CONST., Art. VII, Secs. 2 and 3.

[61] Veronica Palumbarit, *Past PHL presidents: Many were lawyers, one a housewife, another a mechanic*, GMA NEWS ONLINE, December 17, 2015 <http://www.gmanetwork.com/news/news/specialreports/548156/past-phl-presidents-many-were-lawyers-one-a-housewife-another-a-mechanic/story/> (last accessed May 7, 2018).

Supreme Court E-Library

under the Constitution, but must also undergo a rigorous vetting process by the Judicial and Bar Council.[62]

An applicant must submit an application to the Judicial and Bar Council within 90 days from a vacancy.[63] The list of applicants who fulfill the minimum requirements is published in two (2) newspapers of general circulation. The publication is to inform and to give the public an opportunity to raise any complaint or opposition against any of the listed candidates.[64] The applications are then thoroughly examined by the Council,[65] which looks into the candidates' "educational preparation, relevant experience, work performance and performance ratings." It also looks into "other relevant accomplishments such as the completion of the Prejudicature Program of the Philippine Judicial Academy,"[66] background checks,[67] validated testimonies of reputable officials and impartial organizations,[68] comprehensive medical examinations and psychological evaluation,[69] written evaluative examinations,[70] and public interviews.[71] The Council

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[62] *See* CONST., Art. VIII, Sec. 9 and Art. XI, Sec. 9.

[63] The Revised Rules of the Judicial and Bar Council (2016), Rule 1, Sec. 1.

[64] The Revised Rules of the Judicial and Bar Council (2016), Rule 1, Sec. 8.

[65] The Revised Rules of the Judicial and Bar Council (2016), Rule 3, Rule 4, and Rule 5.

[66] The Revised Rules of the Judicial and Bar Council (2016), Rule 1, Sec. 1.

[67] The Revised Rules of the Judicial and Bar Council (2016), Rule 4, Sec. 2.

[68] The Revised Rules of the Judicial and Bar Council (2016), Rule 5, Sec. 2.

[69] The Revised Rules of the Judicial and Bar Council (2016), Rule 6.

[70] The Revised Rules of the Judicial and Bar Council (2016), Rule 7, Sec. 1.

[71] The Revised Rules of the Judicial and Bar Council (2016), Rule 2, Sec. 2.

Supreme Court E-Library

then deliberates and conducts a final voting on nominations.[72] A candidate must garner at least four (4) votes from the Council before he or she can even be included in the short list.[73]

Members of Constitutional Commissions, on the other hand, are appointed with the consent of the Commission on Appointments.[74] Under Article VII, Section 18 of the Constitution:

> Section 18. There shall be a Commission on Appointments consisting of the President of the Senate, as ex officio Chairman, twelve Senators and twelve Members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented therein. The Chairman of the Commission shall not vote, except in case of a tie. The Commission shall act on all appointments submitted to it within thirty session days of the Congress from their submission. The Commission shall rule by a majority vote of all the Members.

While the Commission on Appointments consists of members of Congress, it is considered to be a constitutional body independent of Congress. *Pimentel v. Enrile*[75] explains:

> The Commission on Appointments is a creature of the Constitution. Although its membership is confined to members of Congress, said Commission is independent of Congress. The powers of the Commission do not come from Congress, but emanate directly from the Constitution. Hence, it is not an agent of Congress. In fact, the functions of the Commissioner are purely executive in nature.[76]

All nominations or appointments submitted for approval to the Commission on Appointments must submit papers or

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[72] The Revised Rules of the Judicial and Bar Council (2016), Rule 8, Sec. 1.

[73] The Revised Rules of the Judicial and Bar Council (2016), Rule 8, Sec. 2.

[74] CONST., Art. IX (B), Sec. 1 (2); Art. IX (C), Sec. 1 (2); and Art. IX (D), Sec. 1 (2).

[75] 509 Phil. 567 (2005) [Per *J.* Carpio, *En Banc*].

[76] *Id*. at 574.

documents containing a family background and curriculum vitae.[77] In addition, the nominees or appointees must submit the following papers and documents:

a) Disclosure, under oath, of kinship with any appointive or elective official in the Government, including government-owned or controlled corporations, occupying positions down to the directorship level, within the fourth degree of consanguinity or affinity;

b) Copies of Income Tax Returns for the four (4) immediately preceding fiscal years;

c) Verified statements of assets and liabilities for the four (4) immediately preceding fiscal years, including those of his spouse, if the nominee or appointee is in the government service; or verified statements of net worth for the four (4) immediately preceding fiscal years, if the nominee or appointee comes from the private sector;

d) Disclosure of business, financial, personal and professional connections and interest for the four (4) immediately preceding fiscal years, including those of his spouse and unmarried children under eighteen (18) years of age living in his household;

e) Clearances under oath by the heads of the National Bureau of Investigation, the Bureau of Internal Revenue, and such other concerned Agencies, as may be required by the nature of the position he is nominated or appointed to;

f) A medical certificate issued by a duly licensed physician containing information about the nominee or appointee's physical and mental conditions; and,

g) Statement, under oath, whether the nominee or appointee has any pending criminal or administrative case against him.[78]

A public hearing is conducted 30 days after the referral to the Commission.[79] The Commission votes by viva voce unless a member requests that the votes should be nominal.[80]

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[77] 2007 Rules of the Commission on Appointments, Ch. IV, Sec. 16.

[78] 2007 Rules of the Commission on Appointments, Ch. V, Sec. 24.

[79] 2007 Rules of the Commission on Appointments, Ch. IV, Sec. 16.

[80] 2007 Rules of the Commission on Appointments, Ch. IV, Sec. 23.

Supreme Court E-Library

The Judicial and Bar Council has the *sole* constitutional mandate of preparing a short list of nominees for the President. The Commission on Appointments meanwhile has the *sole* constitutional mandate of acting upon nominations and appointments submitted to it. The Commission on Elections, however, exercises several functions,[81] its primary purpose being to ensure "free, orderly, honest, peaceful, and credible elections."[82] It is only expected to assess whether a person running for office fulfills the minimum requirements under the law.

Once a candidate has undergone the rigorous application process of the Judicial and Bar Council, the candidate is considered qualified for the position. To hold otherwise would be to render inutile the constitutional mandates of the Judicial and Bar Council and the Commission on Appointments. The removal of an impeachable officer was meant to be difficult and cumbersome since it will only be on the basis of impeachable offenses committed while in office, not any disqualification prior to appointment. The other constitutional organs such as the Judicial and Bar Council as well as the President can otherwise read the Constitution and discern its meaning.

Of the list of impeachable officers, only the Members of the Supreme Court,[83] the Ombudsman,[84] and a majority of the members of the Commission on Elections[85] are required to be lawyers. The members of the Commission on Audit may either be certified public accountants or members of the Bar.[86] Because of this, several disbarment attempts have been made on these impeachable officials, all of which were eventually dismissed.

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[81] CONST., Art. IX (C), Sec. 2.

[82] CONST., Art. IX (C), Sec. 2(4).

[83] CONST., Art. VIII, Sec. 7(1).

[84] CONST., Art. XI, Sec. 8.

[85] CONST., Art. IX (C), Sec. 1 (1).

[86] CONST., Art. IX (D), Sec. 1.

In *Cuenco v. Fernan*,[87] an administrative case for disbarment was filed against then Justice Marcelo V. Fernan in relation to a case he had litigated prior to becoming a Justice of the Supreme Court. This Court stated in no uncertain terms that:

> Members of the Supreme Court must, under Article VIII (7) (1) of the Constitution, be members of the Philippine Bar and may be removed from office only by impeachment. To grant a complaint for disbarment of a Member of the Court during the Member's incumbency, would in effect be to circumvent and hence to ran afoul of the constitutional mandate that Members of the Court may be removed from office only by impeachment for and conviction of certain offenses listed in Article XI (2) of the Constitution. Precisely the same situation exists in respect of the Ombudsman and his deputies, a majority of the members of the Commission on Elections, and the members of the Commission on Audit who are not certified public accountants, all of whom are constitutionally required to be members of the Philippine Bar.[88] (Citations omitted)

This Court again reiterated this principle in *In re: Gonzalez*,[89] a case filed by then Tanodbayan Raul M. Gonzales, requesting Justice Fernan to comment on the letter of Mr. Cuenco questioning the dismissal of his disbarment complaint against Justice Fernan. This Court stated:

> It is important to underscore the rule of constitutional law here involved. This principle may be succinctly formulated in the following terms: A public officer who under the Constitution is required to be a Member of the Philippine Bar as a qualification for the office held by him and who may be removed from office only by impeachment, cannot be charged with disbarment during the incumbency of such public officer. Further, such public officer, during his incumbency, cannot be charged criminally before the Sandiganbayan or any other court with any offense which carries with it the penalty of removal from office, or any penalty service of which would amount to removal from office.
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> . . . . . .

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[87] 241 Phil. 816 (1988) [*Per Curiam*, *En Banc*].

[88] *Id*. at 828.

[89] 243 Phil. 167 (1988) [*Per Curiam*, *En Banc*].

Supreme Court E-Library

This is not the first time the Court has had occasion to rule on this matter. In *Lecaroz v. Sandiganbayan*, the Court said:

> "The broad power of the New Constitution vests the respondent court with jurisdiction over 'public officers and employees, including those in government-owned or controlled corporations.' There are exceptions, however, like constitutional officers, particularly those declared to be removed by impeachment. Section 2, Article XIII of ther 1973 Constitution provides:
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> 'Sec. 2. The President, the Members of the Supreme Court, and the Members of the Constitutional Commissions shall be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, other high crimes, or graft and corruption.'
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> Thus, the above provision proscribes removal from office of the aforementioned constitutional officers by any other method; otherwise, to allow a public officer who may be removed solely by impeachment to be charged criminally while holding his office with an offense that carries the penalty of removal from office, would be violative of the clear mandate of the fundamental law.
>
> Chief Justice Enrique M. Fernando, in his authoritative dissertation on the New Constitution, states that 'judgment in cases of impeachment shall be limited to removal from office and disqualification to hold any office of honor, trust, or profit under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution trial, and punishment, in accordance with law. The above provision is a reproduction of what was found in the 1935 Constitution. It is quite apparent from the explicit character of the above provision that the effect of impeachment is limited to the loss of position and disqualification to hold any office of honor, trust or profit under the Republic. It is equally manifest that the party thus convicted may be proceeded against, tried and thereafter punished in accordance with law. There can be no clearer expression of the constitutional intent as to the scope of the impeachment process (The Constitution of the Philippines, pp. 465-466).' The clear implication is, the party convicted in the impeachment proceeding shall nevertheless be liable and subject to prosecution, trial and punishment according to law;

> and that if the same does not result in a conviction and the official is not thereby removed, the filing of a criminal action 'in accordance with law' may not prosper."

The provisions of the 1973 Constitution we referred to above in *Lecaroz v. Sandiganbayan* are substantially reproduced in Article XI of the 1987 Constitution:

> 'Sec. 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.
>
> Sec. 3 . . .
>
> (7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial and punishment according to law."

It is important to make clear that the Court is not here saying that its Members or the other constitutional officers we referred to above are entitled to immunity from liability for possibly criminal acts or for alleged violation of the Canons of Judicial Ethics or other supposed misbehaviour. What the Court is saying is that there is a fundamental procedural requirement that must be observed before such liability may be determined and enforced. A Member of the Supreme Court must first be removed from office via the constitutional route of impeachment under Sections 2 and 3 of Article XI of the 1987 Constitution. Should the tenure of the Supreme Court Justice be thus terminated by impeachment, he may then be held to answer either criminally or administratively (by disbarment proceedings) for any wrong or misbehaviour that may be proven against him in appropriate proceedings.

The above rule rests on the fundamental principles of judicial independence and separation of powers. The rule is important because judicial independence is important. Without the protection of this rule, Members of the Supreme Court would be vulnerable to all manner

Supreme Court E-Library

of charges which might be brought against them by unsuccessful litigants or their lawyers or by other parties who, for any number of reasons might seek to affect the exercise of judicial authority by the Court.

It follows from the foregoing that a fiscal or other prosecuting officer should forthwith and *motu proprio* dismiss any charges brought against a Member of this Court. The remedy of a person with a legitimate grievance is to file impeachment proceedings.[90]

The same rule was applied in *Jarque v. Desierto*,[91] a disbarment case against former Ombudsman Aniano Desierto. In *Office of the Ombudsman v. Court of Appeals*,[92] however, this Court clarified that when it stated "[p]recisely the same situation exists in respect of the Ombudsman and his deputies"[93] in *Cuenco*, it did not mean that a Deputy Ombudsman was an impeachable officer:

> In cross-referencing Sec. 2, which is an enumeration of impeachable officers, with Sec. 8, which lists the qualifications of the Ombudsman and his deputies, the intention was to indicate, by way of *obiter dictum*, that as with members of this Court, the officers so enumerated were also constitutionally required to be members of the bar.[94]

The principle applies to members of Constitutional Commissions that are also members of the Bar. In *Duque, Jr. v. Brilliantes, Jr.*,[95] a disbarment case was filed against members of the Commission on Elections for the allegedly erroneous resolutions that they issued. This Court held:

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[90] *Id*. at 169-173, citing *Lecaroz v. Sandiganbayan*, 213 Phil. 288 (1984) [Per *J*. Relova, *En Banc*].

[91] A.C. No. 4509, December 5, 1995, as cited in *Office of the Ombudsman v. Court of Appeals*, 493 Phil. 63 (2005) [Per *J*. Chico-Nazario, Second Division].

[92] 493 Phil. 63 (2005) [Per *J*. Chico-Nazario, Second Division].

[93] *Id*. at 82.

[94] *Id*.

[95] A.C. No. 9912, September 21, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/9912.pdf> [Per *J*. Peralta, Third Division].

This Court, guided by its pronouncements in *Jarque v. Ombudsman*, *In Re First Indorsement from Raul M. Gonzales* and *Cuenco v. Hon. Fernan*, has laid down the rule that an impeachable officer who is a member of the Bar cannot be disbarred without first being impeached. At the time the present complaint was filed, respondents-commissioners were all lawyers. As impeachable officers who are at the same time the members of the Bar, respondents-commissioners must first be removed from office via the constitutional route of impeachment before they may be held to answer administratively for their supposed erroneous resolutions and actions.[96]

If an impeachable officer is required to be a member of the Bar, disbarment would make the impeachable officer unqualified for the position and would result in his or her removal from office. This Court prohibited what would be a clear circumvention of the Constitution.

Thus, the rule is that impeachable officers are only removable by impeachment and no other proceeding. Even the majority concedes this point.[97]

This is not to say that this Court has never passed upon the issue on the discipline of impeachable officers. In *Espejo-Ty v. San Diego*,[98] a disbarment case was filed against Lourdes P. San Diego, an Associate Justice of the Court of Appeals in 1970 for misconduct as a bar examiner and for falsifying a public document when she was still a trial court judge. At the time, the Judiciary Act of 1948 provided that a Justice of the Court of Appeals may only be removed from office through impeachment.[99] This Court, in giving due course to the complaint,

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[96] *Duque Jr. v. Brillantes, Jr.*, A.C. No. 9912, September 21, 2016 [Per *J.* Peralta, Third Division].

[97] *Majority opinion*, p. 116. The majority opinion's argument appears to be that while impeachable officers can only be removed by impeachment, an officer who is unqualified to be an impeachable officer may be removed through other means.

[98] 150-A Phil. 757 (1972) [Per *J.* Zaldivar, *En Banc*].

[99] Republic Act No. 296 (1948), Ch. III, Sec. 24 provides:

Supreme Court E-Library

stated that it exercises the power to remove any unworthy member of the Bar, it is Congress alone that can remove from office the impeachable officer:

> And so, in the case now before this Court, the fact that the respondent is a Justice of the Court of Appeals is no reason for this Court not to exercise its disciplinary power over her as a member of the bar. The provision of the second paragraph of Section 24 of the Judiciary Act of 1948 (R.A. No. 296), as amended, that the justices of the Court of Appeals shall not be removed from office except on impeachment, is no reason for this Court to abdicate its duty, and give up its inherent power, to oversee and discipline all members of the bar, regardless of whether they are in the private practice of the profession, or they hold office in any of the three departments of our government, or they pursue any other calling. The power of this Court to disbar an unworthy member of the legal profession is distinct and apart from the power of any other authority to remove such member of the legal profession from his judicial position or from any other position that he holds in the government. Constitutional or statutory proceedings for removal from office are wholly distinct and separate from disciplinary proceedings involving members of a profession.
>
> It is, therefore, Our considered view that the Supreme Court has jurisdiction to entertain and decide complaints for disbarment against a justice of the Court of Appeals. But while this Court may order the disbarment of a justice of the Court of Appeals, it is Congress, and Congress alone, in the exercise of its power of impeachment, that can remove from office a justice of the Court of Appeals.[100]

Espejo-Ty, however, has ceased to become good law with the promulgation of *Cuenco v. Fernan*.[101] In any case, *Espejo-Ty* was an unusual situation of disbarment against an impeachable officer who was under the disciplinary supervision of this Court. The charges against San Diego were eventually dismissed since

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Section 24. The Presiding Justice and the Associate Justices of the Court of Appeals shall not be removed from office except on impeachment upon the grounds and in the manner provided for in Article IX of the Constitution.

[100] *Espejo-Ty v. San Diego*, 150-A Phil. 757, 779 (1972) [Per *J.* Zaldivar, *En Banc*].

[101] 241 Phil. 816 (1988) [*Per Curiam*, *En Banc*].

this Court found no substantial evidence to support the allegations. Thus, there was no opportunity to discover whether San Diego's disbarment would have eventually led to her removal from the Court of Appeals, despite this Court stating that only Congress had the power to remove her.

VI

The propositions advanced by the majority threaten and undermine judicial independence and stability.

Judicial accountability cannot be separated from the concept of judicial independence. They are, in the words of Retired United States Supreme Court Justice Sandra Day O'Connor, "two sides of the same coin:"

> True judicial accountability advances judicial independence and the paramount Rule of Law. "Accountability and independence are two sides of the same coin: accountability ensures that judges perform their constitutional role, and judicial independence protects judges from pressures that would pull them out of that role."[102]

Lower court judges who have failed to meet the ethical standards imposed on the judiciary may face administrative[103] and disciplinary sanction from this Court. They may be admonished, reprimanded, suspended, or even removed from service depending on the gravity of their offense. This Court is specifically empowered under Article VIII, Section 11 of the Constitution, to dismiss lower court judges "by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon."

The same is not true with regard to the members of this Court. Article XI, Section 2 of the Constitution states that the Members

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[102] Sandra Day O'Connor, *Judicial Accountability Must Safeguard, Not Threaten, Judicial Independence: An Introduction*, 86 DENV. U. L. REV. (2008).

[103] CONST., Art. VIII, Sec. 6 provides:

> Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

Supreme Court E-Library

of the Supreme Court, among others, may be removed from office through impeachment proceedings.[104] Liability of Members of the Supreme Court for the commission of a crime or a violation of judicial ethics can only be imposed after this process.[105] This rule is based on the principles of judicial independence and the doctrine of separation of powers.

In re: Gonzalez[106] teaches us that:

> A public officer who under the Constitution is required to be a Member of the Philippine Bar as a qualification for the office held by him and who may be removed from office only by impeachment, cannot be charged with disbarment during the incumbency of such public officer. Further, such public officer, during his incumbency, cannot be charged criminally before the Sandiganbayan or any other court with any offense which carries with it the penalty of removal from office, or any penalty service of which would amount to removal from office.
>
> . . . . . .
>
> The above rule rests on the fundamental principles of judicial independence and separation of powers. The rule is important because judicial independence is important. Without the protection of this rule, Members of the Supreme Court would be vulnerable to all manner of charges which might be brought against them by unsuccessful litigants or their lawyers or by other parties who, for any number of reasons might seek to affect the exercise of judicial authority by the Court.[107]

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[104] CONST., Art. XI, Sec. 2 provides:

> Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

[105] *In re: Gonzales*, 243 Phil. 167, 172 (1988) [*Per Curiam*, *En Banc*].

[106] 243 Phil. 167 (1988) [*Per Curiam*, *En Banc*].

[107] *Id*. at 170-172.

The independence of the Supreme Court and of the Judiciary in general demands that the Members of this Court be removed from office only through the process of impeachment and no other.

Irving R. Kaufman (Kaufman), Chief Judge of the United States Court of Appeals, makes out a compelling case in arguing that a judicial mechanism for the removal of judges weakens rather than promotes judicial independence. He cautions that a "simpler process for judicial removal, even one under the control of judges themselves, would eviscerate the independence of the individuals on the bench."[108]

Judges should be free to render unpopular decisions without fear that the same may threaten his or her term of office.[109] Removal from office through other lesser means may stifle the quality of judgments and judicial conduct.

Alexander Hamilton, one of the framers of the United States Constitution, shared a similar view. He proposed that the members of the judiciary, in order to be truly independent and to be able to fully discharge their functions, ought to be protected in terms of their tenure.[110]

In *The Federalist Papers No. 78*:

> If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.
>
> This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those

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[108] Lecture by United States Court of Appeals Chief Judge Irving R. Kaufman, *Chilling Judicial Independence*, Benjamin N. Cardozo Memorial Lectures, delivered on November 1, 1978, New York.

[109] *Id*.

[110] The Federalist Papers No. 78, <http://avalon.law.yale.edu/18th_century/fed78.asp> (last visited May 9, 2018).

Supreme Court E-Library

ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community.[111]

Another reason that he advanced for proposing permanency in tenure was to ensure that only the best suited would occupy judicial office. The judiciary should be shielded from the mediocre:

It has been frequently remarked, with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us, that the government can have no great option between fit character; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able, and less well qualified, to conduct it with utility and dignity. In the present circumstances of this country, and in those in which it is likely to be for a long time to come, the disadvantages on this score would be greater than they may at first sight appear; but it must be confessed, that they are far inferior to those which present themselves under the other aspects of the subject.[112]

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[111] *Id*.

[112] *Id*.

VII

Courts are the sanctuaries of rights, and not the preserve of political majorities. They are not representative organs. They do not exist to mirror the outcomes of deliberations in forums where the representatives of the majority of our people supposedly prevail. Rather, courts clarify the content of governmental powers most especially in the context of our fundamental rights. They are the sanctuaries for law. Courts are the soul of the government.

The Judiciary is the final arbiter of conflicts between and among the branches and different instrumentalities of the government. It has the duty to determine the proper allocation of governmental power and to guarantee "that no one branch or agency of the government transcends the Constitution, which is the source of all authority."[113] Moreover, the Judiciary acts as the guardian of the fundamental rights and freedoms guaranteed under the Bill of Rights.[114]

In *Angara v. Electoral Commission*:[115]

> [T]he Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.

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[113] *Angara v. Electoral Commission*, 63 Phil. 139, 182 (1936) [Per *J.* Laurel, *En Banc*].

[114] See *Export Processing Zone Authority v. Dulay*, 233 Phil. 313 (1987) [Per *J.* Gutierrez, Jr., *En Banc*].

[115] 63 Phil. 139 (1936) [Per *J.* Laurel, *En Banc*].

Supreme Court E-Library

As any human production, our Constitution is of course lacking perfection and perfectibility, but as much as it was within the power of our people, acting through their delegates to so provide, that instrument which is the expression of their sovereignty however limited, has established a republican government intended to operate and function as a harmonious whole, under a system of checks and balances, and subject to specific limitations and restrictions provided in the said instrument. The Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms. Certainly, the limitations and restrictions embodied in our Constitution are real as they should be in any living constitution. In the United States where no express constitutional grant is found in their constitution, the possession of this moderating power of the courts, not to speak of its historical origin and development there, has been set at rest by popular acquiescence for a period of more than one and a half centuries. In our case, this moderating power is granted, if not expressly, by clear implication from section 2 of article VIII of our Constitution.[116]

The Constitution specifically vests courts with the ability to "settle actual controversies involving rights which are legally demandable and enforceable" and, more importantly, to determine whether either of the other two (2) branches of the government gravely abused its discretion.[117]

For courts to be able to discharge their functions, impartiality is required. Impartiality demands freedom from coercion. This requires judicial independence.

Judicial independence has been described as a "vital mechanism that empowers judges to make decisions that may

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[116] *Id*. at 157-158.

[117] CONST., Art. VIII, Sec. 1.

be unpopular but nonetheless correct."[118] The Philippine judiciary's historical underpinnings highlight this concept. In *Borromeo v. Mariano*:[119]

> A history of the struggle for a fearless and an incorruptible judiciary prepared to follow the law and to administer it regardless of consequences, can be perused with ever-recurring benefit. Since the early days of the Republic, the judicial system in the United States, with certain exceptions which only served to demonstrate more fully the excellence of the whole, has been viewed with pride, and confidently relied upon for justice by the American people. The American people considered it necessary "that there should be a judiciary endowed with substantial and independent powers and secure against all corrupting or perverting influences; secure, also, against the arbitrary authority of the administrative heads of the government." It was such a conception of an independent judiciary which was instituted in the Philippines by the American administration and which has since served as one of the chief glories of the government and one of the most priceless heritages of the Filipino people.[120] (Citations omitted)

There are two (2) aspects of judicial independence, namely: decisional independence and institutional independence.

Decisional independence focuses on the autonomy of a judge and his or her ability "to render decisions free from political or popular influence based solely on the individual facts and applicable law."[121]

The second aspect of judicial independence refers to institutional independence. As its name suggests, institutional independence puts more emphasis on the entire judiciary as an institution rather than the magistrate as an individual. It refers

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[118] Sandra Day O'Connor, *Judicial Accountability Must Safeguard, Not Threaten, Judicial Independence: An Introduction*, 86 DENV. U. L. REV. (2008).

[119] 41 Phil. 322 (1921) [Per *J.* Malcolm, *En Banc*].

[120] *Id*. at 329-330.

[121] *Re: COA Opinion on Computation of Appraised Value of Properties Purchased by SC Justices*, 692 Phil. 147, 156 (2012) [*Per Curiam*, *En Banc*].

Supreme Court E-Library

to the "collective independence of the judiciary as a body"[122] from the unlawful and wrongful interference of other government branches.[123]

Retired United States Supreme Court Justice O'Connor enumerates measures by which individual judicial independence may be secured. The first approach protects judges from possible retaliation that may be directed against them while the second minimizes external pressure and political influence:

> Judicial independence has both individual and institutional aspects. As for the independence of individual judges, there are at least two avenues for securing that independence: First, judges must be protected from the threat of reprisals, so that fear does not direct their decision making. Second, the method by which judges are selected, and the ethical principles imposed upon them, must be constructed so as to minimize the risk of corruption and outside influence. The first endeavor is to protect judicial independence from outside threat. The second is to ensure that judicial authority is not abused, and it is the core concern of the enterprise of judicial accountability.[124]

Considering that the Judiciary is publicly perceived "as the authority of what is proper and just,"[125] and taking into account its vital role in protecting fundamental freedoms, both decisional independence and institutional independence must be preserved.[126] The Judiciary's independence becomes more critical in light of the expanding critical issues it may possibly face.[127]

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[122] *Id*. at 157.

[123] Sandra Day O'Connor, *Judicial Accountability Must Safeguard, Not Threaten, Judicial Independence: An Introduction*, 86 DENV. U. L. REV. (2008).

[124] *Id*.

[125] *Francia v. Abdon*, 739 Phil. 299, 313 (2014) [Per *J*. Reyes, First Division].

[126] *Re: COA Opinion on Computation of Appraised Value of Properties Purchased by SC Justices*, 692 Phil. 147,156 (2012) [*Per Curiam*, *En Banc*] *citing In re: Macasaet*, 583 Phil. 391 (2008) [Per *J*. Reyes, R.T., *En Banc*].

[127] Lecture by United States Court of Appeals Chief Judge Irving R. Kaufman, *Chilling Judicial Independence*, Benjamin N. Cardozo Memorial Lectures, delivered on November 1, 1978, New York.

Supreme Court E-Library

The 1987 Constitution sets up a framework that guarantees the Judiciary's institutional independence.

The Constitution vests the power to promulgate rules regarding pleading, practice, and procedure, and rules concerning admission to the Bar exclusively on the Supreme Court. This is in stark contrast with the 1935 and 1973 Constitutions, which granted Congress the authority to "repeal, alter or supplement" such rules.[128] The "power-sharing scheme" between the Judiciary and the Legislature was explicitly deleted under the present Constitution.[129]

The grant of fiscal autonomy to the Judiciary[130] and the prohibition on Congress from diminishing the scope of the

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[128] 1973 CONST., Art. X, Sec. 5(5) provides:

Section 5. The Supreme Court shall have the following powers:

. . . . . .

5. Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the bar, which, however, may be repealed, altered or supplemented by the Batasang Pambansa. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights.

1935 CONST., Art. VIII, Sec. 13 provides:

Section 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines.

[129] *Baguio Market Vendors Multi-Purpose Cooperative v. Cabato-Cortes*, 627 Phil. 543, 549 (2010) [Per *J.* Carpio, Second Division] citing *In re: Cunanan*, 94 Phil. 534 (1954) [Per *J.* Diokno, Second Division].

[130] CONST., Art. VIII, Sec. 3 provides:

Section 3. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

Supreme Court E-Library

Supreme Court's constitutionally defined jurisdiction and from passing a law that would, in effect, undermine the security of tenure of its Members[131] are among the other constitutional guarantees of judicial independence.

Another innovation of the present Constitution is the grant of administrative supervision over lower courts and court personnel to this Court. This is a power exclusive to and zealously guarded by this Court.

In *Maceda v. Vasquez*:[132]

> Article VIII, Section 6 of the 1987 Constitution exclusively vests in the Supreme Court administrative supervision over all courts and court personnel, from the Presiding Justice of the Court of Appeals down to the lowest municipal trial court clerk. By virtue of this power, it is only the Supreme Court that can oversee the judges' and court personnel's compliance with all laws, and take the proper administrative action against them if they commit any violation thereof. No other branch of government may intrude into this power, without running afoul of the doctrine of separation of powers.[133]

The selection and appointment process to the Judiciary is an appropriate measure by which judicial independence may be advanced.[134]

Aspiring members of the Judiciary are screened by an independent constitutional body known as the Judicial and Bar

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[131] CONST., Art. VIII, Sec. 2 provides:

> Section 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.
>
> No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its Members.

[132] 293 Phil. 503 (1993) [Per *J.* Nocon, *En Banc*].

[133] *Id*. at 506.

[134] Sandra Day O'Connor, *Judicial Accountability Must Safeguard, Not Threaten, Judicial Independence: An Introduction*, 86 DENV. U. L. REV. (2008).

Council. It is primarily tasked to undertake the process of vetting candidates to vacant positions in the Judiciary.[135]

In *Villanueva v. Judicial and Bar Council,*[136] this Court explained the important role of the Judicial and Bar Council:

As an offspring of the 1987 Constitution, the JBC is mandated to recommend appointees to the judiciary and only those nominated by the JBC in a list officially transmitted to the President may be appointed by the latter as justice or judge in the judiciary. Thus, the JBC is burdened with a great responsibility that is imbued with public interest as it determines the men and women who will sit on the judicial bench. While the 1987 Constitution has provided the qualifications of members of the judiciary, this does not preclude the JBC from having its own set of rules and procedures and providing policies to effectively ensure its mandate.

The functions of searching, screening, and selecting are necessary and incidental to the JBC's principal function of choosing and recommending nominees for vacancies in the judiciary for appointment by the President. However, the Constitution did not lay down in precise terms the process that the JBC shall follow in determining applicants' qualifications. In carrying out its main function, the JBC has the authority to set the standards/criteria in choosing its nominees for every vacancy in the judiciary, subject only to the minimum qualifications required by the Constitution and law for every position. The search for these long[-]held qualities necessarily requires a degree of flexibility in order to determine who is most fit among the applicants. Thus, the JBC has sufficient but not unbridled license to act in performing its duties.

JBC's ultimate goal is to recommend nominees and not simply to fill up judicial vacancies in order to promote an effective and efficient administration of justice. Given this pragmatic situation, the JBC had to establish a set of uniform criteria in order to ascertain whether

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[135] CONST., Art. VIII, Sec. 2 provides:

Section 8. (5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

[136] G.R. No. 211833, April 7, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/211833.pdf> [Per *J.* Reyes, *En Banc*].

Supreme Court E-Library

an applicant meets the minimum constitutional qualifications and possesses the qualities expected of him and his office.[137]

The previous Constitutions conferred the power to nominate and appoint members of the Judiciary to the Executive and Legislative branches.[138]

Under the Malolos Constitution, the National Assembly, the President, and the Secretaries of Government shared the power to select the head of the Supreme Court:

TITLE X
OF THE JUDICIAL DEPARTMENT

Article 80. The President of the Supreme Court of Justice and the Solicitor General shall be appointed by the National Assembly with the concurrence of the President of the Republic and the Secretaries of Government, and shall have absolute independence from the legislative and executive branches.

A similar appointment scheme was adopted in the 1935 Constitution:

ARTICLE VIII
Judicial Department

Section 5. The Members of the Supreme Court and all judges of inferior courts shall be appointed by the President with the consent of the Commission on Appointments.

The 1973 Constitution granted the President the exclusive power to select and appoint members of the Judiciary:

ARTICLE X
The Judiciary

Section 4. The Members of the Supreme Court and judges of inferior courts shall be appointed by the President.

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[137] *Id*. at 7-8.

[138] *J*. Leonen, Dissenting Opinion in *Umali v. Judicial and Bar Council*, G.R. No. 228628, July 25, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/228628.pdf> [Per *J*. Velasco, Jr., *En Banc*].

Supreme Court E-Library

At present, appointment to the Judiciary entails a two (2)-step process. The Judicial and Bar Council submits to the President a list containing at least three (3) nominees. The President then selects a candidate from the list and appoints such candidate to the vacancy.[139]

The Judicial and Bar Council's creation under the 1987 Constitution was revolutionary as it was seen as a way to "insulate the process of judicial appointments from partisan politics"[140] and "de-politicize" the entire Judiciary.[141]

In *De Castro v. Judicial and Bar Council*:[142]

> [T]he intervention of the JBC eliminates the danger that appointments to the Judiciary can be made for the purpose of buying votes in a coming presidential election, or of satisfying partisan considerations. The experience from the time of the establishment of the JBC shows that even candidates for judicial positions at any level backed by people influential with the President could not always be assured of being recommended for the consideration of the President, because they first had to undergo the vetting of the JBC and pass muster there. Indeed, the creation of the JBC was *precisely* intended to de-politicize the Judiciary by doing away with the intervention of the Commission on Appointments. This insulating process was absent from the *Aytona* midnight appointment.[143] (Citations omitted, emphasis in the original)

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[139] CONST., Art. VIII, Sec. 9 provides:

> Section 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.
>
> For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

[140] *J.* Leonen, Dissenting Opinion in *Umali v. Judicial and Bar Council*, G.R. No. 228628, July 25, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/228628.pdf> 2 [Per *J.* Velasco, Jr., *En Banc*].

[141] *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 697 (2010) [Per *J.* Bersamin, *En Banc*].

[142] 629 Phil. 629 (2010) [Per *J.* Bersamin, *En Banc*].

[143] *Id*.

Supreme Court E-Library

Aside from the goal of insulating the Judiciary from partisan politics, the Judicial and Bar Council was envisioned to guarantee that only those who are deserving and qualified may be considered for purposes of appointment. Applicants undergo a rigorous process of screening and selection based on the minimum standards required by the office or position to which they are applying and the criteria set by the Judicial and Bar Council.

Aspiring members of the Judiciary must not only have the basic qualifications under Article VIII, Sections 7(1) and (2) of the Constitution, they must also be persons of "proven competence, integrity, probity, and independence."[144] The members of the 1986 Constitutional Commission believed that neither the President nor the Commission on Appointments would have the time to undertake this vetting process. Thus, the Judicial and Bar Council was tasked to take on the meticulous process of studying the qualifications of every candidate, "especially with respect to their probity and sense of morality."[145]

Villanueva is instructive:

To ensure the fulfillment of these standards in every member of the Judiciary, the JBC has been tasked to screen aspiring judges and justices, among others, making certain that the nominees submitted to the President are all qualified and suitably best for appointment. In this way, the appointing process itself is shielded from the possibility of extending judicial appointment to the undeserving and mediocre and, more importantly, to the ineligible or disqualified.[146] (Citation omitted)

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[144] CONST., Art. VIII, Sec. 7(3).

[145] *J.* Leonen, Dissenting Opinion in *Jardeleza v. Sereno*, G.R. No. 213181, August 19, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/213181.pdf> [Per *J.* Mendoza, *En Banc*] *citing* 1 RECORDS, CONSTITUTIONAL COMMISSION, PROCEEDINGS AND DEBATES, JOURNAL No. 29 (Monday, July 14, 1986).

[146] G.R. No. 211833, April 7, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/211833.pdf> 8-9 [Per *J.* Reyes, *En Banc*] citing *Jardeleza v. Sereno*, 741 Phil. 460 (2014) [Per *J.* Mendoza, *En Banc*].

In *Villanueva*, the Judicial and Bar Council's policy of requiring first-level courts to have five (5) years of service as judges before they may qualify as applicants to second-level courts was challenged for being unconstitutional. In dismissing the petition, this Court described the rigorous screening and selection procedure adopted by the Judicial and Bar Council as necessary to ensure that only the best suited applicants are considered for appointment. The assailed policy required by the Judicial and Bar Council was declared constitutional. It was a reasonable requirement that would demonstrate an applicant's competence:

> Consideration of experience by JBC as one factor in choosing recommended appointees does not constitute a violation of the equal protection clause. The JBC does not discriminate when it employs number of years of service to screen and differentiate applicants from the competition. The number of years of service provides a relevant basis to determine proven competence which may be measured by experience, among other factors. The difference in treatment between lower court judges who have served at least five years and those who have served less than five years, on the other hand, was rationalized by JBC as follows:
>
> > Formulating policies which streamline the selection process falls squarely under the purview of the JBC. No other constitutional body is bestowed with the mandate and competency to set criteria for applicants that refer to the more general categories of probity, integrity and independence.
> >
> > The assailed criterion or consideration for promotion to a second-level court, which is five years['] experience as judge of a first-level court, is a direct adherence to the qualities prescribed by the Constitution. Placing a premium on many years of judicial experience, the JBC is merely applying one of the stringent constitutional standards requiring that a member of the judiciary be of "**proven competence**." In determining competence, the JBC considers, among other qualifications, **experience** and performance.
> >
> > Based on the JBC's collective judgment, those who have been judges of first-level courts for five (5) years are better qualified for promotion to second-level courts. It deems length of

Supreme Court E-Library

> experience as a judge as indicative of conversance with the law and court procedure. Five years is considered as a sufficient span of time for one to acquire professional skills for the next level court, declog the dockets, put in place improved procedures and an efficient case management system, adjust to the work environment, and gain extensive experience in the judicial process.
>
> A five-year stint in the Judiciary can also provide evidence of the **integrity, probity**, and **independence** of judges seeking promotion. To merit JBC's nomination for their promotion, they must have had a "record of, and reputation for, honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards." Likewise, their decisions must be reflective of the soundness of their judgment, courage, rectitude, cold neutrality and strength of character.
>
> Hence, for the purpose of determining whether judges are worthy of promotion to the next level court, it would be premature or difficult to assess their merit if they have had less than one year of service on the bench. (Citations omitted and emphasis in the original)

At any rate, five years of service as a lower court judge is not the only factor that determines the selection of candidates for RTC judge to be appointed by the President. Persons with this qualification are neither automatically selected nor do they automatically become nominees. The applicants are chosen based on an array of factors and are evaluated based on their individual merits. Thus, it cannot be said that the questioned policy was arbitrary, capricious, or made without any basis.[147]

Ethical standards imposed on members of the Judiciary strengthen and promote judicial independence both in its individual and institutional aspects.

The New Code of Judicial Conduct for the Philippine Judiciary[148] indirectly secures the institutional independence of the entire Judiciary by ensuring that individual judges remain

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[147] *Id*. at 9-10.

[148] A.M. No. 03-05-01-SC (2004).

independent in the exercise of their functions. Upon appointment and during their tenure, judges are expected to comply with and adhere to high ethical standards. Members of the Judiciary are "visible representation[s] of the law."[149]

Canon 1 directs judges in general to "uphold and exemplify judicial independence in both its individual and institutional aspects." More specifically, Canon 1, Section 1 mandates judges to exercise their functions "free from any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason."

Judges are made aware that personal or even professional relationships may undermine their independence. Canon 1, Sections 2, 4, and 5 direct magistrates not to allow personal ties or affiliations to influence their judgment, whether directly or indirectly:

CANON 1

Independence

Section 2. In performing judicial duties, Judges shall be independent from judicial colleagues in respect of decisions which the judge is obliged to make independently.

. . . . . .

Section 4. Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

Section 5. Judges shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to be free therefrom to a reasonable observer.

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[149] *Fidel v. Caraos*, 442 Phil. 236, 242 (2002) [Per *J.* Ynares-Santiago, First Division].

Supreme Court E-Library

Conversations with family members and other individuals regarding pending cases are deemed highly improper.[150] Associating with lawyers of litigants, though not wrong *per se*, may raise suspicion as to a judge's independence and integrity. Members of the Judiciary are enjoined from fraternizing with lawyers and litigants as such action may awaken the public's suspicion that a judge's personal relations would affect judicial conduct. For instance, a judge's act of having lunch with a lawyer who has a pending case before him was considered a ground for administrative sanction.[151]

It has been consistently held that "the conduct of a judge must be free of a whiff of impropriety."[152] Acts that appear to be legal and not wrong *per se* may not necessarily be ethical.

Another mechanism against unfit members of the Judiciary, with respect to collegiate courts, is collective judicial decision making. Kaufman points out that "[n]o opinion, whether idiosyncratic or exquisitely sculpted from crystalline premises, can become law without the agreement of at least half of the author's colleagues."[153]

There is another aspect of decisional independence. That is, the independence of a justice vis-à-vis another justice and even against the Court's majority.

Judicial independence transcends the doctrine of separation of powers. It is true that an independent judiciary demands

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[150] See *Re*: *Conrado M. Vasquez, Jr.* 586 Phil. 321 (2008) [*Per Curiam*, *En Banc*].

[151] See *Pertierra v. Lerma*, 457 Phil. 796 (2003) [Per *J.* Quisumbing, Second Division].

[152] See *Castillo v. Calanog,* 276 Phil. 70 (1991) [*Per Curiam*, *En Banc*]; *Dela Cruz v. Bersamira*, A.M. No. RTJ-00-1567, July 24, 2000 [Per *J.* Ynares-Santiago, First Division]; *Sison-Barias v. Rubia*, 736 Phil. 81 (2014) [*Per Curiam*, *En Banc*].

[153] Lecture by United States Court of Appeals Chief Judge Irving R. Kaufman, Chilling Judicial Independence, Benjamin N. Cardozo Memorial Lectures, delivered on November 1, 1978, New York.

the least amount of interference from the other two (2) branches save for certain instances. It is meant to be that way by Constitutional design. However, such a simplistic view severely glosses over what should be considered a more essential attribute of judicial independence:

> The heart of judicial independence, it must be understood, is judicial individualism. The judiciary, after all, is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own. This is true of trial courts, and no less in higher reaches. The Supreme Court, Justice Powell commented, is "perhaps one of the last citadels of jealously preserved individualism. For the most part, we function as nine small, independent law firms." The mental processes of the judges, then, are those of individuals and not of cogs in a vast machine.[154]

The New Code of Judicial Conduct for the Philippine Judiciary guards the Judiciary not only against possible influence and interference from litigants, parties, and personal affiliations, but also from influence that may possibly be exerted by judicial colleagues. Thus, Canon 1, Section 1 requires judges "to be independent from judicial colleagues in respect of decisions which the judge is obliged to make independently."

Independence from colleagues with respect to judicial conduct should be encouraged rather than suppressed, and all opportunities that would nurture it should be taken.

The personal standards of judges and their "individual sense of justice," for one, is essential for the development of law:

> For the law to progress it must occasionally adopt views that were previously in disfavor, and the intellectual foundations are often laid by the opinions of dissenting judges. A dissent, said Hughes, "is an appeal to the brooding spirit of the law, to the intelligence of a future day."[155]

Kaufman warns against the often overlooked but seemingly apparent peer pressure among and between members of a court:

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[154] *Id*.

[155] *Id*.

Supreme Court E-Library

I have spoken of informal peer pressure as the most effective means of ridding the bench of its disabled members. But it is clear that the effectiveness of such pressure—as well as its fairness and the sound discretion as to when it should be applied—does not depend on a formal mechanism pitting judge against judge. It is based, rather on the prevalence within the judiciary of an atmosphere of good faith and collegiality. This sense of judicial community, itself so vital to the proper functioning of our courts, would be gravely endangered if judges were compelled to accept the formal power to discipline their colleagues, thus bypassing impeachment.[156]

Allowing a judicial mechanism for investigating judicial colleagues suppresses candor and undermines the spirit and practice of collegiality that has been so entrenched in the Supreme Court. Such a mechanism for exacting accountability threatens and effectively erodes the principle of independence that the Constitution has protected. It may even stifle free speech.

Kaufman observes:

Sometimes, of course, ideological disagreements combine with personal incompatibilities to disrupt the working relationship. These rifts are unfortunate but tolerable. The other judges muffle the flames, and the consequences are rarely more severe than a few heated dissents and a mild increase in the number of cases heard *en banc*. But add a judicial mechanism for investigating judges and the problem would be magnified. *A judge might see across the table not merely a working partner but a potential adversary. The dialogue would continue, of course. In most cases no change would be detectable. But there would be an inevitable loss of frankness if each participant feared that candor might one day build a case against him.*

. . . . . .

A judge who feels threatened by the perception that other judges are looking over his shoulder, not to decide whether to reverse him but to consider the possibility of discipline, will perform his work with a timidity and awkwardness damaging to the decision process. Judicial independence, like free expression, is most crucial and most vulnerable in periods of intolerance, when the only hope of protection lies in clear rules setting for the bright lines that cannot be traversed.

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[156] *Id*.

The press and the judiciary are two very different institutions, but they share one significant characteristic: both contribute to our democracy not because they are responsible to any branch of government, but precisely because, except in the most extreme cases, they are not accountable at all and so are able to check the irresponsibility of those in power. Even in the most robust of health, the judiciary lives vulnerably. It must have "breathing space." We must shelter it against the dangers of a fatal chill.[157] (Emphasis supplied)

The Supreme Court is a collegial body. As the final arbiter of the interpretation of laws and the Constitution, it will accommodate all points of view. Every legal provision given, the state of facts suggested by judicial notice or the evidence should be independently interpreted and evaluated by every member of the Court. Deliberations should be arrived at rationally within all possible points of view considered. Dissents shape the majority opinion and jurisprudence is enriched for so long as each member is kept independent of the others.

Courts also allow even a lone dissent. By tradition, every dissent is given its space to lay, alongside the majority's majority opinion, its reasons for taking the other view. No space should be allowed for the dissent to be stifled by any member of the Court or by its majority in any form or manner.

VIII

Petitioner claims that respondent's failure to submit copies of her Statements of Assets and Liabilities to the Judicial and Bar Council ultimately meant that she failed "to pass the test of integrity."[158]

I cannot agree to this blanket finding, which is based simply on the non-existence of the Statements of Assets and Liabilities.

The qualifications to become a Member of the Supreme Court can be found in Article VIII, Section 7 of the Constitution:

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[157] *Id*.

[158] Petition, p. 2.

Supreme Court E-Library

Section 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

(2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.

(3) A Member of the Judiciary must be a person of proven competence, integrity, probity and independence.

The responsibility of ensuring that Members of the Supreme Court, as well as members of all the other courts exercising judicial functions, meet the qualifications required under the law falls upon the Judicial and Bar Council.

The Judicial and Bar Council was created under the 1987 Constitution, and it was intended to be a fully independent constitutional body functioning as a check on the President's power of appointment. Article VIII, Section 8 of the Constitution provides:

Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

(2) The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.

(3) The Clerk of the Supreme Court shall be the Secretary *ex officio* of the Council and shall keep a record of its proceedings.

(4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.

(5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

Chavez v. Judicial and Bar Council[159] explains that the Judicial and Bar Council was created to rid the process of appointments to the Judiciary of political pressure and partisan activities.[160] The Judicial and Bar Council is a separate constitutional organ with the same autonomy as the House of Representative Electoral Tribunal and the Senate Electoral Tribunal. *Angara v. The Electoral Commission*[161] emphasizes that the Electoral Commission is "a constitutional creation, invested with the necessary authority in the performance and execution of the limited and specific function assigned to it by the Constitution."[162] The grant of power to the Electoral Commission is intended to be "complete and unimpaired."[163]

The Judicial and Bar Council is tasked to screen applicants for judiciary positions, recommend appointees to the Judiciary, "and only those nominated by the Judicial and Bar Council in a list officially transmitted to the President may be appointed by the latter as justice or judge in the judiciary."[164] In carrying out its main function, the Judicial and Bar Council is given the authority to set standards or criteria in choosing its nominees for every vacancy in the Judiciary,[165] as well as the discretion to determine how to best perform its constitutional mandate.[166]

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[159] 691 Phil. 173 (2012) [Per *J.* Mendoza, *En Banc*].

[160] *Id*. at 188.

[161] 63 Phil. 139 (1936) [Per *J.* Laurel, *En Banc*].

[162] *Id*. at 175.

[163] *Id*.

[164] *Villanueva v. Judicial and Bar Council*, 757 Phil. 548 (2015) [Per *J.* Reyes, *En Banc*].

[165] *Id*. at 549.

[166] *Id*. at 556.

Supreme Court E-Library

The Constitution provides the qualifications of the members of the Judiciary, but it also gives the Judicial and Bar Council the latitude to promulgate its own set of rules and procedures to effectively ensure its mandate to recommend only applicants of "proven competence, integrity, probity and independence."[167] The internal rules of the Judicial and Bar Council are necessary and incidental to the function conferred to it by the Constitution.

Rule 4 of JBC-009, the internal rules in place at the time respondent applied for the position of Chief Justice, provides the framework on how the Judicial and Bar Council will determine if an applicant is a person of integrity:

> Section 1. Evidence of Integrity — The council shall take every possible step to verify the applicants records and of reputation for honesty, integrity, incorruptibility, irreproachable conduct and fidelity to sound moral and ethical standards. For this purpose, the applicant shall submit to the council certifications or testimonials thereof from reputable government officials and non-governmental organizations, and clearances from the courts, National Bureau of Investigation, police, and from such other agencies as the council may require.
>
> Section 2. Background Check — The Council may order a discrete background check on the integrity, reputation and character of the applicant, and receive feedback thereon from the public, which it shall check or verify to validate the means thereof.
>
> Section 3. Testimonies of Parties — The Council may receive written opposition to an applicant on ground of his moral fitness and its discretion, the Council may receive the testimony of the oppositor at a hearing conducted for the purpose, with due notice to the applicant who shall be allowed to be cross-examine the opposite and to offer countervailing evidence.
>
> Section 4. Anonymous Complaints — Anonymous complaints against an applicant shall not be given due course, unless there appears on its face probable cause sufficient to engender belief that the allegations may be true. In the latter case the Council may either direct a discrete investigation or require the applicant to comment thereon in writing or during the interview.

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[167] CONST. Art. VIII, Sec. 7(3).

Supreme Court E-Library

Section 5. Disqualification — The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman or Deputy Ombudsman:

1. Those with pending criminal or regular administrative cases;
2. Those with pending criminal cases in foreign courts or tribunals; and
3. Those who have been convicted in any criminal case; or in administrative case where the penalty imposed is at least a fine of more than ₱10,000.00, unless he has been granted judicial clemency.

Section 6. Other instances of disqualification — Incumbent judges, officials or personnel of the Judiciary who are facing administrative complaints under informal preliminary investigation by the Office of the Court Administrator may likewise be disqualified from being nominated if, in the determination of the Council, the charges are serious or grave as to affect the fitness of the applicant for nomination.

For purposes of this Section and of the preceding Section 5 in so far as pending regular administrative cases are concerned, the Secretary of the Council shall, from time to time, furnish the Office of the Court of Administrator the name of an applicant upon receipt of the application/recommendation and completion of the required papers; and within ten days from the receipt thereof the Court Administrator shall report in writing to the Council whether or not the applicant if facing a regular administrative case or an IPI case and the status thereof. In regard to the IPI case, The Court Administrator shall attach to his report copies of the complaint and the comment of the respondent.

Petitioner is mistaken in its assertion that respondent's non-submission of her complete Statements of Assets and Liabilities is fatal to her application as Chief Justice. JBC-009 shows that the determination of integrity is so much more nuanced than merely submitting documents like Statements of Assets and Liabilities or clearances from government agencies.

The Judicial and Bar Council, in its sound discretion, is empowered to conduct background checks to ascertain an applicant's integrity and general fitness for the position. It is likewise authorized to conduct a hearing to give an applicant the opportunity to refute the testimony of an oppositor. Even

Supreme Court E-Library

an anonymous complaint, which is generally not given due course, can be acted upon by the Judicial and Bar Council by making it the subject of a discrete investigation or requiring the applicant to comment on the anonymous complaint.

It is true that in some cases, courts can put themselves in the shoes of representative branches to see how policy questions were weighed. But, this is only to provide them with context—not to supplant decisions. Furthermore, this is only valid to understand the milieu under which a power granted as a fundamental right guaranteed is present and must be understood. It is to sharpen the issues and the context of the *ratio decidendi* that will emerge.

It is true that the submission of a Statement of Assets and Liabilities may be implied from Article XI, Section 17[168] of the Constitution, thus:

> Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

This finds its implementation in Section 8 of Republic Act No. 6713, or the Code of Conduct and Ethical Standards for Public Officials and Employees, and Section 7 of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.

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[168] CONST., Art. 11, Sec. 17 provides:

Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

Supreme Court E-Library

A closer reading of the provision, however, reveals that the ***constitutional*** requirement is for the submission of a Statement of Assets and Liabilities upon assumption of office. On the other hand, Republic Act No. 6713[169] and Republic Act No. 3019[170] ***statutorily*** require government employees to submit their Statements of Assets and Liabilities on an annual basis.

Concededly, the Statement of Assets and Liabilities plays a critical function in eliminating corruption in the government and ensuring that public servants remain truthful and faithful in discharging their duties towards the public. As practiced however, the Judicial and Bar Council ***did not always require***

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[169] *Navarro v. Office of the Ombudsman,* G.R. No. 210128. August 17, 2016 [Per *J*. Mendoza, Second Division] summarized the contents of Section 8, Republic Act No. 6713 as:

"[T]hat it is the duty of public officials and employees to accomplish and submit declarations under oath of their assets, liabilities, net worth, and financial and business interests, including those of their spouses and of unmarried children under eighteen (18) years of age living in their households. The sworn statement is embodied in a proforma document with specific blanks to be filled out with the necessary data or information. Insofar as the details for real properties are concerned, the information required to be disclosed are limited to the following: 1) kind, 2) location, 3) year acquired, 4) mode of acquisition, 5) assessed value, 6) current fair market value, and 7) acquisition cost."

[170] Republic Act No. 3019, Sec.7 provides:

Section 7. Statement of assets and liabilities. Every public officer, within thirty days after the approval of this Act or after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: Provided, That public officers assuming office less than two months before the end of the calendar year, may file their statements in the following months of January.

Supreme Court E-Library

the submission of Statements of Assets and Liabilities as part of the documentary requirements for applicants or recommendees to the Judiciary.

It was only in the year 2009 that the Judicial and Bar Council first required candidates to the Judiciary to submit Statements of Assets and Liabilities as part of the documentary requirements. Even then, only candidates from the private sector, who were applying for a position in the appellate courts, were required to submit their Statements of Assets and Liabilities.[171]

In the January 20, 2010 announcement[172] for the opening of the position of Chief Justice following the retirement on May 17, 2010 of Chief Justice Reynato S. Puno, the Judicial and Bar Council required applicants or recommendees to submit six (6) copies of each of the following documents:

Application or recommendation letter
Personal Data Sheet (JBC Form 1 downloadable from the JBC Website . . .)
Proof of Filipino Citizenship
ID Picture (2x2)
Cert. of Good Standing or latest Official Receipt from the IBP National Treasurer
ITR for the past two (2) years
2010 Clearances from NBI, Ombudsman, IBP, Office of the Bar Confidant and employer
Transcript of School Records
2010 Police Clearance from place of residence
Certificate of Admission to the Bar (with Bar Rating)

On June 24, 2010, with Chief Justice Renato C. Corona's appointment as Chief Justice, the Judicial and Bar Council put out an announcement[173] for applications or recommendations for the vacant position of Associate Justice of the Supreme

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[171] *Ad Cautelam* Manifestation/ Submission, Annex 21, p. 15.

[172] Published in Philippine Daily Inquirer, p. A14.

[173] Published in Philippine Daily Inquirer, p. B4.

Court. New applicants or recommendees were directed to submit the following documents:

Six (6) copies of the following:

Application or Recommendation Letter
Notarized Personal Data Sheet (JBC Form 1 downloadable from the JBC website . . . with recent ID Picture (2x2)
Transcript of School Records
Certificate of Admission to the Bar (with Bar Rating)

One (1) copy of the following:

ITR for the past two (2) years
2010 Clearances from NBI, Ombudsman, IBP, Office of the Bar Confidant and employer
Proofs of age and Filipino citizenship
2010 Police Clearance from place of residence
Results of Medical examination and sworn medical certificate with impressions on such results
Cert. of Good Standing or latest Official Receipt from the IBP National Treasurer

The January 20, 2010 and June 24, 2010 announcements for vacancies in the Supreme Court, the first of which pertained to the position of Chief Justice, did not require the applicants and recommendees to submit their Statement of Assets and Liabilities. Despite the constitutional requirement that a member of the Judiciary should be of "proven competence, integrity, probity and independence," the Judicial and Bar Council, until recently, has not consistently required the submission of Statements of Assets and Liabilities for applicants to the Judiciary.

It was only starting January 7, 2013 onwards that applicants in government service were required to submit their Statements of Assets and Liabilities for the past two (2) years, while applicants in private practice were required to submit their Statement of Assets and Liabilities for the preceding year. Likewise, it was only during the vacancy left by Chief Justice Corona's impeachment that the Judicial and Bar Council required

Supreme Court E-Library

the submission of all previous Statements of Assets and Liabilities for applicants in government service.[174]

Clearly, the Judicial and Bar Council recognized that *the Statement of Assets and Liabilities is merely a tool in determining if an applicant possesses integrity and is not the actual measure of integrity*.

The Judicial and Bar Council's own internal rules recognize that integrity is a collection of attributes that tend to show "the quality of a person's character,"[175] and as such, the Judicial and Bar Council in its discretion has prescribed the submission of select documents and formulated other processes which may allow it to best determine if a candidate possesses the required integrity for the position.

Jardeleza v. Sereno[176] summarized it best when it stated:

> As disclosed by the guidelines and lists of recognized evidence of qualification laid down in JBC-009, "integrity" is closely related to, or if not, approximately equated to an applicant's good reputation for honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards. That is why proof of an applicant's reputation may be shown in certifications or testimonials from reputable government officials and non-governmental organizations and clearances from the courts, National Bureau of Investigation, and the police, among others. In fact, the JBC may even conduct a discreet background check and receive feedback from the public on the integrity, reputation and character of the applicant, the merits of which shall be verified and checked. As a qualification, the term is taken to refer to a virtue, such that, "integrity is the quality of person's character."[177]

This Court in *Office of the Ombudsman v. Racho*[178] stressed that the failure to disclose assets or the misdeclaration of assets

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[174] *Ad Cautelam* Manifestation/ Submission, Annex 21, pp. 15-16.

[175] *Jardeleza v. Sereno*, 741 Phil. 460 (2014) [Per *J.* Mendoza, *En Banc*].

[176] 741 Phil. 460 (2014) [Per *J.* Mendoza, *En Ba*nc].

[177] *Id*.

[178] 656 Phil. 148 (2011) [Per *J.* Mendoza, Second Division].

in a Statement of Assets and Liabilities does not automatically translate to dishonesty. Rather, what the Statement of Assets and Liabilities law aims to guard against are accumulated wealth of public servants that are grossly disproportionate to their income or other sources of income, and which cannot be properly accounted for or explained:

> In this case, the discrepancies in the statement of Racho's assets are not the results of mere carelessness. On the contrary, there is substantial evidence pointing to a conclusion that Racho is guilty of dishonesty because of his unmistakable intent to cover up the true source of his questioned bank deposits.
>
> It should be emphasized, however, that mere misdeclaration of the Statement of Assets and Liabilities does not automatically amount to dishonesty. Only when the accumulated wealth becomes manifestly disproportionate to the employee's income or other sources of income and the public officer/employee fails to properly account or explain his other sources of income, does he become susceptible to dishonesty because when a public officer takes an oath or office, he or she binds himself or herself to faithfully perform the duties of the office and use reasonable skill and diligence, and to act primarily for the benefit.[179]

It is within the discretion of the Judicial and Bar Council to decide that the mere failure to file a Statement of Assets and Liabilities or misdeclaration or omission of assets in a Statement of Assets and Liabilities, without any evidence of disproportionate or unexplained wealth, cannot be said to be reflective of one's lack of integrity. I find no transgression of the Constitution when the Judicial and Bar Council does so.

IX

The Judicial and Bar Council, in the proper exercise of its constitutional mandate, considered respondent's application and after finding that she substantially complied with the requirements and possessed all of the qualifications and none of the disqualifications for the position of Chief Justice, included her in the shortlist for the consideration of the President. That process is not being assailed in this quo warranto proceeding.

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[179] *Id*. at 164.

Supreme Court E-Library

The validity of respondent's appointment was likewise recognized by the House of Representatives when it went through the process of considering the Complaint filed against her and announced the Articles of Impeachment.

Under the guise of this Court's power of supervision over the Judicial and Bar Council, the majority wants to supplant their own finding of respondent's lack of integrity over that of the Judicial and Bar Council's determination of respondent as a person of proven integrity.

The Judicial and Bar Council is under the supervision of the Supreme Court[180] and may exercise such other functions and duties as the Supreme Court may assign to it.[181] This Court's supervision over the Judicial and Bar Council is further manifested by its composition, wherein the Chief Justice is its *ex-officio* Chair,[182] exercising overall administrative authority in the execution of the Council's mandate,[183] and wherein the Clerk of Court is its Secretary *ex-officio*.[184] The emoluments of the members of the Council and its budget are determined and provided by this Court.[185]

Drilon v. Lim,[186] in differentiating between control and supervision, emphasized that supervision is the authority to ensure that the rules are followed, but without the power to lay down rules nor the discretion to modify or replace them. If the rules are not observed, the power of supervision involves the authority to order the work done or re-done. Supervising officials

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[180] CONST. Art. VIII, Sec. 8(1).

[181] CONST. Art VIII, Sec. 8(5).

[182] CONST. Art VIII, Sec. 8(1).

[183] A.M. No. 03-11-16-SC, Sec. 4(a). *A Resolution Strengthening the Role and Capacity of the Judicial and Bar Council and Establishing the Offices Therein.*

[184] CONST. Art VIII, Sec. 8(3).

[185] CONST. Art VIII, Sec. 8(4).

[186] *Drilon v. Lim,* 305 Phil. 146 (1994) [Per *J.* Cruz, *En Banc*].

may not prescribe the manner by which an act is to be done. They have no judgment on that matter except to see that the rules are followed.

The Court goes beyond its constitutional role when its actions amount to control and not merely supervision. The varied composition of the Judicial and Bar Council is testament to its uniqueness with members that come not only from the Judiciary, but from the Executive and Legislative branches, the academe, and the private sector. While the Court possesses the power of control and supervision over members of the Judiciary and the legal profession, it does not have the same authority over the Secretary of Justice, a representative of Congress or a member of the private sector.[187]

This Court's power of supervision over the Judicial and Bar Council cannot be read as authority to interfere with the Judicial and Bar Council's discretion in performing its constitutional mandate. At most, this Court's supervision is administrative in nature.[188]

Justice Arturo Brion in his separate opinion in *De Castro v. Judicial and Bar Council*[189] expounded on the fully independent character of the Judicial and Bar Council:

> This aspect of the power of the Court — its power of supervision — is particularly relevant in this case since the JBC was created "under the supervision of the Supreme Court," with the "principal function of recommending appointees to the Judiciary." In the same manner that the Court cannot dictate on the lower courts on how they should decide cases except through the appeal and review process provided by the Rules of Court, *so also cannot the Court intervene in the JBC's authority to discharge its principal function.* In this sense, the JBC is *fully independent* as shown by A.M. No. 03-11-16-SC or Resolution Strengthening the Role and Capacity of the Judicial and

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[187] *J.* Leonen, Concurring Opinion in *Aguinaldo v. Aquino III*, G.R. No. 224302 (November 29, 2016) [Per *J.* Leonardo-de Castro, *En Banc*].

[188] *J.* Leonen, Dissenting Opinion in *Jardeleza v. Sereno*, 741 Phil. 460 (2014) [Per *J.* Mendoza, *En Banc*].

[189] 629 Phil. 629 (2010) [Per *J.* Bersamin, *En Banc*].

Supreme Court E-Library

Bar Council and Establishing the Offices Therein. In both cases, however and unless otherwise defined by the Court (as in A.M. No. 03-11-16-SC), the Court can *supervise by ensuring the legality and correctness of these entities' exercise of their powers as to means and manner, and interpreting for them the constitutional provisions, laws and regulations affecting the means and manner of the exercise of their powers* as the Supreme Court is the final authority on the interpretation of these instruments. . . .[190] (Emphasis supplied)

The dissent in *Jardeleza v. Sereno*[191] then stressed that this Court should observe restraint in reviewing the Judicial and Bar Council's vetting process so as not to unnecessarily interfere with the nomination and appointment of its own Members:

By constitutional design, this court should wisely resist temptations to participate, directly or indirectly, in the nomination and appointment process of any of its members. In reality, nomination to this court carries with it the political and personal pressures from the supporters of strong contenders. This court is wisely shaded from these stresses. We know that the quality of the rule of law is reduced when any member of this court succumbs to pressure.

The separation of powers inherent in our Constitution is a rational check against abuse and the monopolization of all legal powers. We should not nullify any act of any constitutional organ unless there is grave abuse of discretion. The breach of a constitutional provision should be clearly shown and the necessity for the declaration of nullity should be compelling. Any doubt should trigger judicial restraint, not intervention. Doubts should be resolved in deference to the wisdom and prerogative of co-equal constitutional organs.[192]

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[190] Justice Brion, Separate Opinion in *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 736 (2010) [Per *J.* Bersamin, *En Banc*].

[191] 741 Phil. 460 (2014) [Per *J.* Mendoza, *En Banc*].

[192] *J.* Leonen, Dissenting Opinion in *Jardeleza v. Sereno*, 741 Phil. 460 (2014) [Per *J.* Mendoza, *En Banc*].

Supreme Court E-Library

The Concurring Opinion in *Villanueva v. Judicial and Bar Council*[193] and Separate Opinion in *Aguinaldo v. Aquino*[194] emphasized that while this Court has the power of supervision over the Judicial and Bar Council, such power must only be exercised in cases when the Council commits grave abuse of discretion.

This expanded power of review, even of independent constitutional bodies, is expressly granted to this Court by the second paragraph of Article VIII, Section 1 of the Constitution:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The Separate Opinion in *Aguinaldo*, in particular, states:

> This Court exercises the powers of supervision only through judicial review over the Judicial and Bar Council and only when there is grave abuse of discretion.
>
> Nothing in the Constitution diminishes the fully independent character of the Judicial and Bar Council. It is a separate constitutional organ with the same autonomy as the House of Representative Electoral Tribunal and the Senate Electoral Tribunal. *Angara v. Electoral Commission* emphasizes that the Electoral Commission is "a constitutional creation, invested with the necessary authority in the performance and execution of the limited and specific function assigned to it by the Constitution." The grant of power to the Electoral Commission is intended to be "complete and unimpaired." The rules it promulgates cannot be subject to the review and approval of the

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[193] 757 Phil. 534 (2015) [Per *J.* Reyes, *En Banc*].

[194] G.R. No. 224302, November 29, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/224302.pdf> [Per *J.* Leonardo-De Castro, *En Banc*].

Supreme Court E-Library

legislature because doing so would render ineffective the grant of power to the Electoral Commission[.][195] (Citations omitted)

Nonetheless, the independent character of the Judicial and Bar Council as a constitutional body does not remove it from the Court's jurisdiction when its assailed acts involve grave abuse of discretion.

Judicial review is the mechanism provided by the Constitution to settle actual controversies and to determine whether there has been grave abuse of discretion on the part of any branch or instrumentality of the Government. The expanded power of judicial review gives the court the authority to strike down acts of all government instrumentalities that are contrary to the Constitution. *Angara v. Electoral Commission* points out that judicial review is not an assertion of the superiority of the judiciary over other departments, rather, it is the judiciary's promotion of the superiority of the Constitution:

> The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.[196]

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[195] *J.* Leonen, Separate Opinion in *Aguinaldo v. Aquino*, G.R. No. 224302, November 29, 2016 [Per *J.* Leonardo-De Castro, *En Banc*] <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/224302_leonen.pdf> 3-4.

[196] *J.* Leonen, Separate Opinion in *Aguinaldo v. Aquino*, G.R. No. 224302, November 29, 2016 [Per *J.* Leonardo-De Castro, *En Banc*] citing *Angara v. Electoral Commission*, 63 Phil. 139 (1936) [Per *J.* Laurel, *En Banc*] and CONST., Art. VIII, Sec. 1.

In order to come within the scope of judicial review, the Constitution requires not merely abuse of discretion but *grave* abuse of discretion. The constitutional transgression must be nothing less than "arbitrary, capricious and whimsical."[197] The extent of this Court's review of the nomination and appointment process must not be given such an expansive interpretation that it not only undermines the independence of the Judicial and Bar Council, but even undermines the President's constitutional power of appointment.

There must also be a time period within which to question any perceived grave abuse of the Judicial and Bar Council's discretion. In this particular instance, the act complained of was allegedly committed by the Council *six (6) years ago*. The appointee whose qualifications are now being questioned was appointed by the President of the previous administration *six (6) years ago*.

Allowing an agent of the current administration to now question the previous administration's appointee would set a dangerous precedent. The current administration can just as easily undo all judicial appointments made by a previous administration. This will not inspire public trust and confidence in our institutions. The security of tenure of magistrates insulate them from the changing political winds. Removing that security renders members of the Judiciary vulnerable to currying favor with whichever political entity is in power, if only to guarantee that they remain in office until retirement. The immeasurable repercussions of this will corrode the foundations of our institution, to the ultimate detriment of the people.

X

The independence of the Judiciary should be specially guarded. This is the duty not only of the Court but likewise by the legal profession which includes the Solicitor General.

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[197] See *Ganaden, et al. v. Court of Appeals, et al.*, G.R. Nos. 170500 and 170510-11, June 1, 2011, 650 SCRA 117 [Per *J.* Villarama, Jr., Third Division] and *Ysidoro v. Hon. De Castro*, G.R. Nos. 171513 and 190963, February 6, 2012, 665 SCRA 1 [Per *J.* Brion, Second Division].

Supreme Court E-Library

The Executive and Legislative departments are constitutional departments, but they are also political. The Constitutional Commissions and the Ombudsman have fixed terms, and therefore, are subject to the choices of a political administration. On the other hand, the justices of the Supreme Court serve under good behavior and are to serve until the age of 70 years old.

Political departments respond to majorities. That is in their nature since they act with the next elections in mind. Congress specifically makes policy choices through the concurrence of the majority in the House of Representatives and the Senate. The minorities may provide their dissenting voices on record but they are recorded for posterity and not for winning policy.

On the other hand, the Supreme Court is not political in that way. By providing for a term until the age of 70, the Constitution ensures that the vision of each member of the Court is for the longer term, and therefore, that decisions are made, not merely to address pragmatic needs, but long term principles as well. The Court is expected to be the last resort even in determining whether a political majority has transgressed its constitutional power or a fundamental right of the minority.

In doing so, the Court may be counter-majoritarian but pro-Constitution or pro-principle. Certainly, when it declares a law or an executive act as null and void because it is unconstitutional, it will arouse discomfort with those who are in political power. This Court, thus, protects not only the majority of the political present but the majority of the sovereign that ratified the Constitution.

Thus, even the majority of this Court must be shielded against the majority's power to remove. Their removal should also be done only through impeachment and conviction.

It cannot be denied that there are dire consequences in granting this Quo Warranto Petition.

First, the Solicitor General, who is not even a constitutional officer, is given awesome powers.

Second, since quo warranto is within the concurrent original jurisdiction of the Regional Trial Court, the Court of Appeals, and the Supreme Court, we will be ushering in the phenomena of a trial court judge ousting a colleague from another branch or another judicial region or a Court of Appeals division ousting another justice belonging to another division or working in another region. The logical consequence is to diminish the concept of professional collegiality and independence also among lower courts.

Third, this Decision would inexorably empower appellate court judges to exercise discipline and control over lower courts through acting on Petitions for Quo Warranto against other lower court judges. This will take away this Court's sole constitutional domain to discipline lower court judges

Fourth, there will be no security of tenure for justices of this Court who will consistently dissent against the majority.

Fifth, this precedent opens the way to reviewing actions of the Judicial Bar Council and the President. It is an illicit motion for reconsideration against an appointment, even long after the exercise of judicial power.

Sixth, we have effectively included another requirement for the selection of judges and justices even though we are not constitutionally mandated to do so. Through the majority opinion, we now require the submission of all the Statements of Assets and Liabilities of a candidate.

XI

This dissent, however, should not be read as a shield for the respondent to be accountable for her actions.

The Constitution is not a document that ensures that there be no dialogical interaction between its various organs. Certainly, there will be tension between the Supreme Court and the various political branches. This is not a flaw in the design of a democratic and republican state. Rather, it reveals the necessary inherent contradiction between those who are elected to represent the

Supreme Court E-Library

contemporary majority and the court that represents the concept that there are foundational principles which not even a present contemporary majority can ignore. Democracies do not do away with discomfort. Discomfort in a true democratic setting is an assurance that there are contending voices to be resolved through the constitutional process.

Unfortunately, in her efforts to save her tenure of public office she held as a privilege, this nuance relating to this Court's role in the constitutional democracy may have been lost on the respondent. She may have created too much of a political narrative which elided her own accountability and backgrounded her responsibilities as a member of this Court.

Ideally, a justice must be slow to make public statements, always careful that the facts before her may not be the entire reality. The conclusion that the initial effort to hold her to account for her acts was an attack on the entire judiciary itself should have been a judgment that should have been carefully weighed.

It was unfortunate that this seemed to have created the impression that she rallied those in political movements with their own agenda, tolerating attacks on her colleagues in social and traditional media. She may have broken the expectations we have had on parties to cases by speaking *sub judice* on the merits of the Quo Warranto Petition and her predictions on its outcome. She may not have met the reasonable expectation of a magistrate and a Chief Justice that, whatever the reasons and even at the cost of her own personal discomfort, she—as the leader of this Court—should not be the first to cause public shame and humiliation of her colleagues and the institution she represents.

The claim that the present actions against her was because of her constant position against the administration is belied by her voting record in this Court.

Supreme Court E-Library

In *Lagman v. Medialdea*,[198] respondent did not dissent on the constitutionality of the extension of the President's declaration of martial law. She only opined that it was valid within the limited area of Lanao del Sur, Maguindanao, and Sulu.

In *Padilla v. Congress*,[199] respondent voted with the majority and concurred in the main opinion that a joint congressional session was unnecessary to affirm the President's declaration of Martial Law in Mindanao.

In *Baguilat v. Alvarez*,[200] respondent again voted with the majority and concurred in the main opinion that this Court cannot interfere in the manner by which the House of Representatives chooses its minority leader, despite the absence of a genuine minority.

In *SPARK v. Quezon City*,[201] respondent likewise voted with the majority and concurred in the main opinion, which upheld the curfew ordinance in Quezon City on the ground that the ordinance, as crafted, did not violate the constitutional rights of minors.

Her view of the expanded powers of the President is further cemented by her vote in two (2) landmark cases. In *Gonzalez v. Executive Secretary*,[202] she was one of the dissenters who opined that the Office of the President had the power to remove

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[198] G.R. No. 231658, July 4, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658.pdf> [Per *J.* Del Castillo, *En Banc*].

[199] G.R. No. 231671, July 25, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231671.pdf> [Per *J.* Leonardo-De Castro].

[200] G.R. No. 227757, July 25, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/227757.pdf> [Per *J.* Perlas-Bernabe, *En Banc*].

[201] G.R. No. 225442, August 8, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/225442.pdf>[Per *J.* Perlas-Bernabe, *En Banc*].

[202] 725 Phil. 380 (2014) [Per *J.* Brion, *En Banc*].

Supreme Court E-Library

a Deputy Ombudsman. Then, in *Saguisag v. Ochoa*, she delivered the main opinion of this Court holding that an executive issuance or the Enhanced Defense Cooperation Agreement (EDCA) may have the same binding effect as a treaty ratified by the Senate.[203]

If true, the claim that the present status quo caused her difficulties due to her positions is, therefore, puzzling.

XII

More troubling was the inaccuracies in the announcements made by her team of the agreements of the Court *En Banc* to suit her personal agenda.

On February 27, 2018, during the regular *En Banc* session, respondent agreed to go on an indefinite leave.

Respondent's letter of even date to Atty. Anna-Li Papa Gombio, the En Banc Deputy Clerk of Court, supports what was agreed upon during the En Banc session:

Dear Atty. Gombio,

On the matter of my leave, please take note that due to the demands of the Senate trial where I intend to fully set out my defenses to the baseless charges, I will take an *indefinite leave*, until I shall have completed my preparation for the Senate trial, a portion of which will be charged against my wellness leave under A.M. No. 07-11-02-SC (Re: Wellness Program of all Justices for 2018), originally from March 12 to 23, 2018, to March 1 to 15, 2018. I will be submitting the requisite forms to the Clerk of Court.

Thank you. (Emphasis supplied)

Strangely, the letter was not addressed to her colleagues. Neither were they given the courtesy of being furnished copies of her letter.

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[203] G.R. No. 212426, January 12, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/212426.pdf> [Per *C.J.* Sereno, *En Banc*].

However, that same day, respondent's spokesperson announced a different version of events to the media by declaring that respondent will go on a wellness leave instead of an indefinite leave. This appeared to be an attempt to spin the events and sanitize the turn of events with the spokesperson's declaration that the wellness leave had long been scheduled and that respondent was only availing of her wellness leave a few weeks ahead of schedule.

Respondent is well aware that wellness leaves of Members of the Supreme Court are subject to the approval of the En Banc, hence, her follow-up letter the following day to the En Banc asking for approval of her wellness leave:

Dear Colleagues:

On the matter of my leave, I would respectfully need to advance my wellness leave to March 1 to 15, 2018 (originally March 12 to 26, 2018), to avail of the exemption from raffle under Section 6(c), Rule 7 of the Internal Rules of the Supreme Court. Thereafter, I shall take an indefinite vacation leave (of at least 15 days) to prepare for my Senate defense and to be exempt for raffle. Please note that under said rule:

(c) Members who are on wellness leave or who are on vacation or sick leave, for at least fifteen (15) continuous calendar days, shall be exempt from raffle. . . .

Thank you.

Her follow-up letter highlighted the inaccuracies over what was agreed upon during the February 27, 2018 En Banc session. Her camp's propensity to spin facts into a story that would closely hew to their narrative of respondent as the righteous and steadfast defender of the Judiciary should have been kept in check. There is a difference between sober advocacy and reckless media spin.

Confusion was by then rampant as to whether or not respondent was going on an indefinite leave or merely a rescheduled wellness leave, as her camp insisted. Speculations were also rife that some Members of the Supreme Court had forced respondent to

Supreme Court E-Library

go on indefinite leave and that respondent's indefinite leave was a prelude to her resignation as Chief Justice.

On March 1, 2018, the En Banc, with the exception of Associate Justice Alfredo Caguioa, who was then on official leave, took the unprecedented move of authorizing Atty. Theodore O. Te of the Public Information Office to release the following statement to clarify the confusion caused by respondent:

> I have been requested to read this Press Statement by thirteen (13) Justices of the Supreme Court.
>
> After extended deliberations last Tuesday February 27, 2018, thirteen (13) of the Justices present arrived at a consensus that the Chief Justice should take an indefinite leave. Several reasons were mentioned by the various justices. After consulting with the two most senior justices, the Chief Justice herself announced that she was taking an indefinite leave, with the amendment that she start the leave on Thursday, March 1, 2018. The Chief Justice did not request the rescheduling of her wellness leave.
>
> The Court En Banc regrets the confusion that the announcements and media releases of the spokespersons of the Chief Justice have caused, which seriously damaged the integrity of the Judiciary in general and the Supreme Court in particular. In the ordinary course of events, the Court expected the Chief Justice to cause the announcement only of what was really agreed upon without any modification or embellishment. This matter shall be dealt with in a separate proceeding.
>
> In view of the foregoing, the Court En Banc considers Chief Justice Maria Lourdes P.A. Sereno to be on an indefinite leave starting March 1, 2018. Senior Associate Justice Antonio T. Carpio shall be the Acting Chief Justice.
>
> The Clerk of Court and the Office of the Court Administrator will be informed and ordered to inform all courts and offices accordingly.

The Court's statement reveals what really happened during the En Banc session and confirms that contrary to her team's pronouncements to the media that it was her choice to go on

leave, respondent was in truth asked by her peers to go on an indefinite leave. There was no reason for the En Banc to reveal such a delicate and sensitive matter which occurred within its chambers, but respondent's inaccurate statement meant that the En Banc had no choice but to correct her in order to preserve the Court's integrity.

In response to the En Banc's press release, respondent released a letter-explanation which read:

> The Chief Justice understands the sense of the thirteen (13) justices that they expected me, in the normal course of events, to cause the announcement of my indefinite leave. I had agreed to go on an indefinite leave, but I am also bound by the appropriate administrative rules. The rules do not contain any provision on "indefinite leave." I had to qualify my leave according to the provisions of Rule 7, Section 6(c) of the Internal Rules of the Supreme Court which reads "(c) Members who are on wellness leave or who are on vacation or sick leave, for at least fifteen (15) continuous calendar days shall be exempt from raffle. xxx" and the Resolution dated January 23, 2018 (A.M. No. 07-11-02-SC) on the matter of my approved wellness leave. I requested yesterday in writing the rescheduling of my wellness leave in view of my restudy of the rules. It is unfortunate that my plan of making use of any already approved wellness leave in relation to an indefinite leave was inaccurately conveyed for which I apologize.
>
> I have not resigned and I will not resign. This indefinite leave is not a resignation. I will devote my time to the preparation of my Senate defense and work on the cases in my docket.

This explanation does not inspire belief. It was obviously meant to harmonize her first and second letters and lessen the impact of the inaccuracies.

While the Court's internal or administrative rules may not contain a provision on indefinite leaves, it does not mean that it is not recognized. There was no need to denominate or qualify the indefinite leave as a wellness leave or any one of the recognized leaves that Members of the Supreme Court are entitled to. The intention to go on an indefinite leave was already understood, and to insinuate that categorizing the indefinite

Supreme Court E-Library

leave as a wellness leave was merely in compliance with administrative rules is certainly not the truth.

Besides, during the deliberations of February 27, 2018, respondent indeed attempted to convince her colleagues to characterize her leave as a wellness leave. She, together with all the other Justices present, knows that it was not accepted.

Strangely, she appeared at the Court's steps on May 8, 2018 purportedly to end her leave, knowing fully well that it was part of a collegial decision with her peers. She was well aware that the Court was on an intensive decision writing break for the whole month, and hence, there was no special reason for her to report back without the approval of the Court. Her reporting for work did not appear to have any urgent motive except her desire to preside over the special session of the en banc where the main agenda was the deliberation of this case.

The respondent knows fully well that she is a party to her case. For her to report to control the bureaucracy of the Court—such as the Clerk of Court and its process servers—when her case is for decision, and for her to put herself in a position to be engaged in *ex parte* communication with the sitting justices who will decide her case, border on the contumacious. At the very least, this appears to violate Canon 13 of the Code of Professional Responsibility, thus:

> Canon 13 – A lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance of influencing the Court.

Disappointments arising from losing one's motions and pleadings are understandable. Criticism of the Court that decides will always be forthcoming. But for a party to do everything in her power to undermine the Court for fear of an adverse result may breach not only judicial courtesy but also our professional responsibilities as a lawyer.

XIII

This Court has its faults, and I have on many occasions written impassioned dissents against my esteemed colleagues. But,

there have always been just, legal, and right ways to do the right thing. As a Member of this Court, it should be reason that prevails. We should maintain the highest levels of ethics and professional courtesy even as we remain authentic to our convictions as to the right way of reading the law. Despite our most solid belief that we are right, we should still have the humility to be open to the possibility that others may not see it our way. As mature magistrates, we should be aware that many of the reforms we envision will take time.

False narratives designed to simplify and demonize an entire institution and the attribution of false motives is not the mark of responsible citizenship. Certainly, it is not what this country expects from any justice. Courts are sanctuaries of all rights. There are many cases pending in this Court where those who have much less grandeur than the respondent seek succor. Every judicial institution, every Justice of this Court, will have weaknesses as well as strengths. We should address the weaknesses tirelessly but with respect. We should likewise acknowledge the strengths which we intend to preserve. No court is perfect. All courts need reform.

It is reasonable to expect that the Chief Justice should have the broadest equanimity, to have an open mind, and to show leadership by being the first to defend her Court against underserved, speculative, callous, *ad hominem*, and irrelevant attacks on their personal reputation. She should be at the forefront to defend the Court against unfounded speculation and attacks. Unfortunately, in her campaign for victory in this case, her speeches may have goaded the public to do so and without remorse.

To succeed in discrediting the entire institution for some of its controversial decisions may contribute to weakening the legitimacy of its other opinions to grant succor to those oppressed and to those who suffer injustice.

This is not the end for those who fight for judicial independence. This is not the end for those who articulate a vision of social justice against the unjustness of the politically dominant. There are still many among us in the Judiciary.

Supreme Court E-Library

Those who choose to make personal sacrifices leave the most important lesson that can etch into our history that can be emulated by present and future Justices of this Court: having a soul where the genuine humility of servant leadership truly resides.

Today, perhaps, a torch may just have been passed so that those who are left may shine more brightly. Perhaps, an old torch will be finally rekindled: one which will light the way for a more vigilant citizenry that is sober, analytical, and organized enough to demand decency and a true passion for justice from all of government.

It is with all conviction that I vote to dismiss this Quo Warranto Petition. In my view, it should not even have been given due course. I am convinced that the majority opinion will weaken the role of the Judiciary to deliver social justice and assert our fundamental rights.

I grieve the doctrine of this case. It should be overturned in the near future.

I dissent.

ACCORDINGLY, I vote to **DISMISS** the Petition.

DISSENTING OPINION

CAGUIOA, *J.*:

"Integrity is the ability to stand by an idea."
- Ayn Rand, *The Fountainhead*

This *quo warranto* petition is brought before the Court purportedly to test the integrity of the Chief Justice. However, what it really tests is the integrity of the Court — its ability to stand by an idea. The idea is simple, clearly stated in the Constitution, and consistently upheld by the Court in its jurisprudence before today: impeachable officers, by express constitutional command, may only be removed from office by

Supreme Court E-Library

impeachment. By ousting the Chief Justice through the expediency of holding that the Chief Justice failed this "test" of integrity, it is actually the Court that fails.

The petitioner Solicitor General describes this new and creative mode of removing an impeachable officer as the "road less travelled by." But there is a reason why it has never been taken — it is not a sanctioned road. Refusing to see the impassability of this "road," the Solicitor General forges on, equivocating between grounds of impeachment and grounds for questioning eligibility for appointment, between the appropriate mode to question and the effects of non-submission of the Sworn Statement of Assets, Liabilities and Net Worth (SALN) to the Judicial and Bar Council (JBC) during the application process for appointments in the Judiciary and the non-filing of SALN punishable under Republic Act (R.A.) No. 6713. He attempts to sidestep the unconstitutionality of the consequent ouster he prays for in this *quo warranto* proceeding by drawing a false dichotomy between acts done prior to appointment as against acts done during the holding of office.

Contrary to the decision reached by the majority, it is my view that the *quo warranto* must fail for the following reasons:

1. *Quo warranto*, except only as explicitly allowed by the Constitution to be filed against the President or Vice President under the rules promulgated by the Presidential Electoral Tribunal (PET), is not available as a mode of removal from office for impeachable officers by the clear command of Article XI, Section 2 of the Constitution;

2. Even assuming that *quo warranto* is available, the alleged non-submission or incomplete submission of SALN to the JBC is not a valid ground to question the eligibility of the respondent, the SALN not being a constitutional requirement for the position of Chief Justice.

3. Even assuming that *quo warranto* is available, and that the non-submission or incomplete submission of the SALN to the JBC can somehow be raised to a level of

Supreme Court E-Library

a constitutional requirement, the one-year prescriptive period for the filing of *quo warranto* lapsed one year after the appointment of or assumption of office by the respondent as Chief Justice in 2012;

4. Even assuming again, that the non-submission or incomplete submission of the SALN to the JBC is a ground to disqualify the respondent from being placed in the short list, the records show that the JBC considered the submissions of the respondent Chief Justice as substantial compliance. Any defect in the exercise of discretion by the JBC should have been assailed via *certiorari*, prior to the respondent's appointment. This was not done and can no longer be done through this *quo warranto* petition.

5. Even assuming again, that the non-filing of the SALN under R.A. No. 6713 may lead to the removal from office of an impeachable officer, it cannot be done by *quo warranto*, but through the procedure in Section 11 of R.A. No. 6713.

6. And finally, even assuming that *quo warranto* is available to remove an impeachable officer for violation of R.A. No. 6713 separate from the procedure provided in that law, the Solicitor General failed to prove the non-filing of SALN by the respondent — the evidentiary value of the Certifications from the University of the Philippines Human Resources Development Office (UP HRDO) and the Office of the Ombudsman having been destroyed by the discovery of other SALNs filed that were not found in the custodian's possession.

Contrary to what has been bandied about, this case does **not** present any novel legal or constitutional question. This is **not** a case of first impression. This case is nothing more than cheap trickery couched as some gaudy innovation. Thus, in disposing of this case, it does not take a lot to state plainly the truth; it takes infinitely more effort to hide and bury it.

Save for quo warranto which may be filed against the President and Vice-President, impeachment is the only mode of removal for impeachable officers.

The concept of impeachment was first introduced in the Philippines through the 1935 Constitution.[1] The adoption of impeachment as a method of removing public officers from service was "inspired by existing practice both in the federal and in the state governments of the United States."[2]

As approved, Article IX of the 1935 Constitution read:

SECTION 1. The President, the Vice-President, the Justices of the Supreme Court, and the Auditor General, shall be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, or other high crimes.

SECTION 2. The Commission on Impeachment of the National Assembly, by a vote of two-thirds of its Members, shall have the sole power of impeachment.

SECTION 3. The National Assembly shall have the sole power to try all impeachments. When sitting for that purpose the Members shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of three-fourths of all the Members who do not belong to the Commission on Impeachment.

SECTION 4. Judgment in cases of impeachment shall not extend further then to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the Government of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, according to law.

While the impeachment provisions found in the 1935 Constitution rest on American foundations, the material changes

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[1] II Jose M. Aruego, *The Framing of the Philippine Constitution* 587 (1937).

[2] *Id*.

Supreme Court E-Library

made by its framers resulted in an impeachment mechanism bound by *stricter* standards than its American counterpart, in view of the following features: (i) a narrower base (due to its applicability only to the "highest constitutional officers"[3]); (ii) a wider scope (due to the expansion of grounds upon which removal by impeachment may be based); and (iii) a higher threshold for conviction.

Esteemed Constitutionalist Fr. Joaquin G. Bernas explains the significance behind these stricter standards, thus:

> Coming now to the provisions of our Constitution regarding impeachment, it will be noted that they differ from the U.S. Constitution in three material respects. Firstly, instead of rendering every civil officer liable to impeachment, our Constitution limits the number of impeachable officials to the President, Vice-President, Justices of the Supreme Court, the Auditor General, and members of the Commission on Elections. In other words, whereas in the United States even the most subordinate civil officer is subject to impeachment, here only the highest constitutional officials of the different departments of the government (except the legislative) are removable by impeachment. Secondly, instead of "treason, bribery, or other high crimes and misdemeanors" being the grounds for impeachment, our Constitution makes "culpable violation of the Constitution, treason, bribery, or other high crimes" the ground[s] for impeachment. x x x Thirdly, instead of a majority vote being sufficient for the House to impeach and a two-thirds vote for the Senate, to convict, in our Constitution, a two-thirds of the House is required for impeachment and a three-fourths of the Senate to convict.
>
> The three points of difference between our Constitution and the U.S. Constitution, just pointed out, are of great significance. **It is plain and evident that the intention of the framers of our Constitution was to impress upon the members of our Congress the gravity of their responsibility for initiating and trying an impeachment and the necessity of proceeding slowly and with the utmost caution in the filing of impeachment charges, considering that the impeachable officials occupy the highest constitutional positions in the land. It is likewise plain and evident**

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[3] I Joaquin G. Bernas, *The (Revised) 1973 Philippine Constitution, Notes and Cases* 892 (1983).

that the framers of our Constitution wanted to discourage the filing of impeachment charges inspired solely by personal or partisan considerations, considering the two-thirds vote required for the House to impeach and the three-fourths vote of the Senate to convict.[4] (Emphasis supplied)

The impeachment provisions under the 1935 Constitution were substantially re-adopted under the 1973 Constitution, save for the addition of graft and corruption as grounds for impeachment, and the consolidation of the power to initiate and try impeachment cases in favor of a single legislative body, that is, the National Assembly.[5]

Subsequently, the 1973 impeachment provisions were carried over to the present Constitution, with the addition of betrayal of public trust as another ground, and the restructuring of the impeachment process to facilitate the allocation of impeachment powers to a bicameral legislature.[6]

While proposals to transfer the "powers of impeachment trial"[7] from the legislature to the judiciary had been put forth by Commissioner Felicitas S. Aquino during the 1986 Constitutional deliberations, the body ultimately rejected said proposal by a vote of 25-13.[8]

Hence, at present, the provisions governing impeachment under the 1987 Constitution state:

Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment

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[4] I Joaquin G. Bernas, *id*.

[5] I Joaquin G. Bernas, *id*. at 889.

[6] See 1987 CONSTITUTION, Art. XI, Secs. 2 and 3.

[7] As distinguished from the power to initiate the impeachment process through the formulation of the impeachment articles. See II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 353-354, 371-372 (1986).

[8] *Id*. at 372.

Supreme Court E-Library

for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

Section 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution or endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, according to law.

Supreme Court E-Library

(8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.[9]

The *ponencia* holds that Article XI of the 1987 Constitution permits the removal of impeachable officers through modes *other than* impeachment, on the basis of the following premises:

1. Pursuant to the Presidential Electoral Tribunal (PET) Rules, the eligibility of the President and Vice-President, both of whom are impeachable officers, may be questioned through a petition for *quo warranto*, thereby negating the notion of exclusivity;
2. Section 2, Article XI permits resort to alternative modes of removal, as implied by the use of the word "may" in reference to the impeachment mechanism; and
3. Jurisprudence permits cognizance of *quo warranto* petitions filed against impeachable officers.

As will be discussed henceforth, the foregoing premises, and the conclusion which they purportedly support, are grossly erroneous.

Quo warranto challenging the election, returns, and qualifications of the President and Vice-President is explicitly sanctioned by the Constitution.

The *ponencia* exclaims that the allowance of *quo warranto* under the PET Rules negates respondent's assertion that impeachment is the exclusive mode by which she may be removed from office.[10] The *ponencia* explains:

Even the PET Rules expressly provide for the remedy of either an election protest or a petition for *quo warranto* to question the eligibility of the President and the Vice President, both of whom are

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[9] 1987 CONSTITUTION, Art. XI, Secs. 2 and 3.

[10] See *ponencia,* p. 57.

Supreme Court E-Library

impeachable officers. Following respondent's theory that an impeachable officer can be removed only through impeachment means that the President or Vice-President against whom an election protest has been filed can demand for the dismissal of the protest on the ground that it can potentially cause his/her removal from office through a mode other than by impeachment. x x x[11]

This is egregious error.

Lest it be overlooked, the filing of election protests assailing the qualifications of the President and Vice-President is a remedy **explicitly sanctioned by the Constitution itself**, particularly, under Article VII thereof, thus:

Section 4. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date, six years thereafter. The President shall not be eligible for any re-election. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

x x x x x x x x x

The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose. (Emphasis supplied)

The proposition that *quo warranto* is available as against the President and Vice President only because of the express constitutional commitment under Article VII, Section 4 is supported by the basis of the same authorities[12] used by the *ponencia* to say that *quo warranto* is available and has not prescribed:[13]

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[11] *Id*.

[12] *People v. Bailey*, 30 Cal.App. 581 (1916) and *State of Rhode Island v. Pawtuxet Turnpike Co.*, 8 R.I. 521 (R.I. 1867).

[13] *Ponencia*, pp. 75-79.

§644. Ordinarily it would seem to be a sufficient objection to the exercise of the jurisdiction against a public officer that the case as presented is one in which the court can not give judgment of ouster, even should the relator succeed. Thus, an information [in *quo warranto*] will not be allowed against certain magistrates to compel them to show by what authority they grant licenses within a jurisdiction alleged to pertain to other magistrates, since there can not in such case be judgment of ouster or of seizure in the hands of the crown.

x x x x x x x x x

§646a. When, under the constitution of a state, the power to determine the elections, returns and qualifications of members of the legislature is vested exclusively in each house as to its own members, the courts are powerless to entertain jurisdiction in *quo warranto* to determine the title of a member of the legislature. In such case, the constitution having expressly lodged the power of determining such question in another body, the courts cannot assume jurisdiction in *quo warranto*, but will have to leave the question to the tribunal fixed by the constitution. x x x[14] (Citations omitted)

By parity of reasoning, except only for the textual commitment in the Constitution to the PET of the power to determine the qualification of the President and Vice President *via quo warranto* under the PET Rules, the unavailability of *quo warranto* under Rule 66 of the Rules of Court extends to both elective and appointive impeachment officers.

Time and again, this Court has ruled that the Constitution is to be interpreted as a whole; one mandate should not be given importance over the other except where the primacy of one over the other is clear.[15] Meaning, even as Section 4, Article VII provides an exception to Section 2, Article XI, this exception should not be unduly extended to apply to impeachable officers *other than* the President and Vice-President. Such exception is specific and narrow, and should not be interpreted in a manner that subverts the entire impeachment mechanism.

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[14] *High*, on Extraordinary Remedies, pp. 600-602.

[15] On the holistic interpretation of the Constitution, see generally *Abas Kida v. Senate of the Philippines,* 675 Phil. 316, 380 (2011).

Supreme Court E-Library

The spirit, intent and purpose behind the impeachment provisions remain the same, despite the structural changes implemented since their initial adoption.

According to the *ponencia,* the language employed by Article XI, particularly, Section 2 thereof, permits alternative modes of removing impeachable officers from office,[16] claiming that the use of the phrase "*may* be removed", in contrast with the phrase "*shall* be removed" in its counterpart provisions found in the 1935 and 1973 Constitutions, indicate such intent.

This interpretation is fundamentally flawed as it puts unwarranted primacy on "legal hermeneutics" at the expense of Constitutional intent. As the deliberations indicate, the spirit, intent and purpose behind the impeachment provisions remain the same, despite the structural changes implemented since their initial adoption.

The fact that the word "may" *generally* denotes discretion is well taken; this interpretation proceeds from the word's ordinary usage and meaning. Indeed, the Court has, in several cases,[17] construed "may" as permissive in nature, consistent with the basic principle of statutory interpretation which requires, as a general rule, that words used in law be given their ordinary meaning.[18] Nevertheless, such general principle admits of exceptions, as when "a contrary intent is manifest from the law itself"[19] or, more notably, when the act to which it refers constitutes a public duty or **concerns public interest**.[20]

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[16] See *ponencia,* p. 50.

[17] See generally *Bersabal v. Salvador,*173 Phil. 379 (1978); *Philippine Consumers Foundation, Inc. v. National Telecommunications Commission*, 216 Phil. 185, 195 (1984); and *Tan v. Securities and Exchange Commission,* 283 Phil. 692, 701 (1992).

[18] See generally *Philippine Consumers Foundation, Inc. v. National Telecommunications Commission, id*. at 195.

[19] *Id*.

[20] See generally *De Mesa v. Mencias,*124 Phil. 1187 (1966).

De Mesa v. Mencias[21] teaches:

x x x While the ordinary acceptations of [the terms "may" and "shall"] may indeed be resorted to as guides in the ascertainment of the mandatory or directory character of statutory provisions, **they are in no wise absolute and inflexible criteria in the vast areas of law and equity**. **Depending upon a consideration of the entire provision, its nature, its object and the consequences that would follow from construing it one way or the other, the convertibility of said terms either as mandatory or permissive is a standard recourse in statutory construction**. Thus, Black is authority for the rule that "**Where the statute provides for the doing of some act which is required by justice or public duty, or where it invests a public body, municipality or public officer with power and authority to take some action which concerns the public interest** or rights of individuals, the permissive language will be construed as mandatory and the execution of the power may be insisted upon as a duty[.]"[22] (Emphasis and underscoring supplied)

To further support this position, the *ponencia* quotes a passage from Burke Shartel's *Federal Judges: Appointment, Supervision, and Removal: Some Possibilities under the Constitution* where the author opines that the "express provision for removal by impeachment ought not to be taken as a tacit prohibition of removal by other methods when there are other adequate reasons to account for this express provision;" and concludes that "logic and sound policy demand that the Congressional power be construed to be a concurrent, not an exclusive, power of removal."[23] According to the *ponencia*, this interesting and valid observation deals with "a parallel provision on impeachment under the U.S. Constitution from which ours was heavily patterned."

While the observation may be valid as to the U.S. formulation of impeachment, it is entirely inapplicable to the Philippine formulation and interpretation of impeachment. To use this as

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[21] *Id*.

[22] *Id*. at 1196-1197.

[23] *Ponencia*, pp. 59-60.

Supreme Court E-Library

support to say that in the application of the "parallel" impeachment provision in Article XI, Section 2, the power to remove is concurrent between the Legislature through impeachment and the Judiciary through *quo warranto* is downright misleading.

There are indeed parallel provisions relating to impeachment between the Constitution of the United States and ours.[24] However, the scope of the application and the grounds for impeachment are vastly different. This is easily shown when these "parallel" provisions are placed side by side.

Article II, Section 4 of the Constitution of the United States reads:

> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article XI, Section 2 of the 1987 Constitution reads:

> The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

Obviously, the power to remove by the Legislature under the Constitution of the United States is necessarily construed

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[24] For example, U.S. CONST. Art. I, §2, cl. 5 and Article XI, Section 3(1) of the 1987 Constitution on the sole or exclusive power of the House of Representatives to initiate impeachment; U.S. CONST. Art. I, §3, cl. 6, 7 and Article XI, Sections 3(6) and 3(7) of the 1987 Constitution on the sole power of the Senate to try cases of impeachment, the requirement of oath and affirmation upon the Senators, and what may be adjudged in the said cases; U.S. CONST. Art. I, §2 and Article VII, Section 19 of the 1987 Constitution excepting cases of impeachment from the power of the President to grant reprieves and pardons.

Supreme Court E-Library

as a concurrent power because impeachment in the United States covers not only the President, Vice President, and the heads of coordinate departments and constitutional commissions, but all civil officers, such as federal court judges and lesser executive functionaries. Shartel opines that these lesser functionaries, federal court judges in particular, be subject to removal for other offenses or defects. Unlike in the United States, lower court judges in the Philippines may be ordered dismissed by the Court in the exercise of its administrative and disciplinary powers,[25] and lesser executive functionaries are subject to the appointing authority's power of removal and the jurisdiction of the Office of the Ombudsman or the Sandiganbayan, as the case may be. The same considerations by Shartel do not obtain in the impeachment provision that limits itself to the highest public officers of the departments of government. As well, the language of Article XI, Section 2 of the Constitution, supported by the deliberations,[26] cannot admit of the interpretation that the power to remove these impeachable officers is concurrent.

To be sure, the use of Shartel's exposition justifying the removal of federal judges by judicial action on the ground that impeachment is a "limited legislative method for removal" does not find application in our jurisdiction. Contrary to the *ponencia*'s conclusion that the absolute enumeration of "impeachable offenses" cannot be a complete statement of the causes of removal from office, the constitutional deliberations[27] and the contemporaneous interpretation of the Legislature[28] bear out that virtually all offenses serious enough to warrant removal

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[25] 1987 CONSTITUTION, Art. VIII, Secs. 6 and 11.

[26] *See* II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 272-274 (1986) on the discussions relating specifically with the language of Art. XI, Sec. 2 *vis-à-vis* P.D. No. 1606.

[27] *Id*.

[28] In the impeachment of former Chief Justice Renato C. Corona, the seven (7) out of eight (8) Articles of Impeachment charged "betrayal of public trust," consistent with the "catch-all" nature of the said ground as deliberated in II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 314-315 (1986).

Supreme Court E-Library

of those key impeachable officers can be grounds for impeachment.

To stress, the impeachment mechanism had been crafted and incorporated into the 1935, 1973 and 1987 Constitutions to strengthen the independence of the highest constitutional officers[29] by freeing them from political pressure.[30] **Accordingly, these provisions should be interpreted in a manner that serves the policy considerations for which they have been adopted.** To my mind, these policy considerations are crystal clear, and are too striking to either be ignored or concealed under the cloak of legal hermeneutics.

Quo warranto cannot proceed against a member of the Supreme Court.

The *ponencia* draws a distinction between impeachment and *quo warranto,* by respectively characterizing them as political and judicial nature.[31] Proceeding therefrom, the *ponencia* concludes that both may proceed independently and simultaneously in order to cause the removal of the respondent, who, in turn, is a sitting member of the Supreme Court.[32]

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[29] I Joaquin G. Bernas, *supra* note 3.

[30] See II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 267 (1986). During the Sponsorship Speech of Commissioner Colayco, he explained the rationale of the inclusion of the Ombudsman among the list of officers removable only by impeachment, thus:

> To give the Ombudsman stature and a certain clout, we are proposing that he be given the status, the role or the rank of a chairman of a constitutional commission, as well as the same salary. If we are going to create an office which will have a lower rank than this, not even an ordinary employee of the government will bother to obey him. Second, to free him from political pressure, the Ombudsman cannot be removed except by impeachment. We hope that with the help of this body, we will receive better and more practical ideas. But we certainly appeal to the Members not to fail our people.

[31] See *ponencia,* pp. 47-50.

[32] See *id*. at 50-52.

With due respect, I completely disagree — for reasons grounded upon the principle of separation of powers.

A. The Court's action on the Petition erodes judicial independence, and encroaches upon the legislature's impeachment powers.

The origin, textual history and structure of the impeachment provisions inevitably lead to the conclusion that impeachment is the exclusive mechanism for the removal of incumbent members of the Supreme Court.

This intention is easily discernable from the constitutional deliberations:

MR. REGALADO. I propose to add in Section 2 as a last sentence thereof as already amended the following: ALL OTHER PUBLIC OFFICERS AND EMPLOYEES MAY BE REMOVED FROM OFFICE AS PROVIDED BY LAW BUT NOT BY IMPEACHMENT. The reason for the amendment is this: While Section 2 enumerates the impeachable officers, there is nothing that will prevent the legislature as it stands now from providing also that other officers not enumerated therein shall also be removable only by impeachment, and that has already happened.

Under Section 1 of P.D. No. 1606, the Sandiganbayan Decree, justices of the Sandiganbayan may be removed only by impeachment, unlike their counterparts in the then Court of Appeals. **They are, therefore, a privileged class on the level of the Supreme Court**. In the Committee on Constitutional Commissions and Agencies, there are many commissions which are sought to be constitutionalized — if I may use the phrase — and the end result would be that if they are constitutional commissions, the commissioners there could also be removed only by impeachment. What is there to prevent the Congress later — because of the lack of this sentence that I am seeking to add — from providing that officials of certain offices, although non-constitutional, cannot also be removed except by impeachment?

x x x x x x x x x

MR. MONSOD. Mr. Presiding Officer, the Committee is willing to accept the amendment of Commissioner Regalado.

Supreme Court E-Library

x x x x x x x x x

THE PRESIDING OFFICER (Mr. Treñas). x x x Is there any objection? (*Silence*) The Chair hears none; the amendment is approved.[33]

x x x x x x x x x

MR. DAVIDE. x x x

On lines 13 and 14, I move for the deletion of the words "and the Ombudsman." **The Ombudsman should not be placed on the level of the President and the Vice-President, the members of the judiciary and the members of the Constitutional Commissions in the matter of removal from office**.

MR. MONSOD. Madam President.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. We regret we cannot accept the amendment because we feel that the Ombudsman is at least on the same level as the Constitutional Commissioners and this is one way of insulating it from politics.

MR. DAVIDE. **Madam President, to make the members of the Ombudsman removable only by impeachment would be to enshrine and install an officer whose functions are not as delicate as the others whom we wanted to protect from immediate removal by way of an impeachment.**

MR. MONSOD. We feel that an officer in the Ombudsman, if he does his work well, could be stepping on a lot of toes. We would really prefer to keep him there but we would like the body to vote on it, although I would like to ask if we still have a quorum, Madam President.

THE PRESIDENT. Do we have a quorum? x x x

x x x x x x x x x

THE PRESIDENT. We have a quorum.

MR. MONSOD. May we restate the proposed amendment for the benefit of those who were not here a few minutes ago.

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[33] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 356-357 (1986).

x x x x x x x x x

MR. DAVIDE. The proposed amendment of Commissioner Rodrigo was the total deletion of the office of the Ombudsman and all sections relating to it. It was rejected by the body and, therefore, we can have individual amendments now on the particular sections.

THE PRESIDENT. **The purpose of the amendment of Commissioner Davide is not just to include the Ombudsman among those officials who have to be removed from office only on impeachment. Is that right?**

MR. DAVIDE. Yes, Madam President.

x x x x x x x x x

THE PRESIDENT. We will now vote on the amendment.

x x x x x x x x x

The results show 10 votes in favor and 14 against; the amendment is lost.[34] (Emphasis and underscoring supplied)

B. This has been the interpretation accorded by the Court to Article XI, Section 2 in extant jurisprudence.

The intent of the framers of the 1987 Constitution, as reflected in the records, had been subsequently recognized and accordingly applied in *Cuenco v. Fernan*[35] *(Cuenco),* where the Court *en banc* unanimously[36] resolved to dismiss the disbarment case filed against then Associate Justice Marcelo B. Fernan (Justice Fernan):

There is another reason why the complaint for disbarment here must be dismissed. Members of the Supreme Court must, under Article

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[34] *Id*. at 305.

[35] 241 Phil. 816 (1988).

[36] With Chief Justice Teehankee, and Associate Justices Yap, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento and Cortes concurring. Associate Justices Fernan and Griño-Aquino did not participate in the deliberations, and took no part.

Supreme Court E-Library

VIII (7) (1) of the Constitution, be members of the Philippine Bar and may be removed from office only by impeachment (Article XI [2], Constitution). **To grant a complaint for disbarment of a Member of the Court during the Member's incumbency, would in effect be to circumvent and hence to run afoul of the constitutional mandate that Members of the Court may be removed from office only by impeachment for and conviction of certain offenses listed in Article XI (2) of the Constitution**. x x x[37] (Emphasis and underscoring supplied)

The Court subsequently echoed its unequivocal pronouncements in *Cuenco* in *In re: Gonzalez*[38] concerning the same disbarment charges. Expounding further, the Court held:

It is important to underscore the rule of constitutional law here involved. This principle may be succinctly formulated in the following terms: A public officer who under the Constitution is required to be a Member of the Philippine Bar as a qualification for the office held by him and who may be removed from office **only by impeachment**, cannot be charged with disbarment during the incumbency of such public officer. Further, such public officer, during his incumbency, cannot be charged criminally before the *Sandiganbayan* or any other court with any offense which carries with it the penalty of removal from office, or any penalty service of which would amount to removal from office.

x x x x x x x x x

This is not the first time the Court has had occasion to rule on this matter. In *Lecaroz v. Sandiganbayan*[39] [*Lecaroz*], the Court said:

> "The broad power of the New Constitution vests the respondent court with jurisdiction over 'public officers and employees, including those in government-owned or controlled corporations.' There are exceptions, however, like constitutional officers, particularly those declared to be removed by impeachment. Section 2, Article XIII of the 1973 Constitution x x x

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[37] *Cuenco v. Fernan*, *supra* note 35, at 828.

[38] 243 Phil. 167 (1988).

[39] 213 Phil. 288, 294 (1999).

Supreme Court E-Library

> **x x x [T]he above provision proscribes removal from office of the aforementioned constitutional officers by any other method; otherwise, to allow a public officer who may be removed solely by impeachment to be charged criminally while holding his office with an offense that carries the penalty of removal from office, would be violative of the clear mandate of the fundamental law**.["]

x x x x x x x x x

The provisions of the 1973 Constitution we referred to above in *Lecaroz v. Sandiganbayan* are substantially reproduced in Article XI of the 1987 Constitution.

x x x x x x x x x

It is important to make clear that the Court is not here saying that its Members or the other constitutional officers we referred to above are entitled to immunity from liability for possibly criminal acts or for alleged violation of the Canons of Judicial Ethics or other supposed misbehaviour. **What the Court is saying is that there is a fundamental procedural requirement that must be observed before such liability may be determined and enforced. A Member of the Supreme Court must first be removed from office *via* the constitutional route of impeachment under Sections 2 and 3 of Article XI of the 1987 Constitution**. Should the tenure of the Supreme Court Justice be thus terminated by impeachment, he may then be held to answer either criminally or administratively (by disbarment proceedings) for any wrong or misbehaviour that may be proven against him in appropriate proceedings.

The above rule rests on the fundamental principles of judicial independence and separation of powers. The rule is important because judicial independence is important. Without the protection of this rule, Members of the Supreme Court would be vulnerable to all manner of charges which might be brought against them by unsuccessful litigants or their lawyers or by other parties who, for any number of reasons might seek to affect the exercise of judicial authority by the Court.

It follows from the foregoing that a fiscal or other prosecuting officer should forthwith and *motu proprio* dismiss any charges brought against a Member of this Court. **The remedy of a person with a**

Supreme Court E-Library

legitimate grievance is to file impeachment proceedings.[40] (Emphasis and underscoring supplied)

The *ponencia* finds the Court's pronouncements in *Cuenco, In re: Gonzalez* and *Lecaroz* inapplicable, as these cases do not delve into the validity of an impeachable officer's appointment.[41] The *ponencia* reaches the same conclusion anent the Court's rulings in *Jarque v. Desierto*[42] *(Jarque)* and *Marcoleta v. Borra*[43] *(Marcoleta)*.

Instead, the *ponencia* maintains that "*quo warranto* is the proper legal remedy to determine the right or title to [a] contested public office or to *oust* the holder [of public office] from its enjoyment,"[44] and that this remedy is available even against incumbent members of the Supreme Court.[45] The *ponencia* justifies this Court's assumption of jurisdiction by invoking the Court's power of judicial review under Article VIII, Section 1 of the Constitution. Further, the *ponencia* points to the cases of *Nacionalista Party v. De Vera*[46] (*Nacionalista*) and the consolidated cases of *Estrada v. Desierto*[47] and *Estrada v. Macapagal-Arroyo,*[48] (*Estrada cases*) as basis to support its assertions.

As stated earlier, I completely disagree.

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[40] *In re: Gonzalez*, *supra* note 38, at 169-173.

[41] *Ponencia,* p. 56.

[42] A.C. No. 4506, December 5, 1995 (Minute Resolution). In *Jarque,* the Court, *via* minute resolution, resolved to dismiss the complaint for disbarment filed against Ombudsman Aniano A. Desierto.

[43] 601 Phil. 470 (2009). In *Marcoleta,* the Court resolved to dismiss the complaint for disbarment against Commissioners Resureccion Borra and Romeo Brawner of the Commission on Elections.

[44] *Ponencia,* p. 50.

[45] *Id*. at 48-49.

[46] 85 Phil. 126 (1949).

[47] 406 Phil. 1 (2001).

[48] *Id*.

The *ponencia* itself recognizes that the Court can only assume jurisdiction over a case, and thereby exercise its power of judicial review, "in the presence of all the requisites." Not all the requisites are present in this case as the Court is precisely prohibited by the Constitution from assuming jurisdiction, for the intent was to allow the removal of impeachable officers only through impeachment. Further, the *ponencia* is mistaken in invoking the Court's power of judicial review as there was absolutely no allegation by the petitioner of grave abuse of discretion on any part of the government as regards the respondent's appointment.

As regards the cases cited as basis, while *Lecaroz, Cuenco, In re: Gonzalez, Jarque* and *Marcoleta* involve criminal and administrative actions where the appointment of respondents therein had not been assailed, **the reasons which impelled the Court to dismiss said actions hold true for *all* proceedings which seek to remove those officers who, under the Constitution, may be removed from office *only* by impeachment**.

Verily, the dismissal of the complaints in the afore-cited disbarment cases had been ordered in furtherance of a single fundamental purpose — to protect the impeachable officers involved therein from immediate removal,[49] **pursuant to the explicit mandate enshrined in Article XI of the 1987 Constitution.** The protection afforded by Article XI of the 1987 Constitution applies with equal force and extends to such officers not only in cases of disbarment, but, also, to all other actions which seek their ouster through means *other than* impeachment.

Thus, any ruling which sanctions the removal of a sitting member of the Supreme Court through alternative modes, be it through an administrative proceeding (*i.e.,* disbarment) or a judicial proceeding (*i.e.,* criminal action or *quo warranto),* would, in effect, be unconstitutional.

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[49] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 356-357 (1986).

Supreme Court E-Library

Notably, the parameters for the removal of impeachable officers set by Article XI had not been called for consideration in the *Nacionalista* and *Estrada cases.* In other words, these cases cannot be relied upon to sanction the removal of an impeachable officer (particularly, an incumbent member of the Court) through means other than impeachment.

In *Nacionalista,* the Court ruled that a petition for prohibition cannot be resorted to as a substitute for *quo warranto* where the purpose thereof is to assail the validity of an appointment into office.[50] However, nothing in *Nacionalista* upholds the propriety of a *quo warranto* action as a mode of removal of a public officer removable only by impeachment. As well, in the *Estrada cases,* the Court determined, on the basis of "the totality of prior, contemporaneous and posterior facts and circumstantial evidence,"[51] that Joseph Estrada had resigned from office, and had left vacant the position of President at the time Gloria Macapagal-Arroyo took her oath of office. The Court's ruling in the *Estrada cases* did not direct the removal of Joseph Estrada through *quo warranto,* but merely determined that the acts he had performed prior to his physical departure from Malacañang Palace constituted resignation.

To be certain, the grant of *quo warranto* against an incumbent member of the Supreme Court does not find any basis in the laws and jurisprudence cited by the *ponencia*.

C. Impeachment is a process textually committed to the legislature and is beyond the Court's power of review.

By deliberate constitutional design, the power to initiate and try impeachment cases has always been, and still remains, a political process textually committed to the legislature. This constitutional structure is, as stated, fundamentally grounded upon the principle of separation of powers. The purpose behind

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[50] *Nacionalista, supra* note 46, at 133.

[51] *Estrada cases*, *supra* notes 47 and 48, at 48.

this intricately designed structure resonates with utmost clarity when considered in connection with the Judiciary and its power of review.

In *Nixon v. United States*[52] *(Nixon)*, the Supreme Court of the United States (SCOTUS) unequivocally ruled that the impeachment of a federal office is not subject to judicial review. In so ruling, SCOTUS emphasized that judicial involvement in the impeachment process would defeat the system of checks and balances, thus:

> The history and contemporary understanding of the impeachment provisions support our reading of the constitutional language. The parties do not offer evidence of a single word in the history of the Constitutional Convention or in contemporary commentary that even alludes to the possibility of judicial review in the context of the impeachment powers. x x x This silence is quite meaningful in light of the several explicit references to the availability of judicial review as a check on the Legislature's power with respect to bills of attainder, ex post facto laws, and statutes. x x x
>
> The Framers labored over the question of where the impeachment power should lie. x x x Indeed, Madison and the Committee of Detail proposed that the Supreme Court should have the power to determine impeachments. x x x Despite these proposals, the Convention ultimately decided that the Senate would have "the sole Power to Try all Impeachments." x x x According to Alexander Hamilton, the Senate was the "most fit depositary of this important trust" because its members are representatives of the people. x x x The Supreme Court was not the proper body because the Framers "doubted whether the members of that tribunal would, at all times, be endowed with so eminent a portion of fortitude as would be called for in the execution of so difficult a task" or whether the Court "would possess the degree x x x of credit and authority" to carry out its judgment if it conflicted with the accusation brought by the Legislature — the people's representative. x x x In addition, the Framers believed the Court was too small in number: "The awful discretion, which a court of impeachments must necessarily have, to doom to honor or to infamy the most confidential and the most distinguished characters of the

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[52] 506 U.S. 224 (1993).

Supreme Court E-Library

community, forbids the commitment of the trust to a small number of persons." x x x

There are two additional reasons why the Judiciary, and the Supreme Court in particular, were not chosen to have any role in impeachments. First, the Framers recognized that most likely there would be two sets of proceedings for individuals who commit impeachable offenses – the impeachment trial and a separate criminal trial. In fact, the Constitution explicitly provides for two separate proceedings. x x x The Framers deliberately separated the two forums to avoid raising the specter of bias and to ensure independent judgments:

x x x x x x x x x

Second, judicial review would be inconsistent with the Framers' insistence that our system be one of checks and balances. In our constitutional system, impeachment was designed to be the *only* check on the Judicial Branch by the Legislature. On the topic of judicial accountability, Hamilton wrote:

> "The precautions for their responsibility are comprised in the article respecting impeachments. They are liable to be impeached for mal-conduct by the house of representatives, and tried by the senate, and if convicted, may be dismissed from office and disqualified for holding any other. *This is the only provision on the point, which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own constitution in respect to our own judges.*"

Judicial involvement in impeachment proceedings, even if only for purposes of judicial review, is counterintuitive because it would eviscerate the "important constitutional check" placed on the Judiciary by the Framers. x x x Nixon's argument would place final reviewing authority with respect to impeachments in the hands of the same body that the impeachment process is meant to regulate.[53] (Emphasis and underscoring supplied; citations omitted)

The exclusion of the judicial branch from exercising any power in the impeachment process has a two-pronged purpose — it insulates the legislature from judicial encroachment, and,

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[53] *Id*. at 233-235.

at the same time, ensures the independence of the *individual* members of the Court. **Verily, to permit the Court to exercise its judicial powers to determine the fate of its individual members would expose each to the pressures of conformity at the risk of removal**.

In *Chandler v. Judicial Council,*[54] the Judicial Council of the Tenth Circuit issued an order directing the District Judge of the Western District of Oklahoma to desist in acting in any case then or thereafter pending before his court. The District Judge thus sought the issuance of a writ of prohibition and/or mandamus to stay the Judicial Council's order, alleging, among others, that the order constitutes a usurpation of the impeachment powers vested in Congress. The SCOTUS denied the petition due to the District Judge's failure to exhaust his remedies.

In his dissent, Associate Justice William Douglas (Justice Douglas) expounded on the dangers of such judicial overreach, thus:

> An independent judiciary is one of this Nation's outstanding characteristics. **Once a federal judge is confirmed by the Senate and takes his oath, he is independent of every other judge**. He commonly works with other federal judges who are likewise sovereign. But neither one alone nor any number banded together can act as censor and place sanctions on him. **Under the Constitution the only leverage that can be asserted against him is impeachment, where pursuant to a resolution passed by the House, he is tried by the Senate, sitting as a jury**. x x x Our tradition even bars political impeachments as evidenced by the highly partisan, but unsuccessful, effort to oust Justice Samuel Chase of this Court in 1805. The Impeachment Provision of the Constitution indeed provides for the removal of "Officers of the United States," which includes judges, on "Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."
>
> **What the Judicial Council did when it ordered petitioner to "take no action whatsoever in any case or proceeding now or hereafter pending" in his court was to do what only the Court of**

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[54] 398 U.S. 74 (1970).

Supreme Court E-Library

Impeachment can do. If the business of the federal courts needs administrative oversight, the flow of cases can be regulated. Some judges work more slowly than others; some cases may take months while others take hours or days. Matters of this kind may be regulated by the assignment procedure.

But there is no power under our Constitution for one group of federal judges to censor or discipline any federal judge and no power to declare him inefficient and strip him of his power to act as a judge.

The mood of some federal judges is opposed to this view and they are active in attempting to make all federal judges walk in some uniform step. What has happened to petitioner is not a rare instance; it has happened to other federal judges who have had perhaps a more libertarian approach to the Bill of Rights than their brethren. The result is that the nonconformist has suffered greatly at the hands of his fellow judges.

x x x x x x x x x

These are subtle, imponderable factors which other judges should not be allowed to manipulate to further their own concept of the public good. x x x[55] (Emphasis supplied)

The grant of the *quo warranto* effectively sets a judicial precedent through which the dangers tersely identified by Justice Douglas will come to pass. On this point, the *ponencia* further states that:

At this juncture, it would be apt to dissuade and allay the fear that a ruling on the availability of *quo warranto* would allow the Solicitor General to "wield a sword over our collective heads, over all our individual heads, and on that basis, impair the integrity of the Court as a court."

Such view, while not improbable, betrays a fallacious and cynical view of the competence and professionalism of the Solicitor General and the members of this Court. It presupposes that members of this Court are law offenders. It also proceeds from the premise that the Solicitor General is the Executive's pawn in its perceived quest for a "more friendly" Court. Verily, fear, particularly if unfounded, should not override settled presumptions of good faith and regularity in the

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[55] *Id*. at 136-137.

performance of official duties. This Court, absent a compelling proof to the contrary, has no basis to doubt the independence and autonomy of the Solicitor General. x x x[56]

If indeed all men, being inherently good, were motivated by the best intentions, and if they only did act with utmost good faith, fidelity and impartiality and uphold the Constitution, then there really would be nothing to be afraid of. In that ideal utopian scenario, this Court itself becomes *functus officio*.

The *ponencia,* however, completely misses the point. The "fear" is not based on the theory that the members of the Court are law offenders, nor is it based on an imputation of malice on the part of the Solicitor General. The *ponencia* misplaced the statement from its proper context. For a better understanding of the "fear" the *ponencia* outrightly dismisses as unfounded, I quote the following exchange from the Oral Arguments:

JUSTICE CAGUIOA:

Because if we were to follow the theory of the Solicitor General, he would have unfettered discretion.

ATTY. POBLADOR:

Yes.

JUSTICE CAGUIOA:

To file a *quo warranto* suits…

ATTY. POBLADOR:

Yes, at any time…

JUSTICE CAGUIOA:

At any time because according to him, he is not bound by the one (1) year prescriptive period. So, he can file at any time or anything.

ATTY. POBLADOR:

Yes.

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[56] *Ponencia*, p. 52.

Supreme Court E-Library

JUSTICE CAGUIOA:

As long as he is able to relate it to the question of integrity.

ATTY. POBLADOR:

Integrity, yes.

JUSTICE CAGUIOA:

So, if one of us had copied from his seatmate in college, and become a sitting Justice of the Supreme Court, he can in fact, be removed or ousted for lack of integrity because he cheated in college. Is that correct?

ATTY. POBLADOR:

Yes, but I would appeal to the discretion of the SolGen probably he will be very selective.

JUSTICE CAGUIOA:

Only if he cheated in law school.

ATTY. POBLADOR:

Well, the SolGen has full discretion. **He can actually say this particular offense impeachable or not affects integrity**. So, probably can make a case against any sitting Judge or any sitting Justice which to me highlights the danger of allowing…

JUSTICE CAGUIOA:

And that's…

ATTY. POBLADOR:

…him to do so….

JUSTICE CAGUIOA:

And that's where I'm coming from. If I follow the theory of the Solicitor General, then, is as if, this Court were to say that *quo warranto* is available then, is as if the Solicitor General **whoever that Solicitor General would be whether it's today, tomorrow, next year, six years from now,** ***he would have the ability to wield a sword over all our collective heads, over all our individual heads. And on that basis, therefore, impair the integrity of the Court as a Court.*** Do you agree?

ATTY. POBLADOR:

Yes, he can change the make-up of the Court, influence how the Court adopts policy. He can actually control them by selectively removing certain Justices which do not align himself, or align themselves with government policies…[57] (Emphasis, underscoring and italics supplied)

The "fear" is not founded on the "fallacious and cynical view of the competence and professionalism of the Solicitor General and the members of this Court."[58] As shown by the underscored portion of the quoted exchange, the "fear" is not even based on any imputation of malice or irregularity on the part of the *present* Solicitor General. Rather, the "fear" is based on the dangerous power the *ponencia* grants the *present* and *future* Solicitors General without any constitutional support. With such unfettered power, the balance of powers between the three coordinate departments unconstitutionally shifts, and the independence and stability of the Judiciary is eroded. **This is where the danger lies.**

The Constitution exacts adherence to the principle of separation of powers and the maintenance of the system of checks and balances.

The Constitution is the basic and paramount law to which all other laws must conform and to which all persons must defer.[59] From this cardinal postulate, it follows that the three branches of government must discharge their respective functions within the limits of authority conferred by the Constitution.[60]

The principle of separation of powers is borne out of the allocation of State powers under the Constitution, and precludes one branch from unduly encroaching upon, assuming, or

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[57] TSN, Oral Arguments dated April 10, 2018, pp. 198-200.

[58] *Ponencia*, p. 52.

[59] See generally *Bengzon v. Drilon*, 284 Phil. 245, 260 (1992).

[60] *Id*.

Supreme Court E-Library

interfering with powers that, under the Constitution, are vested in another.

"The Constitution expressly confers on the [J]udiciary the power to maintain inviolate what it decrees. As the guardian of the Constitution[, the Court] cannot shirk the duty of seeing to it that the officers in each branch of government do not go beyond their constitutionally allocated boundaries[.]"[61] Conversely, the Court is bound to exercise restraint with respect to matters unequivocally committed to a coordinate branch and refuse to act on matters placed beyond the scope of its judicial power.

The present action for *quo warranto* against the respondent constitutes an institutional attack on the Supreme Court, as it enlists the Court's participation in the erosion of its own independence through the circumvention of the very document it has been tasked to uphold. To my mind, the Court's *duty* to exercise restraint has never been so glaring.

Assuming that quo warranto is available, it is time-barred.

The Solicitor General argues that as early as 1901, the action for *quo warranto* has been available to question a person's title to an office, attempting to extend the same to impeachable officers as, in this case, to the Chief Justice. He also claims that the remedy remains available. Moreover, he argues that his right to file the *quo warranto* is imprescriptible on the basis alternatively of the maxim *nullum tempus occurit regis* and Article 1108 of the Civil Code.

Both premises are egregiously wrong.

The provision for *quo warranto* found in the 1901 Code of Civil Procedure[62] provides:

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[61] *Id*.

[62] Act No. 190, AN ACT PROVIDING A CODE OF PROCEDURE IN CIVIL ACTIONS AND SPECIAL PROCEEDINGS IN THE PHILIPPINE ISLANDS, August 7, 1901.

SEC. 197. Usurpation of an office or franchise. — A civil action may be brought in the name of the Government of the Philippine Islands:

1. Against a person who usurps, intrudes into, or unlawfully holds or exercises a public civil office or a franchise within the Philippine Islands, or an office in a corporation created by the authority of the Government of the Philippine Islands;

2. Against a public civil officer who does or suffers an act which, by the provisions of law, works a forfeiture of his office;

3. Against an association of persons who act as a corporation within the Philippine Islands, without being legally incorporated or without lawful authority so to act.

While the provision does allow the filing of a civil action to question a person's title to public office, the passage of the 1935, 1973 and 1987 Constitutions had amended the provisions of *quo warranto* to exclude impeachable officers from its application. Indeed, it is hornbook that the Constitution is read into every law. It thus cannot be said that the provisions of *quo warranto* from the 1901 and 1940 Codes of Civil Procedure and the subsequent Rules of Court have efficacy independent of or contrary to the provisions of the Constitution. As provisions on *quo warranto* had to be harmonized and deemed modified by other existing laws,[63] all the more must it bow to the express constitutional directive of Article XI, Section 2.

Under this novel interpretation of the availability of *quo warranto* under Sections 197 to 216 of the 1901 Code of Civil Procedure as substantially retained in Rule 66 of the present Rules of Civil Procedure, any Solicitor General can assail the title of an impeachable officer, even the President, *via quo warranto*, bypassing the constitutional directive that removal of these officers is possible only by the process of impeachment.

The error in this interpretation is readily apparent: the Constitution committed to the Legislature the check in the form of removal only through impeachment of the appointive

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[63] See *Navarro v. Gimenez,* 10 Phil. 226 (1908).

Supreme Court E-Library

impeachable officers of the Judiciary, the Constitutional Commissions and the Ombudsman.[64] For elective impeachable officers, the President and the Vice President, the Constitution allowed other modes that may lead to removal in the form of election protest and *quo warranto* as allowed by the rules promulgated by the Court *en banc* sitting as the Presidential Electoral Tribunal.[65] Under the *ponencia's* theory, the Executive — nay, a mere agency of the Executive, can cause the removal of an appointive impeachable officer.

Aggravating the stance of the Solicitor General that *quo warranto* is available against appointive impeachable officers, he also claims that the right to file the action is imprescriptible on the basis of Article 1108 of the Civil Code and the maxim of *nullum tempus occurrit regi*. The *ponencia* agrees, in turn citing the cases of *Agcaoili v. Suguitan*[66] *(Agcaoili)*, citing *People ex rel. Moloney v. Pullman's Palace Car Co.,*[67] *State of Rhode Island v. Pawtuxet Turnpike Company,*[68] and *People v. Bailey*[69] (*Bailey*).[70] At the risk of belaboring the point, these are wrong bases to rely on.

The reliance on *Agcaoili* does not entirely displace the running of prescription in *quo warranto* proceedings. In *Tumulak v. Egay*,[71] on the question of prescription, the Court held:

> And there is good justification for the limitation period: it is not proper that the title to public office should be subjected to continued uncertainty, and the people's interest requires that such right should be determined as speedily as practicable.

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[64] 1987 CONSTITUTION, Art. XI, Sec. 2.

[65] *Id*., Art. VII, Sec. 4.

[66] 48 Phil. 676 (1926).

[67] 175 Ill. 125; 64 L.R.A. 366.

[68] *Supra* note 13.

[69] *Supra* note 13.

[70] *Ponencia*, pp. 74-76.

[71] 82 Phil. 828 (1949).

Remembering that the period fixed may not be procedural in nature, it is quite possible that some persons will question the validity of the "rule of court" on the point. However, it should be obvious that if we admit the inefficacy of the particular rule of court hereinbefore transcribed, the previous statute on the subject (Act 190, Section 216) — equally providing for a one-year term — would automatically come into effect, and we return to where we started: one year has passed.

It is also suggested that according to *Agcaoili vs. Suguitan*, the one-year period does not refer to public officers, but to corporations. In that litigation, it is true that the court, on this particular point, decided by a bare majority, the case for the petitioner on two grounds, namely, (*a*) the one-year period applies only to actions against corporations and not to actions against public officers and (*b*) even if it applied to officers, the period had not lapsed in view of the particular circumstances. However, upon a reconsideration this Court "modified" the decision "heretofore announced" by limiting it to the second ground.

And thereafter — this is conclusive — this Court, with the concurrence of justices who had signed the original Agcaoili decision, expressly applied the one-year period in a quo warranto contest between two justices of the peace.[72]

As well, while the doctrine of *nullum tempus occurrit regi* ("time does not run against the King")[73] exempts the State from the effects of time limitations placed on private litigants,[74] such exemption is far from absolute. As observed by the United States Supreme Court, limitations (on the applicability of *nullum tempus*) derive their authority from statutes.[75] This is so because the contemporary notion of *nullum tempus* is grounded not on notions of royal privilege, but on considerations of public

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[72] *Id*. at 830-831.

[73] *Black's Law Dictionary* 1096 (7th ed. 1999).

[74] *United States v. Hoar*, 26 F Cas. 329, 330 (C.C.D. Mass. 1821); see also Mack, Joseph, *Nullum Tempus: Governmental Immunity to Statutes of Limitation, Laches, and Statutes of Repose*, p. 185.

[75] *United States v. Thompson*, 98 U.S. 486 (1878).

Supreme Court E-Library

policy.[76] Consequently, statutes of limitation do not operate against the State **only in the absence of** an express provision on a period within which the State may, or should, bring an action.[77]

Further, the *ponencia* insists that prescription does not lie in the present case as deduced from the very purpose of an action for *quo warranto*, relying on *People v. City of Whittier*[78] (*Whittier*) and *Bailey*.[79] *Whittier,*[80] however, concerned the validity of an attempted annexation of a certain territory in the City of Whittier in the Los Angeles County. On the other hand, while the California Court of Appeals in *Bailey*[81] indeed held that the attorney general may file the information (in the nature of *quo warranto*) on behalf of the people at any time, and that lapse of time constitutes no bar to the proceeding, **the ruling itself recognizes that [*nullum tempus*] would only operate in favor of the State "in the absence of any statutory period of limitation"**.[82] This same recognition of the import of *High* as authority for the passage in *Bailey* operates with its use in the case of *State of Rhode Island v. Pawtuxtet Turnpike Company.*[83]

In this regard, even if the discussions on prescription of the cases cited by the *ponencia* are applicable, these are not inconsistent with my conclusion that the *quo warranto* is time-

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[76] *Guaranty Trust Co. v. United States*, 304 U.S. 126, 132, 58 S. Ct. 785, 788, 82 L. Ed. 1224 (1937).

[77] *State v. Cape Giraardeau & Jackson Gravel Road Co.*, 207 Mo. 85, 105 S. W. 761 (1907).

[78] *People v. City of Whittier* (1933) 133 Cal. App. 316, 324; 25 Ops. Cal. Atty. Gen. 223 (1955).

[79] *Supra* note 13.

[80] *Supra* note 78.

[81] *Supra* note 13.

[82] *Id*. at 584, citing *High on Extraordinary Legal Remedies, Sec. 621.*

[83] *Supra* note 13.

barred. The authority relied upon by those cases, *High* on Extraordinary Remedies, explicitly states:

> §621. The information in the nature of a *quo warranto* being in effect a civil remedy, although criminal in form, it is held that a statute of limitations barring proceedings upon the prosecution of indictments or informations under any penal law is not applicable to this form of remedy, and it is not barred by such a statute. **And in the absence of any statutory period of limitation,** it is held in this country that the attorney-general may file in the information in behalf of the people at any time, in conformity with the maxim *nullum tempus occurrit regi*. So when the purpose of the information is to determine a matter of public right, as distinguished from a question of private interest, as when it is brought to test the legal existence of a municipal corporation and the right of its officers to exercise certain corporate powers and functions, the statute of limitations does not apply. **But the state may be barred by its own laches and acquiescence from maintaining the proceeding**, as in a case where it is sought to oust the corporation from the franchise or privilege of occupying certain public funds, in the use of which by the corporation the state has long acquiesced. And when a corporation, such as a railway or turnpike company, has been permitted to exercise its corporate franchises for many year, without objection or question upon the part of the state, such acquiescence has been held as sufficient ground for refusing to entertain an information in *quo warranto* to question the right to exercise such franchise.[84]

For the *quo warranto* imported into this jurisdiction, its earliest iteration in 1901 itself limited the period within which it can be filed:

> SECTION 216. *Limitations*. — Nothing herein contained shall authorize an action against a corporation for forfeiture of charter, unless the same be commenced within five years after the act complained of was done or committed; nor shall an action be brought against an officer to be ousted from his office unless within one year after the cause of such ouster, or the right to hold the office, arose.

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[84] *High*, on Extraordinary Remedies, p. 577.

Supreme Court E-Library

This one-year statute of limitation was retained under Section 11 of Rule 66. There being an express provision of law on the period within which to institute a *quo warranto* action, *nullum tempus* does not serve to justify the delay in the filing of the present petition.

As for Article 1108, this is found in Book III of the Civil Code entitled Modes of Acquiring Ownership. The provision reads:

ART. 1108. Prescription, both acquisitive and extinctive, runs against:

(1) Minors and other incapacitated persons who have parents, guardians or other legal representatives;

(2) Absentees who have administrators, either appointed by them before their disappearance, or appointed by the courts;

(3) Persons living abroad, who have managers or administrators;

(4) Juridical persons, except the State and its subdivisions.

Persons who are disqualified from administering their property have a right to claim damages from their legal representatives whose negligence has been the cause of prescription.

The very placement of Article 1108 in Book III of the Civil Code already signals the extent of the applicability of the provision. Extant jurisprudence fails to yield any support to use Article 1108 outside of cases seeking recovery of ownership of State property.[85] Hence, to apply Article 1108 to the instant case is an unwarranted stretch. Most importantly, the use of Article 1108 as basis to say that the right to file an action for *quo warranto* is imprescriptible conveniently disregards Article 1115 of the same Code which provides:

ART. 1115. The provisions of the present Title are understood to be without prejudice to what in this Code or in special laws is established with respect to specific cases of prescription.

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[85] The case of *Republic v. CA* (253 Phil. 698 [1989]), used by the *ponencia* to support the claim that there can be no defense on the ground of laches or prescription as against the government deals with cancellation of free patent.

For *quo warranto*, its earliest iteration in the law itself limited the period within which it can be filed under Section 216 earlier cited. This one-year statute of limitation was retained under Section 11 of Rule 66:

> SEC. 11. *Limitations*. – Nothing contained in this Rule shall be construed to authorize an action against a public officer or employee for his ouster from office unless the same be commenced within one (1) year after the cause of such ouster, or the right of the petitioner to hold such office or position, arose; nor to authorize an action for damages in accordance with the provisions of the next preceding section unless the same be commenced within one (1) year after the entry of the judgment establishing the petitioner's right to the office in question.

Therefore, even on the basis of the foreign jurisprudence cited in the *ponencia*, there is a recognition of prescription running against the State in informations in *quo warranto*. With more reason in this case, when Article 1115 of the Civil Code and Section 11, Rule 66 of the Rules of Court recognize a specific case of prescription for actions of *quo warranto*, and when Article XI, Section 2 of the Constitution signals the non-availability of the remedy.

The one-year period within which *quo warranto* may be filed commences from "the cause of such ouster, or the right of the petitioner to hold such office or position, arose;"[86] the relevant reckoning period is from the cause of the ouster.

Following the theory of the petitioner as rationalized by the *ponencia*, the cause(s) of the ouster of the respondent CJ elevated to the level of lack of the constitutional requirement of integrity consist of (1) her alleged failure to file her SALNs during her employment with the UP College of Law, and (2) her failure to submit all SALNs to the JBC when she applied for the position of Chief Justice in 2012. Still following the "upon discovery" theory, however, it should be emphasized that the JBC, the Office of the Ombudsman, and the University of the Philippines under the Executive department would have already been aware,

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[86] RULES OF COURT, Rule 66, Sec. 11.

Supreme Court E-Library

or at the very least, put on notice, of the said failure to file and the subsequent failure to submit to the JBC at the time she submitted her application for the position of Chief Justice. Even to generously apply Section 11 of Rule 66 to consider the reckoning point of the one-year period to be from the time the respondent "usurp[ed], intrude[d] into, or unlawfully h[eld] or execise[d]"[87] the office of the Chief Justice, it would still lead to the same conclusion that the one-year period to file the *quo warranto* commenced from the time the Chief Justice was appointed and took her oath.[88]

Both causes cannot be said to have only been discovered during the hearings before the Committee on Justice of the House of Representatives in order to justify the belated filing of the *quo warranto* action.

Regrettably, the Decision agrees with the petitioner's position, relying upon the use of the word "must" in Section 2[89] of Rule 66.

I disagree. The exercise of the Solicitor General's discretion to file an action for *quo warranto* when he "must" under Section 2 is available only as long as the right of action still exists. Section 11 of Rule 66 is clear that there is no authority

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[87] *Id*., Sec. 1(a).

[88] See *Velicaria-Garafil v. Office of the President,* 760 Phil. 410, 438 (2015) where the Court stated: "Based on prevailing jurisprudence, appointment to a government post is a process that takes several steps to complete. Any valid appointment, including one made under the exception provided in Section 15, Article VII of the 1987 Constitution, must consist of the President signing an appointee's appointment paper to a vacant office, the official transmittal of the appointment paper (preferably through the MRO), receipt of the appointment paper by the appointee, and acceptance of the appointment by the appointee evidenced by his or her oath of office or his or her assumption to office."

[89] SEC. 2. *When Solicitor General or public prosecutor must commence action*. – The Solicitor General or a public prosecutor, when directed by the president of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in the preceding section can be established by proof, must commence such action.

to file an action beyond one (1) year after the cause of such ouster, or the right of the petitioner to hold such office, arose. Thus, even if *quo warranto* is available, the Solicitor General's right of action prescribed one year after the appointment of the Chief Justice in 2012.

To extend the pernicious implications of this interpretation, the *quo warranto* may now be used by the Executive, or by the Solicitor General, at his own discretion, to (1) force the removal of impeachable appointive officer appointed during previous administrations so that the sitting Executive can appoint a new person in his or her place; or (2) preempt or countermand the decision of the Legislature in an impeachment proceeding. **This is clearly not in consonance with the constitutional design. I simply cannot believe how the Court can accept this interpretation as being consistent with the Constitution.**

The submission of the SALN to the JBC is not a constitutional requirement for the position of the Chief Justice.

Article VIII, Section 7 of the 1987 Constitution provides for the qualifications for members of the Judiciary, particularly of the Supreme Court. The said section states:

> Section 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.
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> (2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.
>
> (3) A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.

These qualifications are absolutely exclusive, and no one can add to or lessen these qualifications. In *Social Justice Society*

Supreme Court E-Library

v. Dangerous Drugs Board,[90] where the constitutionality of a law requiring all candidates for public office, both in the national or local government, to undergo a mandatory drug test[91] was assailed, the Court held that the law and the subsequent issuances implementing the same were invalid for adding another layer of qualification to what the 1987 Constitution requires for membership in the Senate. Thus:

> Pimentel's contention is well-taken. Accordingly, Sec. 36(g) of RA 9165 should be, as it is hereby declared as, unconstitutional. It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution. In the discharge of their defined functions, the three departments of government have no choice but to yield obedience to the commands of the Constitution. Whatever limits it imposes must be observed.
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> Congress' inherent legislative powers, broad as they may be, are subject to certain limitations. As early as 1927, in *Government v. Springer,* the Court has defined, in the abstract, the limits on legislative power in the following wise:
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> > Someone has said that the powers of the legislative department of the Government, like the boundaries of the ocean, are unlimited. In constitutional governments, however, as well as governments acting under delegated authority, the powers of each of the departments x x x are limited and confined within the four walls of the constitution or the charter, and each department can only exercise such powers as are necessarily implied from the given powers. The Constitution is the shore of legislative authority against which the waves of legislative enactment may dash, but over which it cannot leap.
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> Thus, legislative power remains limited in the sense that it is subject to substantive and constitutional limitations which circumscribe both the exercise of the power itself and the allowable subjects of legislation. The substantive constitutional limitations are chiefly found in the

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[90] 591 Phil. 393 (2008).

[91] Section 36(g) of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

Bill of Rights and other provisions, such as Sec. 3, Art. VI of the Constitution prescribing the qualifications of candidates for senators.

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Sec. 36(g) of RA 9165, as sought to be implemented by the assailed COMELEC resolution, effectively enlarges the qualification requirements enumerated in the Sec. 3, Art. VI of the Constitution. As couched, said Sec. 36(g) unmistakably requires a candidate for senator to be certified illegal-drug clean, obviously as a pre-condition to the validity of a certificate of candidacy for senator or, with like effect, a condition *sine qua non* to be voted upon and, if proper, be proclaimed as senator-elect. The COMELEC resolution completes the chain with the proviso that "[n]o person elected to any public office shall enter upon the duties of his office until he has undergone mandatory drug test". **Viewed, therefore, in its proper context, Sec. 36(g) of RA 9165 and the implementing COMELEC Resolution add another qualification layer to what the 1987 Constitution, at the minimum, requires for membership in the Senate.** Whether or not the drug-free bar set up under the challenged provision is to be hurdled before or after election is really of no moment, as getting elected would be of little value if one cannot assume office for non-compliance with the drug-testing requirement.

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It ought to be made abundantly clear, however, that the unconstitutionality of Sec. 36(g) of RA 9165 is rooted on its having infringed the constitutional provision defining the qualification or eligibility requirements for one aspiring to run for and serve as senator.[92] (Emphasis and underscoring supplied)

The case held that the requirements set by the Constitution are absolute, and that no one, not even the Legislature which possesses plenary powers, can add to the same. **By necessary implication, therefore, not even this Court, through the decisions it promulgates, can add to these qualifications**. Thus, the submission of SALNs to the JBC cannot be declared by this Court as a *pre-requisite* to a valid appointment of a

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[92] *Social Justice Society v. Dangerous Drugs Board, supra* note 90, at 405-408.

Supreme Court E-Library

Supreme Court Justice. Unfortunately, this is what the *ponencia* does despite the exclusivity of these requirements.

For a valid appointment as a Justice of the Supreme Court, the Constitution only requires the applicant to possess the following qualifications: (1) natural-born citizenship; (2) at least forty years old; (3) at least fifteen (15) years of experience in the practice of law; and (4) proven competence, integrity, probity, and independence. Of these four requirements, the first three are easily verifiable for they can be proved without difficulty through documentary evidence, such as a certificate of live birth, and the certificate of admission to the Bar.

On the other hand, the requirement of having "proven competence, integrity, probity, and independence" is not easily quantifiable or measurable. Recognizing this, the Constitution precisely created a separate body to determine what possession of these characteristics entails, and who among several aspirants to a judicial post possesses the same. This Constitutional body tasked to define and ascertain the possession of these characteristics is the JBC.

The creation of the JBC was prompted by the clamor to rid the process of appointments to the Judiciary from political pressure and partisan activities.[93] Seeing the need to create a separate, competent, and independent body to recommend nominees to the President, the members of the Constitutional Commission conceived of a body representative of all the stakeholders in the judicial appointment process and called it the Judicial and Bar Council.[94] Sections 8 and 9, Article VIII of the 1987 Constitution provides that:

> Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

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[93] *Chavez v. Judicial and Bar Council,* 691 Phil. 173, 188 (2012).

[94] *Id*. at 188.

Supreme Court E-Library

(2) The regular Members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.

(3) The Clerk of the Supreme Court shall be the Secretary *ex officio* of the Council and shall keep a record of its proceedings.

(4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.

(5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

Section 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

While the framers of our Constitution intended for the JBC to be an innovative solution in response to the public clamor to eliminate politics in the appointment of members of the Judiciary, **it was also envisioned to be a body that ensures judicial independence**. To reach that goal, they adopted a holistic approach and hoped that, in creating the JBC, the private sector and the three branches of government would have an active role and **equal voice** in the selection of the members of the Judiciary.[95] The JBC is, in fact, the central body which ensures the independence of the entire Judiciary by fulfilling its Constitutional role in the whole process of appointments in judicial posts. Together with the safeguards established by the 1987 Constitution on fiscal autonomy[96] and the prohibition on the reorganization of the Judiciary when the same undermines

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[95] *Id*. at 207.

[96] 1987 CONSTITUTION, Art. VIII, Sec. 3.

Supreme Court E-Library

the security of tenure of its members,[97] the JBC's role of screening applicants and recommending prospective members of the Judiciary is actually a vital part in protecting judicial independence as it ensures that the persons appointed to judicial posts are persons of proven competence, integrity, probity, and independence. The deliberations of the Constitutional Commission illumine this:

> MR. COLAYCO. **The decision of the Committee in creating the Judicial and Bar Council was finally to establish the independence of the Judiciary.** We all talk about the independence of the three departments of our government and everybody knows, including the interpellator, that the Judiciary is not independent. It is the President who chooses, names and appoints the judges and who is the President? He is a politician. Granted that most of us know that our present President is somebody above politics, a lot of rumors have been going around that politics has somehow managed to get into the present reorganization of the Judiciary. This is inescapable because the President owes political favors. They are not easy to refuse or to fail to acknowledge on the part of the President-elect.
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> So, we felt that the creation of this Council would ensure more the appointment of judges and justices who will be chosen for their confidence and their moral qualifications, rather than to favor or to give something in return for their help in electing the President.
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> MR. ROMULO. Mr. Presiding Officer, in approaching this question of the independence of the Judiciary, which I do not think anyone will dispute is a necessary goal, the Committee has used a holistic approach — as if it were a four-legged stool. One of the essential legs is the appointment of competent men, honest and so on. Another is, of course, the security of tenure. The third is fiscal independence of the Supreme Court. And if any of the legs of the stool is missing, then the stool cannot stand.
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> Our experience has been, even with the Commission on Appointments, that politics does get into the picture. **We have tried to compromise in arriving at a unique system for us by making**

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[97] *Id*., Art. VIII, Sec. 2.

the Council a composition of representatives of the three branches of the government plus a wide spectrum of the private sector, and at the same time, without demeaning the power of the President to appoint because she or he inputs the considerations through the Minister of Justice; and the legislature, on the other hand, is able to express its considerations through the representatives of Congress. So we have what we believe is a good compromise. The Bar, equally for the first time, will be represented and has a definite say on appointments; and the private sector, as well as the law schools, is given a representative. As we will notice, the private sector representative need not be a lawyer. So, as I say, it is a holistic approach.

Finally, the problem of filling a vacancy in the Supreme Court within the three-month limit which we have all accepted, and the fact that the legislature may be in recess, is solved by this provision. I think we have to try something different, something radical because the past has not worked. **And insofar as the Committee is concerned, we can have any form of government we like and we are safe, provided we have an independent and competent Judiciary.** The English experience certainly proves this. **And if we are trying to bolster the independence of the Supreme Court, it is because in the end it is the Judiciary that will protect all of us**. We are not trying to create an independent republic out of the Judiciary, only an autonomous region.[98] (Emphasis supplied)

The symbiotic relationship between the JBC and the Court is highlighted by the fact that, as the *ponencia* pointed out, the Court exercises supervisory authority over the JBC.[99] However, contrary to the *ponencia*'s pronouncement, **the Constitution did not intend the JBC to be an office "subordinate" to the Supreme Court**. Instead, the JBC was intended to be a body that is independent from executive, legislative, and even judicial influence.

Supervision is a limited power, as defined in Book IV, Chapter 7, Section 38(2) of Executive Order No. 292, otherwise known as The Administrative Code of the Philippines:

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[98] I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 487-488 (1986).

[99] 1987 CONSTITUTION, Art. VIII, Sec. 8(1).

Supreme Court E-Library

Sec. 38. *Definition of Administrative Relationship.* — Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

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(2) *Administrative Supervision.* — (a) Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be limited to the authority of the department or its equivalent to generally oversee the operations of such agencies and to insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them;

(b) **Such authority shall not, however, extend to**: (1) appointments and other personnel actions in accordance with the decentralization of personnel functions under the Code, except when appeal is made from an action of the appointing authority, in which case the appeal shall be initially sent to the department or its equivalent, subject to appeal in accordance with law; (2) contracts entered into by the agency in the pursuit of its objectives, the review of which and other procedures related thereto shall be governed by appropriate laws, rules and regulations; and **(3) the power to review, reverse, revise, or modify the decisions of regulatory agencies in the exercise of their regulatory or quasi-judicial functions**; and

(c) Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "supervision" shall encompass administrative supervision as defined in this paragraph. (Emphasis supplied)

In *Aguinaldo v. Aquino III,*[100] the Court differentiated "supervision" and "control," thus:

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[100] G.R. No. 224302, November 29, 2016, 811 SCRA 304.

Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; **it does not include any restraining authority over such body.** Officers in control lay down the rules in the doing of an act. If they are not followed, it is discretionary on his part to order the act undone or redone by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. Supervising officers merely sees to it that the rules are followed, but he himself does not lay down such rules, **nor does he have the discretion to modify or replace them.** If the rules are not observed, he may order the work done or redone to conform to the prescribed rules. He cannot prescribe his own manner for the doing of the act. x x x[101] (Emphasis supplied)

In particular reference to the Supreme Court's supervisory authority over the JBC, the Supreme Court can only inquire and thereafter order that the JBC follow its own rules, **but it does not have the jurisdiction to revise the rules promulgated by JBC, much less supplant the latter's exercise of discretion with its own**, as what the *ponencia* now does. In *Jardeleza v. Sereno,*[102] (*Jardeleza*) the Court held that:

As a meaningful guidepost, jurisprudence provides the definition and scope of supervision. It is the power of oversight, or the authority to see that subordinate officers perform their duties. It ensures that the laws and the rules governing the conduct of a government entity are observed and complied with. Supervising officials see to it that rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. **They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.**[103] (Emphasis supplied)

In the same case, the Court was unequivocal that "[c]onsidering that the Court's power over the JBC is merely supervisory, the

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[101] *Id*. at 370-371.

[102] 749 Phil. 460 (2014).

[103] *Id*. at 489-490.

Supreme Court E-Library

revisions in its internal rules need not be submitted to the Court for approval."[104] Further, in *Villanueva v. Judicial and Bar Council*,[105] (*Villanueva*) the Court held that:

> Following this definition, **the supervisory authority of the Court over the JBC is to see to it that the JBC complies with its own rules and procedures**. Thus, when the policies of the JBC are being attacked, then the Court, through its supervisory authority over the JBC, has the duty to **inquire about the matter and ensure that the JBC complies with its own rules.**
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> As the constitutional body granted with the power of searching for, screening, and selecting applicants relative to recommending appointees to the Judiciary, **the JBC has the authority to determine how best to perform such constitutional mandate**. Pursuant to this authority, the JBC issues various policies setting forth the guidelines to be observed in the evaluation of applicants, and formulates rules and guidelines in order to ensure that the rules are updated to respond to existing circumstances. **Its discretion is freed from legislative, executive or judicial intervention to ensure that the JBC is shielded from any outside pressure and improper influence.** x x x[106] (Emphasis supplied)

The independence of JBC from the political departments was further underscored by the fact that in *Chavez v. Judicial and Bar Council*,[107] the Court ruled as unconstitutional the practice of having two members of the Legislature in the JBC membership. In the said case, the Court ruled that "to allow the Legislature to have more quantitative influence in the JBC by having more than one voice speak, whether with one full vote or one-half (1/2) a vote each, would, as one former congressman and member of the JBC put it, 'negate the **principle of equality among the**

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[104] *Jardeleza v. Sereno,* G.R. No. 213181, January 21, 2015, p. 5 (Unsigned Resolution).

[105] 757 Phil. 534 (2015).

[106] *Id*. at 545, 556.

[107] *Supra* note 93.

three branches of government which is enshrined in the Constitution.'"[108]

If the Court was conservative enough not to let one more legislator disrupt the balance of power within the JBC, with more reason then that the Court should not allow the same balance of power to be disturbed by extending its supervisory authority beyond what was intended by the Constitution. The Court cannot say in one case that one branch of the government cannot be more powerful than the other two in the JBC, and then hold that the JBC is *completely subordinate* to it in this, another case.

The fact that the Constitution mandated the JBC to do "such other functions and duties as the Supreme Court may assign to it"[109] did not make the JBC subordinate to this Court. The Constitution, for instance, mandated the Commission on Human Rights (CHR) to "perform such other duties and functions as may be provided by law,"[110] but the Constitution did not intend the CHR to be in any way subordinate to the Legislature.

This is not to say that the JBC possesses absolute autonomy as to place its actions beyond the reach of the Court. Despite JBC independence as a body created by the Constitution, the Court can still review its exercise of discretion — not by virtue of its supervisory authority over the JBC, but by the power granted to the Court by the Constitution to determine whether or not there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.[111]

Differently put, when what is at issue is the JBC's determination of an applicant's fitness, which requires the JBC to do an act exclusively vested in it by the Constitution — as

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[108] *Id*. at 207; emphasis and underscoring supplied.

[109] 1987 CONSTITUTION, Art. VIII, Sec. 8(5).

[110] *Id*., Art. XIII, Sec. 18(11).

[111] *Id*., Art. VIII, Sec. 1.

Supreme Court E-Library

opposed to other matters such as the validity of its rules or its compliance with its own rules — then it is required that an allegation be made to the effect that the JBC had committed grave abuse of discretion amounting to lack or excess of jurisdiction. Without such allegation, the Court cannot review the JBC's exercise of discretion as it is not covered by the Court's supervisory authority over the said body.

As well, the review of the JBC's exercise of discretion must be assailed prior to the appointment. The reason is obvious: the subsequent appointment of an applicant to the position vests upon the appointee the status of an impeachable officer who can be removed only by impeachment under Article XI, Section 2.

Apparently cognizant of this fact, the Republic, through the OSG, never claimed that the JBC committed grave abuse of discretion amounting to lack or excess of jurisdiction. Thus, the *ponencia* is utterly confused when it invoked both (1) the Court's supervisory authority over the JBC and (2) its Constitutional power of judicial review based on allegations of grave abuse of discretion amounting to lack or excess of jurisdiction, to justify the Court's assumption of jurisdiction over this case. To repeat, the assailed actions of the JBC cannot be reviewed by this Court wearing its hat of supervision, and neither can it review the same by virtue of its Constitutional power of judicial review as there was absolutely no claim or allegation that the JBC had gravely abused its discretion. More important, following the fundamental precepts of due process and fair play, the Court cannot make a pronouncement on JBC's discretion without making the said body a party in this case.

Apart from its role in protecting judicial independence and ensuring that the appointments to the Judiciary are insulated from politics, it is likewise the JBC's task to ensure that the appointees possess the qualifications prescribed by the Constitution. This is clear in the deliberations of the Framers of the Constitution:

Supreme Court E-Library

MR. CONCEPCION. The Judicial and Bar Council is no doubt an innovation. But it is an innovation made in response to the public clamor in favor of eliminating politics in the appointment of judges.

At present, there will be about 2,200 positions of judges, excluding those of the Supreme Court, to be filled. We feel that neither the President alone nor the Commission on Appointments would have the time and the means necessary to study the background of every one of the candidates for appointment to the various courts in the Philippines, **specially considering that we have accepted this morning the amendment to the effect that no person shall be qualified unless he has a proven high sense of morality and probity**. These are matters that require time, which we are sure the President does not have except, probably, he would have to endorse the matter to the National Bureau of Investigation or to some intelligence agency of the government. **And we do not think that these agencies are qualified to pass upon questions of morality, integrity and competence of lawyers**.[112] (Emphasis supplied)

On integrity, and the JBC's power to determine evidence thereof

To reiterate, no person shall be appointed as member of the Supreme Court unless (a) he is a natural-born citizen of the Philippines; (b) is at least forty years of age; and (c) must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.[113] He must also be a person of proven competence, integrity, probity, and independence. The requirement of proven competence, integrity, probity, and independence was proposed by Commissioner Jose N. Nolledo to strengthen the moral fiber of the judiciary. The proposal was accepted; the pertinent Records of the Constitutional Commission reads:

MR. NOLLEDO. Thank you, Mr. Presiding Officer.

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[112] I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 487 (1986).

[113] 1987 CONSTITUTION, Art. VIII, Sec. 7(1).

Supreme Court E-Library

My amendment is to add a new subsection (3) on Section 4 which reads: A MEMBER OF THE JUDICIARY MUST BE A PERSON OF PROVEN COMPETENCE, INTEGRITY, PROBITY, AND INDEPENDENCE.

Before the Committee decides on whether or not to accept the amendment, I would like to explain it first.

Mr. Presiding Officer, this is a moral provision lifted with modifications from the "Canons of Judicial Ethics." The reputation of our justices and judges has been unsavory. I hate to say this, but it seems that it has become the general rule that the members of the Judiciary are corrupt and the few honest ones are the exceptions. We hear of justices and judges who would issue injunctive relief to the highest bidder and would decide cases based on hundreds of thousands, and even millions, mercenary reasons.

The members of the deposed Supreme Court, with a few exceptions, catered to the political likings and personal convenience of Mr. Marcos by despicably surrendering their judicial independence. Why should we resist incorporating worthy moral principles in our fundamental law? Why should we canalize our conservative thoughts within the narrow confines of pure legalism?

I plead to the members of the Committee and to my colleagues in this Constitutional Commission to support my amendment in order to strengthen the moral fiber of our Judiciary. Let not our Constitution be merely a legal or political document. Let it be a moral document as well.

Thank you.

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THE PRESIDING OFFICER (Mr. Bengzon). The amendment has been accepted by the Committee.

Is there any objection? (*Silence*) The Chair hears none; the amendment is approved.[114]

As earlier intimated, the first three constitutional requirements are objective qualifications and are easily verifiable. However,

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[114] I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 484-485 (1986).

the requirement of proven competence, integrity, probity, and independence are not. Section 8(5), Article VIII states that the JBC shall have the principal function of recommending appointees to the Judiciary. Thus, I agree with the respondent that the question of whether an applicant for the position of the Chief Justice is a person of integrity is a question constitutionally committed to the JBC. In fact, the Records of the Constitutional Commission shows that the framers of the Constitution intended that these moral qualifications will be considered as guidelines by the JBC when they determine the qualification of prospective appointees.

MR. NOLLEDO. If the Commissioner does not mind, I presented Resolution No. 188, which is not mentioned in the committee report, entitled:

> RESOLUTION TO ENSHRINE IN THE ARTICLE ON THE JUDICIARY OF THE NEW CONSTITUTION, ETHICAL RULES ON QUALIFICATIONS AND CONDUCT OF MEMBERS OF THE JUDICIARY.

It is unfortunate that the reputation of our judges is not so good and so, I do not know what is the sense of the Committee. I would like to tell the members in advance that I intend to present this as an amendment for consideration — that in connection with Section 4, perhaps we can add a subsection there which may run like this: THAT NO ONE SHALL BE APPOINTED AS MEMBER OF THE JUDICIARY UNLESS HE IS A PERSON OF PROVEN COMPETENCE, INTEGRITY, PROBITY AND INDEPENDENCE and THAT THE ACTUATIONS OF A MEMBER OF THE JUDICIARY IN OR OUTSIDE THE COURT MUST BE BEYOND REPROACH.

This is similar to a provision in "Canons of Judicial Ethics," but history states that those provisions are more honored in breach than in observance.

MR. CONCEPCION. That is right.

MR. NOLLEDO. So, when we discipline a member of the judiciary, perhaps it will strengthen the intention if we can quote a constitutional mandate that he has not acted beyond reproach as enjoined by the Constitution.

Supreme Court E-Library

MR. CONCEPCION. The Committee is well aware of the fact that our task is to make good laws. But it is also fully aware of the fact that no matter how good the laws are, if the persons chosen to enforce those laws are not the right persons, they may be doing a disservice to the country. In connection with the judges, that is the reason for the Judicial and Bar Council.

MR. NOLLEDO. When we set forth these moral qualifications, they may be considered guidelines by the Judicial and Bar Council when they determine the qualifications of prospective appointees.

MR. CONCEPCION: But that is understood: honesty, competence, etc. That is the only purpose of the Judicial and Bar Council.[115]

As the Constitutional body tasked to ensure that persons appointed to the Judiciary are persons of "proven competence, integrity, probity, and independence,"[116] the JBC is given sufficient, if not wide, discretion to define the said terms and then set the standards it would use to determine which of the applicants truly possesses the said qualities. In the case of *Villanueva,*[117] the issue was whether it was valid for the JBC to require five years of experience for judges of first-level courts before they could seek promotion to the Regional Trial Courts. The Court upheld the explanation of the JBC when it said:

x x x While the 1987 Constitution has provided the qualifications of members of the judiciary, this does not preclude the JBC from having its own set of rules and procedures and providing policies to effectively ensure its mandate.

The functions of searching, screening, and selecting are necessary and incidental to the JBC's principal function of choosing and recommending nominees for vacancies in the judiciary for appointment by the President. **However, the Constitution did not lay down in precise terms the process that the JBC shall follow in determining applicants' qualifications. In carrying out its main function, the JBC has the authority to set the standards/criteria in choosing its nominees for every vacancy in the judiciary, subject only to**

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[115] *Id*. at 440-441.

[116] 1987 CONSTITUTION, Art. VIII, Sec. 7(3).

[117] *Supra* note 105.

the minimum qualifications required by the Constitution and law for every position. The search for these long held qualities necessarily requires a degree of flexibility in order to determine who is most fit among the applicants. x x x[118] (Emphasis and underscoring supplied)

The Court further expounded that "[f]ormulating policies which streamline the selection process falls squarely under the purview of the JBC. **No other constitutional body is bestowed with the mandate and competency to set criteria for applicants that refer to the more general categories of probity, integrity and independence.**"[119] In explaining that the JBC was justified in imposing the five-year experience requirement for judges of first-level courts, the Court held that:

That is the situation here. **In issuing the assailed policy, the JBC merely exercised its discretion in accordance with the constitutional requirement and its rules that a member of the Judiciary must be of proven competence, integrity, probity and independence.** "To ensure the fulfillment of these standards in every member of the Judiciary, the JBC has been tasked to screen aspiring judges and justices, among others, making certain that the nominees submitted to the President are all qualified and suitably best for appointment. In this way, the appointing process itself is shielded from the possibility of extending judicial appointment to the undeserving and mediocre and, more importantly, to the ineligible or disqualified."[120] (Emphasis supplied)

Following the Court's pronouncement in *Villanueva,* where it upheld the JBC's exclusive power to define the requirement of "competence," the same body therefore has the sole and exclusive power to define the other qualifications such as "integrity." **To be clear, not even the Court's power of supervision can diminish the JBC's jurisdiction to define "integrity" and determine who possesses the same**.

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[118] *Id*. at 548-549.

[119] *Id*. at 551; emphasis supplied.

[120] *Id*. at 550.

Supreme Court E-Library

It is a very grave error, therefore, for the *ponencia* to rule that the "qualifications under the Constitution cannot be waived or bargained away by the JBC" — when the JBC bargained away nothing. The *ponencia* itself recognized that the *Rules of the Judicial and Bar Council*[121] or JBC-009 was issued by the JBC in compliance with its Constitutional mandate. When the JBC issued JBC-009 and determined therein what constitutes "competence," "integrity," "probity," and "independence," the JBC was well-within its discretion granted by the Constitution, and neither the OSG nor the Court can inquire as to the validity of such determination. The JBC, through JBC-009, determined that a person's "integrity" is best proved by certifications and testimonials from various persons and organizations. Section 1, Rule 4 of JBC-009 provides:

RULE 4
INTEGRITY

SECTION 1. *Evidence of integrity*. — The Council shall take every possible step to verify the applicant's record of and reputation for honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards. For this purpose, the applicant shall submit to the Council certifications or testimonials thereof from reputable government officials and non-governmental organizations, and clearances from the courts, National Bureau of Investigation, police, and from such other agencies as the Council may require.

Again, in *Jardeleza*,[122] the Court held:

In the performance of this sacred duty, the JBC itself admits, as stated in the "whereas clauses" of JBC-009, that qualifications such as "competence, integrity, probity and independence are not easily determinable as they are developed and nurtured through the years." Additionally, "it is not possible or advisable to lay down iron-clad rules to determine the fitness of those who aspire to become a Justice, Judge, Ombudsman or Deputy Ombudsman." Given this realistic situation, there is a need "to promote stability and uniformity in JBC's

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[121] Judicial and Bar Council Resolution No. JBC-009, October 18, 2000.

[122] *Supra* note 102.

guiding precepts and principles." **A set of uniform criteria had to be established in the ascertainment of "whether one meets the minimum constitutional qualifications and possesses qualities of mind and heart expected of him" and his office.** Likewise for the sake of transparency of its proceedings, the JBC had put these criteria in writing, now in the form of JBC-009. **True enough, guidelines have been set in the determination of "competence," "probity and independence," "soundness of physical and mental condition," and "integrity."**

As disclosed by the guidelines and lists of recognized evidence of qualification laid down in JBC-009, "integrity" is closely related to, or if not, approximately equated to an applicant's good reputation for honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards. **That is why proof of an applicant's reputation may be shown in certifications or testimonials from reputable government officials and non-governmental organizations and clearances from the courts, National Bureau of Investigation, and the police, among others. In fact, the JBC may even conduct a discreet background check and receive feedback from the public on the integrity, reputation and character of the applicant, the merits of which shall be verified and checked.** As a qualification, the term is taken to refer to a virtue, such that, "integrity is the quality of person's character."[123] (Emphasis supplied)

JBC-009 did **not** require the submission of SALNs as proof of one's integrity. The submission of SALNs was only required in response to the ***impeachment*** of former Chief Justice Renato Corona. As the minutes of the JBC reveals, as quoted by the *ponencia* itself, requiring aspirants to a judicial post to submit to the JBC their SALNs was only to prevent the same thing from happening to the next Chief Justice:

Senator Escudero moved that additional requirements be imposed by the Council for the position of Chief Justice, namely (1) all previous SALNs (up to December 31, 2012) for those in the government or SALN as of December 31, 2012 for those from the private sector; and (2) waiver in favor of the JBC of the confidentiality of local and foreign currency bank accounts under the Bank Secrecy Law and Foreign Currency Deposits Act. The documents shall be treated with

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[123] *Id*. at 492-496.

Supreme Court E-Library

utmost confidentiality and only for the use of the JBC. He proposed that these additional requirements be included in the publication of the announcement opening the said position. **He explained that the basis of his motion was the fact that the reason why Chief Justice Corona was removed from office was due to inaccuracies in his SALN. The Members of the House of Representatives, in the exercise of their wisdom, determined that non-inclusion of assets in one's SALN is an impeachable offense.** Likewise, majority of the Senate voted to convict because of the inaccuracies in the bank accounts and statements in his SALN. He said that the JBC would not want to recommend a person who is susceptible to such kind of attack. He said that the JBC should impose higher standards to aspirants for the position of Chief Justice.

Congressman Tupas concurred with Senator Escudero's motion and suggested that the waiver should not be limited to year-end balances only.

There being no objection, the motion was **APPROVED**. The Council agreed to **PUBLISH** the announcement opening the position of Chief Justice of the Supreme Court of the Philippines together with the additional requirements.[124] (Emphasis and underscoring supplied)

Hence, the requirement for aspirants to submit to the JBC their SALNs was only JBC's reaction to the Congress' *exercise of its wisdom* that non-inclusion of assets in one's SALN was an *impeachable offense*. **The JBC itself did not make a determination that submission of SALNs is part of determining whether a person is of proven integrity. In fact, when the JBC Rules were revised in 2016, submission of SALNs still did not constitute proof of a person's integrity.** Rule 4 of the *Revised Rules of the JBC*[125] provides that:

RULE 4
INTEGRITY AND PROBITY

SECTION 1. *Evidence of Integrity and Probity*. — The Council shall take every possible step to verify the applicants' record of and

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[124] Minutes of the JBC *En Banc* Meeting dated June 4, 2012, pp. 22-23.

[125] Promulgated on September 20, 2016.

reputation for honesty, integrity, probity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards. For this purpose, the applicants shall submit to the Council certifications thereon or testimonials thereof from reputable government officials and non-governmental organizations, and clearances from the courts, National Bureau of Investigation, Office of the Ombudsman, Office of the Bar Confidant, Integrated Bar of the Philippines, Philippine National Police in their places of residence, and from such other agencies as the Council may require. All of these must have been issued not earlier than six (6) months from the deadline for their submission.

SEC. 2. *Background Check.* — The Council may order a discreet background check on the integrity, reputation, and character of the applicants, and receive feedback thereon from the public, which the Council shall check, verify, or validate the merits thereof.

All applicants may be subject to, or covered by, a survey or feedback mechanism.

SEC. 3. *Complaints or Oppositions.* — The Council may receive written sworn complaint or opposition relating to the qualifications or moral fitness of applicants.

The applicants concerned shall be furnished with a copy of the sworn complaint or opposition and shall be given five (5) days from receipt thereof within which to file a comment thereon, if they so desire. During the interview, the applicants concerned may be made to comment on the complaint or opposition.

SEC. 4. *Anonymous Complaints or Oppositions.* — Anonymous complaints or oppositions against applicants shall not be given due course unless there appears probable cause sufficient to engender a belief that the allegations may be true, which may affect the integrity of the applicants. The Council may either direct a discreet investigation or require the applicants concerned to comment thereon in writing or during the interview.

SEC. 5. *Disqualifications.* — The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman, Deputy Ombudsman, Special Prosecutor, or Chairperson or Regular Member of the Legal Education Board:

Supreme Court E-Library

1. *Applicants with Criminal Cases*
    a. Those with pending criminal cases in the Philippines even if they are still under preliminary investigation;
    b. Those with pending criminal cases in foreign courts or tribunals; and
    c. Those who have been convicted in any criminal case;
2. *Applicants with Administrative Cases*
    a. Those with pending administrative cases or complaints in the Office of the Ombudsman which are either under fact-finding stage and the applicants were not issued a clearance, or still under administrative adjudication.
    b. Those with pending administrative cases or complaints before any court, office, tribunal, any government office, agency, or instrumentality, or before the Integrated Bar of the Philippines or any association, disciplinary committee or body when, in the determination of the Council, the complaints are serious or grave as to affect their fitness for nomination;

        However, complaints against applicants concerning the merits of cases or ascribing errors to their decisions or resolutions, which are judicial in nature, shall not be a grounds for disqualification.
    c. Those who have been found guilty in an administrative case where the penalty imposed is suspension for a period at least ten (10) days or a fine of at least ₱10,000 unless they have been granted judicial clemency; and
3. Applicants who have been found to have made false statements, misrepresentations, or concealments of material information in their personal data sheet.

To emphasize, the whole rule, even as revised, did not consider the filing of SALNs as a measure of a person's integrity. Therefore, the *ponencia* ***was grossly unfair, if not unjust***, to the JBC when it stated that the latter 'bargained away constitutional qualifications' when the JBC simply did not. The JBC had rules in place to determine whether an applicant possesses the requisite qualification of 'proven integrity' and,

therefore, it cannot be said that the JBC "bargained away" this qualification.

It is worth repeating that the JBC's discretion is freed from legislative, executive, or even ***judicial*** intervention to ensure that the JBC is shielded from any outside pressure and improper influence.[126] **It is thus the height of judicial tyranny for the *ponencia* to hold that the JBC's rules were insufficient to measure 'integrity'. In so doing, the Court unwarrantedly encroached on powers it unequivocally does not possess.**

Further, the JBC had the right to rely on their rules existing at the time. In the respondent's case, therefore, the JBC followed its rules when it required her to submit the certifications or testimonials, and accordingly considered such as proof of her integrity once she submitted the same. The respondent cannot likewise be faulted for not submitting her complete SALNs because the JBC itself accepted her explanation that the said SALNs were "irretrievable." In *Office of the Court of Administrator v. Floro, Jr.,*[127] the Court held the judge involved could not be faulted when the JBC disregarded the Supreme Court Clinic's finding that he failed the psychological evaluations because the JBC was justified in disregarding the same. The Court held:

> Judge Floro did not breach any rule of procedure relative to his application for judgeship. **He went through the entire gamut of tests and interviews and he was nominated by the JBC on the strength of his scholastic achievements. As to having failed the psychological examinations given by the SC Clinic, it must be pointed out that this was disregarded by the JBC upon Judge Floro's submission of psychiatric evaluations conducted by mental health professionals from the private sector and which were favorable to him.** Nowhere is it alleged that Judge Floro acted less than honorably in procuring these evaluations.
>
> The JBC in 1999 had all the discretion to refer Judge Floro to a private clinic for a second opinion of his mental and psychological

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[126] *Villanueva v. Judicial and Bar Council, supra* note 105, at 556.

[127] 520 Phil. 590 (2006).

Supreme Court E-Library

fitness. In performing its functions, the JBC had been guided primarily by the Constitution which prescribes that members of the Judiciary must be, in addition to other requirements, persons of proven competence, integrity, probity and independence. It was only on 18 October 2000 when it promulgated JBC-009, the "Rules of the Judicial and Bar Council," that the JBC put down in writing guidelines or criteria it had previously used in ascertaining "if one seeking such office meets the minimum constitutional qualifications and possesses qualities of mind and heart expected of the Judiciary." Rule 6 thereof states:

> SECTION 1. *Good health.* — Good physical health and sound mental/psychological and emotional condition of the applicant play a critical role in his capacity and capability to perform the delicate task of administering justice. x x x
>
> SEC. 2. *Psychological/psychiatric tests.* — The applicant shall submit to psychological/psychiatric tests to be conducted by the Supreme Court Medical Clinic or by a psychologist and/or psychiatrist duly accredited by the Council.

It would seem that as things stood then, the JBC could very well rely on the evaluation of a private psychologist or psychiatrist not accredited by the JBC. Thus, the JBC cannot be faulted for accepting the psychological evaluations of mental health professionals not affiliated with the Supreme Court Clinic.[128] (Emphasis supplied)

The JBC, recognizing its task of determining who meets the constitutional requirements to merit recommendation for appointment to the Judiciary, has grappled with this most difficult and trying duty because the virtues and qualities of competence, integrity, probity and independence are not easily determinable as they are developed and nurtured through the years.[129] Thus, in its attempt to determine whether a person is of proven integrity, the JBC, **in its wisdom**, laid down in JBC-009 certain guidelines to verify the applicant's records and of reputation for honesty, integrity, incorruptibility, irreproachable conduct and fidelity to sound moral and ethical standards.

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[128] *Id*. at 666-667.

[129] JBC-009, 5th WHEREAS Clause.

In *Jardeleza,* the Court tried to rationalize the requirement of integrity as laid down in JBC-009, as follows:

> As disclosed by the guidelines and lists of recognized evidence of qualification laid down in JBC-009, **"integrity" is closely related to, or if not, approximately equated to an applicant's good reputation for honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards.** That is why proof of an applicant's reputation may be shown in certifications or testimonials from reputable government officials and non-governmental organizations and clearances from the courts, National Bureau of Investigation, and the police, among others. In fact, the JBC may even conduct a discreet background check and receive feedback from the public on the integrity, reputation and character of the applicant, the merits of which shall be verified and checked. As a qualification, the term is taken to refer to a virtue, such that, "integrity is the quality of person's character."[130] (Emphasis and underscoring supplied; citations omitted)

As can be gleaned above, the requirement of submission of SALNs is **not** found in Rule 4 of JBC-009. As stated earlier, the undenied fact is that the submission to the JBC of all of the applicant's SALNs was required only in the published *Announcement* dated June 5, 2012. Again, this requirement was prompted only by the impeachment of former Chief Justice Renato Corona who was removed from office due to inaccuracies in his SALN.[131]

The questioned appointment of respondent occurred in 2012. If indeed the submission of SALNs is a requirement to determine one's proven integrity, I reiterate that Rule 4 (Integrity) of JBC-009, after almost six years, remains the same and has not been amended to include the submission of SALNs.

As such, the Court cannot now say that the respondent had not proven her integrity at the time of her appointment — in the face of the JBC's own determination that she indeed possessed the requisite qualifications in compliance with its own rules.

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[130] *Supra* note 102, at 492-496.

[131] See Minutes of the JBC *En Banc* Meeting, *supra* note 125.

Supreme Court E-Library

Also noteworthy is the fact that prior to the screening of applicants for the Chief Justice post in 2012, the JBC had **never required** the submission of all SALNs from the prospective applicants. This fact was proved during the oral arguments as follows:

JUSTICE LEONEN:

Yes. Would you recall that if SALNs were required for the Office of the Chief Justice in 2010?

CHIEF JUSTICE SERENO:

I think, *hindi*. I think not, we had a chance to look at the publication.

JUSTICE LEONEN:

In point, in fact, it was not. In 2010 therefore, it was not required. Would you recall when you applied for Associate Justice in 2010, whether you were required to file your SALNs?

x x x x x x x x x

CHIEF JUSTICE SERENO:

It was not formally required in the publication.

JUSTICE LEONEN:

Would you recall when it was first required, that SALN… should be submitted?

CHIEF JUSTICE SERENO:

I think it was after the impeachment of Justice Corona.

JUSTICE LEONEN:

And point in fact, in 2011 when there was an opening for Chief Justice, am I not correct?

CHIEF JUSTICE SERENO:

2012?

JUSTICE LEONEN:

Yes, when there was an opening vice Chief Justice Renato Corona…

CHIEF JUSTICE SERENO:

Yes…

JUSTICE LEONEN:

… that there was a requirement for SALN. Would you know for Associate Justices what the requirements for SALNs are? Is it all or is it only two (2)?

CHIEF JUSTICE SERENO:

Only two (2)?

JUSTICE LEONEN:

Only two (2).

CHIEF JUSTICE SERENO:

Okay. Thank you.

JUSTICE LEONEN:

In other words, the JBC has not been consistent in relation to the requirement of SALN, is that not correct?

CHIEF JUSTICE SERENO:

Yes.

JUSTICE LEONEN:

But they are consistent in trying to find out whether a person can be predictably, one with integrity, is that not correct? Because that's a constitutional requirement?

CHIEF JUSTICE SERENO:

Yes, and in fact, there's a special rule…

JUSTICE LEONEN:

Yes.

CHIEF JUSTICE SERENO:

…on integrity.

JUSTICE LEONEN:

Therefore, throughout the years there are instances where the JBC did not even require a SALN, am I not correct?

Supreme Court E-Library

CHIEF JUSTICE SERENO:

Yes.[132] (Emphasis supplied)

This was also confirmed by Justice Aurora Santiago Lagman, a former member of the JBC, in her Comment dated March 23, 2018 in A.M. No. 17-11-12-SC and A.M. No. 17-11-17-SC, where she said that:

> Since the inception of the JBC more than twenty (20) years ago, submission of the SALN of candidates, was not required. SALN became one of the requirements only starting 2009, for candidates for appellate magistracy who were from the private sector. Later, in February 2011, SALNs for the past two (2) years were required. Starting 7 January 2013 to date, SALNs for the past two (2) years have been required of applicants in government service and SALNs for the preceding year, with respect to applicants from the private sector.
>
> It was only in the case of the *Chief Justice* post that the JBC, in the exercise of its discretion, required "[a]ll previous SALNs (up to 31 December 2011) for those in government."[133]

Therefore, by no stretch of the imagination can it be argued that JBC "bargained away" the Constitutional qualification of 'integrity', as the body has consistently been screening applicants based on the criteria it deems best proves that the applicant possesses the same. For the body tasked by the Constitution to define and determine who possesses integrity, the submission of SALNs is not a measure of the same. The absurdity of the *ponencia's* insistence that non-filing of SALN or incomplete or non-submission of past SALNs to the JBC means a lack of "proven integrity" is obvious when the import of the ruling is extended: all members of the Court who could not have complied with this ruling because the submission of all past SALNs was not required during their application process, say, pre-2009, do not have "proven integrity."

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[132] TSN, Oral Arguments dated April 10, 2018, pp. 88-90.

[133] Comment of Former Justice Aurora Santiago Lagman in A.M No. 17-11-12-SC and A.M. No. 17-11-17-SC, p. 8.

The SALN serves a purpose, but it is not to cast doubt upon the validity of a public officer's appointment or to impeach him.

The foregoing discussion does not intend to downplay the importance of complying with the SALN requirement. Concededly, the filing of SALNs is a Constitutional and statutory requirement which every public official should comply with. Being the fundamental law of the land, however, the Constitution cannot provide in specific detail what the requirement of submission under oath of the declaration of assets, liabilities, and net worth entails. The Constitution only very broadly provided that it is required:

> Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.[134]

Hence, implementing legislation was needed to be passed by Congress to ensure the effective implementation of this requirement. Thus, R.A. No. 6713[135] was enacted and provided the following:

> SEC. 8. *Statements and Disclosure*. — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, the assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

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[134] 1987 CONSTITUTION, Art. XII.

[135] CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, February 20, 1989.

Supreme Court E-Library

(A) *Statements of Assets and Liabilities and Financial Disclosure*. — All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The two documents shall contain information on the following:

(a) real property, its improvements, acquisition costs, assessed value and current fair market value;

(b) personal property and acquisition cost;

(c) all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;

(d) liabilities; and

(e) all business interests and financial connections.

The documents must be filed:

(a) within thirty (30) days after assumption of office;

(b) on or before April 30, of every year thereafter; and

(c) within thirty (30) days after separation from the service.

All public officials and employees required under this section to file the aforestated documents shall also execute within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible, the year when they first assumed any office in the Government.

Husband and wife who are both public officials or employees may file the required statements jointly or separately.

The Statements of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections shall be filed by:

(1) Constitutional and national elective officials, with the national office of the Ombudsman;

Supreme Court E-Library

(2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively; Justices, with the Clerk of Court of the Supreme Court; Judges, with the Court Administrator; and all national executive officials with the Office of the President.

(3) Regional and local officials and employees, with the Deputy Ombudsman in their respective regions;

(4) Officers of the armed forces from the rank of colonel or naval captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and

(5) All other public officials and employees, defined in Republic Act No. 3019 as amended, with the Civil Service Commission.

(B) *Identification and disclosure of relatives*. — It shall be the duty of every public official or employee to identify and disclose to the best of his knowledge and information, his relatives in the Government in the form, manner and frequency prescribed by the Civil Service Commission.

(C) *Accessibility of documents*. — (1) Any and all statements filed under this Act, shall be made available for inspection at reasonable hours.

(2) Such statements shall be made available for copying or reproduction after ten (10) working days from the time they are filed as required by law.

(3) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of production and mailing of such statement, as well as the cost of certification.

(4) Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.

(D) *Prohibited acts*. — It shall be unlawful for any person to obtain or use any statement filed under this Act for:

(a) any purpose contrary to morals or public policy; or

Supreme Court E-Library

(b) any commercial purpose other than by news and communications media for dissemination in the general public.

The same law likewise provided for the penalty for non-compliance, which was either a fine or imprisonment, or both, in case of a criminal prosecution, or removal in case of an administrative proceeding.

SEC. 11. *Penalties*. — (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act, shall be punished with a fine not exceeding the equivalent of six (6) months salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (₱5,000), or both, and in the discretion of the court of competent jurisdiction, disqualification to hold public office.

(b) Any violation hereof proven in a **proper administrative proceeding** shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him. (Emphasis and underscoring supplied)

Thus, the law governing the submission of SALNs, while concededly providing that the penalty may be removal, still requires a finding of culpability in a "proper administrative proceeding" or, theoretically, in a criminal prosecution. Certainly, a *quo warranto* proceeding is not such proceeding as it is, in the first place, a special civil action and neither an administrative nor criminal proceeding. **It was premature, therefore, for the Court, through the *ponencia*, to have categorically ruled that the respondent *did not file her SALNs* when no case, administrative or criminal, has been filed against her in accordance with R.A. No. 6713.**

The general proposition that non-filing of SALN means lack of integrity is erroneous.

The case of *Casimiro v. Rigor*[136] enunciated that the requirement of filing a SALN serves as a valid check and balance mechanism to verify undisclosed properties and wealth. The Court explained as follows:

> x x x The requirement of filing a SALN is enshrined in the Constitution to promote transparency in the civil service and serves as a deterrent against government officials bent on enriching themselves through unlawful means. By mandate of law, every government official or employee must make a complete disclosure of his assets, liabilities and net worth in order to avoid any issue regarding questionable accumulation of wealth. The importance of requiring the submission of a complete, truthful, and sworn SALN as a measure to defeat corruption in the bureaucracy cannot be gainsaid. Full disclosure of wealth in the SALN is necessary to particularly minimize, if not altogether eradicate, the opportunities for official corruption, and maintain a standard of honesty in the public service. **Through the SALN, the public can monitor movement in the fortune of a public official; it serves as a valid check and balance mechanism to verify undisclosed properties and wealth.** The failure to file a truthful SALN reasonably puts in doubts the integrity of the officer and normally amounts to dishonesty.[137] (Emphasis supplied; citations omitted)

Thus, the rationale behind the SALN requirement among public officials is not a matter of filing or non-filing, but is *to curtail the "acquisition of unexplained wealth."*[138]

Similarly, the addition of the requirement of proven competence, integrity, probity, and independence in the 1987 Constitution was to uplift the unbecoming reputation of the

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[136] 749 Phil. 917 (2014).

[137] *Id*. at 929-930.

[138] *Office of the Ombudsman v. Racho*, 656 Phil. 148, 161 (2011).

Supreme Court E-Library

judiciary due to the corrupt practices of certain judges and justices. As Commissioner Nolledo mentioned, there were "justices and judges who would issue injunctive relief to the highest bidder and would decide cases based on hundreds of thousands, and even millions, of mercenary reasons."

As discussed, the requirement of the SALN during the 2012 application process for the Chief Justice position was prompted by the impeachment of former Chief Justice Renato Corona. When Senator Escudero moved that the additional requirements be imposed, including the SALNs, he manifested that the JBC would not want to recommend a person who would be susceptible to such kind of attack, which pertains to the eventual removal from office of former Chief Justice Renato Corona due to inaccuracies in his SALN.

Clearly, all of these, if not solely motivated, was significantly driven, by the crusade to eliminate corruption in the government. **With this rationale, the mere failure to submit SALNs without any intent to commit a wrong is thus properly contextualized as not meaning that the person lacks integrity.** The case of *Daplas v. Department of Finance*[139] is instructive:

> Indeed, the failure to file a truthful SALN puts in doubt the integrity of the public officer or employee, and would normally amount to dishonesty. **It should be emphasized, however, that mere non-declaration of the required data in the SALN does not automatically amount to such an offense. Dishonesty requires malicious intent to conceal the truth or to make false statements.** In addition, **a public officer or employee becomes susceptible to dishonesty only when such non-declaration results in the accumulated wealth becoming manifestly disproportionate to his/her income, and income from other sources, and h e/she fails to properly account or explain these sources of income and acquisitions.**
>
> x x x x x x x x x

[139] G.R. No. 221153, April 17, 2017.

It should be emphasized that the **laws on SALN aim to curtail the acquisition of unexplained wealth.** Thus, in several cases **where the source of the undisclosed wealth was properly accounted for, the Court deemed the same an "explained wealth" which the law does not penalize.** Consequently, absent any intent to commit a wrong, and having accounted for the source of the "undisclosed wealth," as in this case, petitioner cannot be adjudged guilty of the charge of Dishonesty; but at the most, of mere negligence for having failed to accomplish her SALN properly and accurately.[140] (Additional emphasis supplied; citations omitted)

At this juncture, it is also important to differentiate the case of the respondent from that of former Chief Justice Corona. In the latter's case, he was charged with betrayal of public trust and/or culpable violation of the Constitution for (1) failing to disclose his SALN, (2) failure to include certain properties in the SALN, and (3) alleged hidden wealth. These charges have not been levelled against the respondent. She is merely accused of not filing her SALNs. Chief Justice Corona was convicted because he had undeclared dollar and peso deposits which were manifestly out of proportion to his lawful income and he failed to provide any explanation on how he obtained such funds. Thus, the case of Chief Justice Corona correctly applied the rule on SALN requirement when it delved into the real issue of curtailing the acquisition of unexplained wealth.

The Announcement required that for those engaged in government practice, all previous SALNs shall be submitted.

The *Announcement* dated June 5, 2012 required the applicants to submit to the JBC, "in addition to the usual documentary requirements," the following documents:

1. Sworn Statement of Assets, Liabilities, and Net Worth (SALN)
    a. **for those in the government: all previous SALNs (up to 31 December 2011)**

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[140] *Id*. at 6-7.

Supreme Court E-Library

b. for those from the private sector: SALN as of 31 December 2011

2. Waiver in favor of the JBC of the confidentiality of local and foreign bank accounts under the Bank Secrecy Law and Foreign Currency Deposits Act. (Emphasis supplied)

Aside from the respondent, there are other applicants engaged in government service, who failed to submit all of their previous SALNs (up to 31 December 2011), to wit:[141]

Candidates for position of Chief Justice of the Supreme Court	*Years in government service based on the "matrix"/ 20 July 2012 ORSN Report*	*Number of SALNs*[142]	*JBCs Remarks on the examination of the list with regard to the SALNs (Minutes of the JBC Special En Banc meeting, July 20, 2012)*
Abad, Roberto	21	6	There being no objection, the Council agreed that Justice Abad had **SUBSTANTIALLY COMPLIED** with the requirements of the JBC.
Bautista, Andres	6	3	*Minutes did not show any comment as regards SALN submission*
Brion, Arturo	22	12	Has substantially complied
Cagampang-De Castro, Soledad M.	12	1	*No notes/remark provided*
Carpio, Antonio	17	15	Has substantially complied

[141] Annex "37", Respondent's Memorandum (Submission of documentary requirements and SALN of candidates for Chief Justice of the Philippines (with corresponding report on professional background) dated 20 July 2012.

[142] All SALNs with distinct dates were considered for purposes of counting the *Number of SALNs*.

De Lima, Leila	11	6	Has substantially complied
Legarda, Maria Carolina	9	1	*No notes/remark provided*
Leonardo-De Castro, Teresita	39	15	Has substantially complied
Pangalanan, Raul	28	8	Justice Lagman moved that the SALNs of Dean Pangalangan be considered as substantial compliance.
Sarmiento, Rene	22	1	Has lacking SALNs
Sereno, Maria Lourdes	22	3	The Executive Officer informed the Council that she had not submitted her SALNs for a period of ten (10) years, that is, from 1986 to 2006 *(sic)*. Senator Escudero mentioned that Justice Sereno was his professor at U.P. and that they were required to submit SALNs during those years.
Siayngco, Manuel	25	18	Has complied
Valdez, Amado	13 (6)	1	Has lacking requirements
Zamora, Ronaldo	43	1	Has lacking SALNs and MCLE cert.

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As earlier stated, Senator Francis G. Escudero, as then *ex officio* member, had suggested that "at least an attempt to comply with a particular requirement" can be used as a parameter for determining substantial compliance.[143] As such, some of the applicants, who did not submit all of their previous SALNs, as was required by the published *Announcement*, were still shortlisted because of substantial compliance, namely:

a. Abad, Roberto
b. Carpio, Antonio
c. Brion, Arturo
d. Leonardo-De Castro, Teresita
e. Zamora, Ronaldo

In doing so, I believe that the JBC did not act with grave abuse of discretion because it is well within its authority to determine what substantial compliance to its requirements shall mean. Thus, in *Villanueva*,[144] the Court ruled:

> As the constitutional body granted with the power of searching for, screening, and selecting applicants relative to recommending appointees to the Judiciary, the JBC has the authority to determine how best to perform such constitutional mandate. Pursuant to this authority, the JBC issues various policies setting forth the guidelines to be observed in the evaluation of applicants, and formulates rules and guidelines in order to ensure that the rules are updated to respond to existing circumstances. Its discretion is freed from legislative, executive or judicial intervention to ensure that the JBC is shielded from any outside pressure and improper influence.[145]

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[143] Minutes of the JBC Special *En Banc* Meeting, July 20, 2012, p. 10.

[144] *Supra* note 105.

[145] *Id*. at 556.

The JBC was not misled into including the respondent in the shortlist.

The respondent submitted to the JBC her SALNs for the years 2009, 2010, and 2011. She also executed a waiver of confidentiality of her local and foreign bank accounts. On July 20, 2012, the respondent received a call from the JBC, through then Chief of Office of the Office of Recruitment, Selection and Nomination (ORSN), Atty. Pascual, asking for her SALNs for the years 1995 to 1999.

The respondent then called the U.P. College of Law, but she was informed that said SALNs were not in her 201 File. Thus, she was advised to write a letter-request to the UP HRDO instead. As there was no opportunity to secure those SALNs in time for the July 23, 2012 deadline, the respondent wrote a letter dated July 23, 2012 addressed to the JBC explaining why she will not be able to submit the SALNs from 1995-1999. She stated that "[c]onsidering that most of my government records in the academe are more than fifteen years old, it is reasonable to consider it infeasible to retrieve all of those files."[146]

During the JBC *en banc* meeting held on July 20, 2012, the members delegated to the Executive Committee the responsibility of determining whether an applicant had substantially complied with the SALN requirement. A Report dated July 24, 2012 of the ORSN indicates that the respondent as a candidate for the position of Chief Justice of the Philippines has "COMPLETE REQUIREMENTS."[147] The same Report includes the following remark:

Letter 7/23/12 – considering that her government records in the academe are more than 15 years old, it is reasonable to consider it infeasible to retrieve all those files.

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[146] Annex "11", Respondent's Comment.

[147] Annex "38", Respondent's Memorandum.

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Thus, it is clear that the Executive Committee, within the exercise of their authority, adjudged the respondent's submission of her three SALNs, together with her letter-explanation, as substantial compliance to these additional requirements. **Thus, the JBC, which solely determines whether a candidate has substantially complied with all the documentary requirements, made a determination that respondent had indeed substantially complied.**

Worthy of note, Former Justice Aurora Santiago Lagman, up to the present time, stands by the JBC's determination on the question of substantial compliance:

It was also in the exercise of its discretion that the JBC deemed some of the aspirants for the *Chief Justice* post with incomplete documents like SALNs to have substantially complied. It may be mentioned herein that the JBC also exempted some of the incumbent Justices of this Honorable Court who were candidates for the said position, from submitting clearances and other documentary requirements.

x x x x x x x x x

It must be recalled that without any objection from the other JBC Members, the *Ex Officio* Member who was the proponent of the requirement of all previous SALNs of candidates from the government sector defined the "**parameter of substantial compliance**" as an "**attempt to comply with the particular requirement;**" and that if indeed those with lacking documents are "serious with their application, they should inform the JBC as to the reason for failing to comply with certain requirements."

The Execom enjoys the presumption that it **regularly performed the task delegated to it** in the 20 July 2012 *en banc* meeting of **determining whether** the eleven (11) candidates with deficiencies in documents, including then Justice Sereno, had **substantially complied** with the documentary requirements – guided by the aforementioned parameter and on the basis of the documents submitted by the applicants and the profile matrices and reports submitted by the ORSN.

Then Justice Sereno was deemed to have **substantially complied with the requirements,** on the basis of her letter to the JBC dated 23 July 2012 and considering further that another candidate who

was similarly situated as be *(sic)* was not able to submit several SALNs when he was a Professor of the University of the Philippines, was deemed by the JBC *En Banc* in its 20 July 2012 meeting to have substantially complied with the requirements.[148] (Emphasis in the original)

Furthermore, JBC regular members Atty. Jose V. Mejia and Atty. Maria Milagros Fernan-Cayosa (Re: Resolution dated February 20, 2018) in A.M. No. 17-11-12-SC and A.M. No. 17-11-17-SC state in their Joint Comment:

> Then-Associate Justice Sereno was included in the shortlist because she possesses the constitutionally prescribed qualifications for a Chief Justice. She was recommended for the position. She conformed with the recommendation. She submitted her supporting documents for her application. She was interviewed. Her application was deliberated by the JBC En Banc. She garnered the required votes to be nominated for the position.[149]

As well, it would not be amiss to point out that at the time the respondent applied for the position of Chief Justice, she was a sitting Member of the Court.

Uncontroverted by the petitioner, respondent testified under oath during the Oral Argument[150] that when she applied for the position of Associate Justice in 2010, and consistent with the fact that she was not a government employee for the period of 2006-2009, she was considered as a private sector applicant. Hence, she was not required to submit previous SALNs and was only made to execute a SAL along with the waiver of confidentiality of bank deposits. Following its own rules, the JBC determined that the respondent had all the constitutional qualifications for a member of the Court.

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[148] Comment of Former Justice Aurora Santiago Lagman in A.M No. 17-11-12-SC and A.M. No. 17-11-17-SC, pp. 9-10.

[149] Joint Comment of Atty. Jose V. Mejia and Atty. Maria Milagros Fernan-Cayosa (Re: Resolution dated February 20, 2018) in A.M. No. 17-11-12-SC and A.M. No. 17-11-17-SC, paragraph 6.

[150] TSN, Oral Arguments dated April 10, 2018, pp. 34-40.

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Now, as a sitting Member of the Court, who had already hurdled the test of integrity when she was appointed as Associate Justice in 2010, respondent's integrity was no longer, as it could no longer be made, subject to any question. Thus, the JBC could not have been misled as to the integrity of the respondent when the JBC already had an earlier occasion to knowingly and intelligently determine her integrity.

The JBC's determination of a person's integrity is a political question outside of the jurisdiction of the Court.

Moreover, I agree with the respondent that the determination of whether a person is of proven integrity is a political question that is outside the jurisdiction of this Court. In *Garcia v. Executive Secretary*,[151] the Court explained the nature of a political question as follows:

As *Tañada v. Cuenco*[152] [*Tañada*] puts it, political questions refer "to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of government." **Thus, if an issue is clearly identified by the text of the Constitution as matters for discretionary action by a particular branch of government or to the people themselves then it is held to be a political question.** In the classic formulation of Justice Brennan in *Baker v. Carr*, "[p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for

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[151] 602 Phil. 64 (2009).

[152] 103 Phil. 1051 (1957).

unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on the one question."[153] [Emphasis supplied.]

The OSG argues that for a political question to exist, there must be in the Constitution a power vested exclusively in the President or Congress.[154] It further avers that the issue of whether the respondent is a person of proven integrity had not been committed under the Constitution to a coordinate political department – either the executive or legislative department and that the JBC is not under the executive or legislative department.[155] Contrary to the OSG's position, I am of the view that the application of the political question doctrine is not limited to the executive and legislative departments. As abovementioned in the case of *Tañada*[156] and *In re McConaughy*,[157] such question covers a situation where the resolution of a particular question has been specifically delegated to some other department of the government, with discretionary power to act:

> x x x What is generally meant, when it is said that a question is political, and not judicial, is that *it is a matter which is to be exercised by the people in their primary political capacity*, **or that it has been specifically delegated to some other department or particular officer of the government, *with discretionary power to act*.** x x x[158] (Emphasis supplied)

The JBC, as the constitutional body granted with the power of searching for, screening, and selecting applicants relative to recommending appointees to the Judiciary, clearly exercises discretionary power and is a department of the government.

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[153] *Id*. at 74, citing *Tañada v. Cuenco*, *id*. and *Baker v. Carr*, 369 U.S. 186.

[154] OSG Memorandum, p. 42.

[155] *Id*. at 43.

[156] *Supra* note 152.

[157] 119 N.W. 408.

[158] *Supra* note 152, at 1067.

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Further, the case of *Abella, Jr. v. CSC*,[159] where the Court affirmed that appointment is an essentially discretionary power and is a political question, applies in this case:

> Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide.
>
> **Significantly, "the selection of the appointee – taking into account the totality of his qualifications, including those abstract qualities that define his personality – is the prerogative of the appointing authority. No tribunal, not even this Court, may compel the exercise of an appointment for a favored person.**[160] (Emphasis supplied; citations omitted)

The Solicitor General failed to discharge his burden to prove non-filing.

I disagree with the majority that the Republic was able to discharge its burden of proof and thus, it is now incumbent upon respondent to discharge her burden of evidence. The Republic relies on these three documents:

a. Letter[161] dated December 8, 2017 from the UP HRDO, through its Director, Dr. Angela D. Escoto, which states in part:

    1. On the lack of Statement of Assets, Liabilities and Net Worth (SALN) of Chief Justice Ma. Lourdes A. Sereno, for the years 2000, 2001, 2003, 2004, 2005, and 2006:

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[159] 485 Phil. 182 (2004).

[160] *Id*. at 195-196.

[161] Annex "D", Petition.

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These documents are not contained in the 201 file of Chief Justice Sereno. Her 201 records show that she was on official leave from the University of the Philippines for the following periods:

June 1, 2000 – May 31, 2001
June 1, 2001 – May 31, 2002
November 1, 2003 – May 31, 2004
June 1, 2004 – October 31, 2004
November 1, 2004 – February 10, 2005
February 11, 2005 – October 31, 2005
November 15, 2005 – May 31, 2006
June 1, 2006 – resigned

x x x x x x x x x

3. On the requested certification that only the SALN for 31 December 2002 can be found in the 201 file of Chief Justice Sereno:

> We respectfully submit the attached certification marked as "Annex B" and the 2002 SALN we previously submitted to the Committee marked as "Annex B-1".

b. Certification[162] dated December 8, 2017, also issued by the UP HRDO, through Dr. Escoto, which states:

> This is to certify that based on the 201 files of Supreme Court Chief Justice Maria Lourdes A. Sereno under the custody of the Information Management Section of the Human Resources Development Office, University of the Philippines Diliman, it was found that between the period 2000 [to] 2009 the SALN submission on file is as of December 31, 2002.
>
> This further certifies that documents in the same 201 file referred to above indicate that Chief Justice Sereno resigned from the University of the Philippines on 01 June 2006.

c. Certification[163] dated December 4, 2017 issued by the Central Records Division of the Office of the

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[162] Annex "B", *id*.

[163] Annex "C", *id*.

Supreme Court E-Library

Ombudsman, through SALN In-Charge" Ms. Julie Ann A. Garcia, which states:

> This is to certify that based on records on file, there is no SALN filed by **MS. MARIA LOURDES A. SERENO** for calendar years 1999 to 2009 except SALN ending December 1998 which was submitted to this Office on December 16, 2003.

The majority deems that these letter, certifications, and the records of the UP HRDO and the Ombudsman conclusively establish that for the years 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005 and 2006, respondent did not file her SALNs. Once more, I disagree. These letter and certifications only prove that these SALNs were not in respondent's files — **they, however, do not constitute proof as to the question of whether or not she had not filed her SALNs.**

Further, contrary to the *ponencia*'s position, the case of *Concerned Taxpayer v. Doblada, Jr.*[164] ***is*** applicable as regards the appreciation of the certifications relied on by the Republic. In the said case, the Court held that one cannot readily conclude that a person has failed to file his sworn SAL(N) simply because these documents are missing in the files of the those who are required to keep it. It also gave credence to the fact that the report of the Office of the Court Administrator simply stated that it does not have on its file the subject SAL of Doblada and that there was no categorical statement that Doblada failed to file his SAL for the years mentioned. The Court ruled as follows:

> Moreover, we find no sufficient evidence to prove that respondent failed to file his SAL for the years 1975, 1977 to 1988, 1990, 1992, 1994, 1997, 1999 and 2000. Respondent maintains that he has consistently filed his SAL for the said years. To prove his contention, respondent submitted a copy of a letter dated May 7, 2001 sent by Remegio C. Añosa, Acting Branch Clerk of Court of Branch 155, RTC, Pasig City, stating therein that attached to said letter are the sworn SAL of the staff of RTC Pasig City, Branch 155, including that of respondent's, for the year 2000. The letter was sent to and

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[164] 498 Phil. 395 (2005).

duly received by the OCA but the SAL of respondent for 2000 is one of those missing in the files of OCA. **On this premise, one cannot readily conclude that respondent failed to file his sworn SAL for the years 1975, 1977 to 1988, 1990, 1992, 1994, 1997, 1999 and 2000 simply because these documents are missing in the files of the OCA.** Even in the report of the Court Administrator dated February 3, 2005, **there was no categorical statement that respondent failed to file his SAL for the years earlier mentioned. The report of the OCA simply stated that it does not have on its file the subject SAL of respondent.**[165] (Emphasis supplied)

Similarly, the letter and certifications of the UP HRDO only state that "these documents are not contained in the 201 file of Chief Justice Sereno" and "it was found that between the period 2000 [to] 2009 the SALN submission on file is as of December 31, 2002," respectively. There is no categorical statement that the respondent failed to file her SALN for the years requested as stated in the letter and the certifications. Thus, these do not constitute sufficient proof to conclude that respondent had failed to file her SALNs.

As regards the certification issued by the Office of the Ombudsman, it merely states that "there is no SALN filed by MS. MARIA LOURDES A. SERENO for calendar years 1999 to 2009 except SALN ending December 1998 which is submitted to this Office on December 16, 2003." Again, this language says only what it means: that the only SALN on file with the Office of the Ombudsman was the SALN ending December 1998. Accordingly, like the UP HRDO letter and certification, this does not suffice to prove that respondent failed to file her SALNs. Contrary to the *ponencia*'s interpretation, the phrase "there is no SALN filed by MS. MARIA LOURDES A. SERENO for calendar years 1999 to 2009" can only be understood as a reference to what was on file with the Office of the Ombudsman — and this is evident from its juxtaposition of the exception, "except SALN ending December 1998 which is submitted to this Office on December 16, 2003." To be sure, the fact that UP professors could submit their SALNs also with the UP HRDO

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[165] *Id*. at 404.

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means that the Office of the Ombudsman was not, as it could not be, in any position to make a definitive statement as to whether respondent had failed to file her SALNs.

For the years that respondent was a professor in the University of the Philippines, *i.e.*, 1986-2006, the UP HRDO was, in fact, able to produce the following SALNs: 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002.[166] Meanwhile, the respondent was able to retrieve her SALNs for the years 1989 and 1998 and was able to find a certified true copy of a page of a notarial book of Notary Public, Atty. Eugenia A. Borlas showing that she executed her SALN for year 1999.[167] Thus, the fact that respondent was able to establish that there are SALNs which are not in the records of the UP HRDO thus situated her similarly to Doblada who was able to present a letter stating that attached to said letter are the sworn SAL of the staff of RTC Pasig City, Branch 155, including that of respondent's, for the year 2000. **In plain terms, therefore, the Court's ruling that one cannot readily conclude that a person has failed to file his SALN simply because these documents are missing in the files of those who are required to keep them applies foursquare to the respondent**.

Accordingly, it is quite clear that the burden of evidence has not shifted to the respondent.

Moreover, and contrary to the *ponencia*'s contention that the burden of proof in *quo warranto* cases rests on the defendant or respondent, as against the State at least, to show his right to the office from which it is sought to oust him,[168] the Court, in the case of *David v. Senate Electoral Tribunal*,[169] ruled that the burden of proof necessarily falls on the party who brings the action and who alleges that the respondent is ineligible for

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[166] *Ponencia*, p. 5.

[167] Annex "47", Respondent's Memorandum.

[168] *Ponencia*, p. 103 citing Vicente J. Francisco, *Revised Rules of Court in the Philippines*, Volume IV-B, Special Civil Actions, 1972.

[169] G.R. No. 221538, September 20, 2016, 803 SCRA 435.

the office involved in the controversy. The Court stated as follows:

> **In an action for *quo warranto*, the burden of proof necessarily falls on the party who brings the action and who alleges that the respondent is ineligible for the office involved in the controversy.** In proceedings before quasi-judicial bodies such as the Senate Electoral Tribunal, the requisite quantum of proof is substantial evidence. This burden was petitioner's to discharge. Once the petitioner makes a prima facie case, the burden of evidence shifts to the respondent.[170]

The Chief Justice **testified under oath** by during the Oral Argument,[171] that she consistently filed her SALNs during her entire employment in the UP College of Law. In support, she also submitted her 1989 and 1998 SALNs, and independent proof of having subscribed to her 1999 SALN.[172] As against the certifications from UP HRDO and Ombudsman of some SALNs not being on file, which have been shown as insufficient to shift the burden of proof to the respondent, I find that on the strength of the testimonial and documentary evidence presented by the respondent, there can be no finding that she did not consistently file her SALNs.

Consequently, it becomes painfully apparent that the decision reached by the majority to oust the Chief Justice is not even for the graver offense of non-filing of SALN under R.A. No. 6713 — which was the only basis of the quo warranto petition — but for the non-submission of the "additional documentary requirement" of all previous SALNs to the JBC required by the Announcement.

Conclusion

The filing by the Solicitor General of the present *quo warranto* petition to oust the Chief Justice appears to be an admission on

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[170] *Id*. at 509-510.

[171] TSN, Oral Arguments dated April 10, 2018, pp. 109-116.

[172] Attached to the *Ad Cautelam Manifestation/Submission* of the Chief Justice.

Supreme Court E-Library

the part of the Executive department that the grounds for impeachment, including the ground upon which this *quo warranto* petition is based, rest on shaky grounds. Understanding the inherent weakness of the grounds of impeachment and the improbability of ouster through the mode constitutionally provided, the Solicitor General has effectively shopped for a different forum to seek the Chief Justice's ouster. This is not a road less travelled — it is a prohibited alleyway that, regrettably, the Court is now allowing passage through.

To me, what had been shown in the hearings before the Committee on Justice in the House of Representatives are all internal matters that, to some, bespeak the lack of able leadership by the Chief Justice. The acts complained of, including the alleged failure to submit SALNs, are actionable under existing laws — provided the respondent is first impeached following settled and unequivocal jurisprudence.

Judicial power rests in the Court *en banc*. The Chief Justice, *primus inter pares*, is first in precedence but does not exercise judicial power on his own. The members of the Court are not without recourse — are not without power — to address any perceived encroachment being committed by the Chief Justice on the powers of the Court *en banc*. The Court's inability to resolve this leadership issue within its own walls and the need to ventilate these matters before another forum is a disservice to the institution and to the individual members of the Court. For the Court to now turn around and oust the Chief Justice on its own, without any constitutional basis, is an even greater disservice.

I view with deep shame and regret this day when the Court has ousted one of its sitting Members upon the prodding of a mere agency of a separate coordinate department. I steadfastly maintain that the members of the Court cannot and should not allow themselves to be used in this manner. No matter how dislikable a member of the Court is, the rules cannot be changed just to get rid of him, or her in this case. The other members of the Court — the Court *en banc* — are called upon to grin and bear the unbearable as travelling this prohibited road will

Supreme Court E-Library

be at the expense and to the extreme prejudice of the independence of the entire Judiciary, the independence of the Court's individual members, and the freedom of discourse within the Court. This case marks the time when the Court commits *seppuku* — without honor.

In view of the foregoing, I vote to **DISMISS** the petition.