Republic of the Philippines
Supreme Court
Manila

EN BANC

HON. PHILIP A. AGUINALDO, HON. REYNALDO A. ALHAMBRA, HON. DANILO S. CRUZ, HON. BENJAMIN T. POZON, HON. SALVADOR V. TIMBANG, JR., and the INTEGRATED BAR OF THE PHILIPPINES (IBP),
Petitioners,

- *versus* -

HIS EXCELLENCY PRESIDENT BENIGNO SIMEON C. AQUINO III, HON. EXECUTIVE SECRETARY PAQUITO N. OCHOA, HON. MICHAEL FREDERICK L. MUSNGI, HON. MA. GERALDINE FAITH A. ECONG, HON. DANILO S. SANDOVAL, HON. WILHELMINA B. JORGE-WAGAN, HON. ROSANA FE ROMERO-MAGLAYA, HON. MERIANTHE PACITA M. ZURAEK, HON. ELMO M. ALAMEDA, and HON. VICTORIA C. FERNANDEZ-BERNARDO,
Respondents,

JUDICIAL AND BAR COUNCIL,
Intervenor.

G.R. No. 224302

Present:

SERENO, *CJ.*,[*]
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
MENDOZA,
REYES,[**]
PERLAS-BERNABE,
LEONEN,
JARDELEZA, and
CAGUIOA, *JJ.*

Promulgated:

February 21, 2017

x----------x

[*] No part.
[**] On official leave.

RESOLUTION

LEONARDO-DE CASTRO, *J.*:

In its Decision dated November 29, 2016, the Court *En Banc* held:

> **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**. The Court further **DENIES** the Motion for Intervention of the Judicial and Bar Council in the present Petition, but **ORDERS** the Clerk of Court *En Banc* to docket as a separate administrative matter the new rules and practices of the Judicial and Bar Council which the Court took cognizance of in the preceding discussion as ***Item No. 2***: the deletion or non-inclusion in JBC No. 2016-1, or the Revised Rules of the Judicial and Bar Council, of Rule 8, Section 1 of JBC-009; and ***Item No. 3***: the removal of incumbent Senior Associate Justices of the Supreme Court as consultants of the Judicial and Bar Council, referred to in pages 35 to 40 of this Decision. The Court finally **DIRECTS** the Judicial and Bar Council to file its comment on said ***Item Nos. 2 and 3*** within thirty (30) days from notice.[1]

I
THE JBC MOTIONS

The Judicial and Bar Council (JBC) successively filed a Motion for Reconsideration (with Motion for the Inhibition of the *Ponente*) on December 27, 2016 and a Motion for Reconsideration-in-Intervention (Of the Decision dated 29 November 2016) on February 6, 2017.

At the outset, the Court notes the revelation of the JBC in its Motion for Reconsideration-in-Intervention that it is not taking any position in this particular case on President Aquino's appointments to the six newly-created positions of Sandiganbayan Associate Justice. The Court quotes the relevant portions from the Motion, as follows:

> **The immediate concern of the JBC is this Court's pronouncement that the former's act of submitting six lists for six vacancies was unconstitutional. Whether the President can cross-reach into the lists is not the primary concern of the JBC in this particular case. At another time, perhaps, it may take a position. But not in this particular situation involving the newly created positions in the Sandiganbayan in view of the lack of agreement by the JBC Members on that issue.**

---

[1] *Rollo*, pp. 250-251.

> **What the President did with the lists, for the purpose of this particular dispute alone as far as the JBC is concerned, was the President's exclusive domain.**[2]

Nonetheless, the JBC did not categorically withdraw the arguments raised in its previous Motions, and even reiterated and further discussed said arguments, and raised additional points in its Motion for Reconsideration-in-Intervention. Hence, the Court is still constrained to address said arguments in this Resolution.

In its Motion for Reconsideration (with Motion for Inhibition of the *Ponente*) the JBC argues as follows: (a) Its Motion for Intervention was timely filed on November 26, 2016, three days before the promulgation of the Decision in the instant case; (b) The JBC has a legal interest in this case, and its intervention would not have unduly delayed or prejudiced the adjudication of the rights of the original parties; (c) Even assuming that the Motion for Intervention suffers procedural infirmities, said Motion should have been granted for a complete resolution of the case and to afford the JBC due process; and (d) Unless its Motion for Intervention is granted by the Court, the JBC is not bound by the questioned Decision because the JBC was neither a party litigant nor impleaded as a party in the case, the JBC was deprived of due process, the assailed Decision is a judgment *in personam* and not a judgment *in rem*, and a decision rendered in violation of a party's right to due process is void for lack of jurisdiction.

On the merits of the case, the JBC asserts that in submitting six short lists for six vacancies, it was only acting in accordance with the clear and unambiguous mandate of Article VIII, Section 9[3] of the 1987 Constitution for the JBC to submit a list for every vacancy. Considering its independence as a constitutional body, the JBC has the discretion and wisdom to perform its mandate in any manner as long as it is consistent with the Constitution. According to the JBC, its new practice of "clustering," in fact, is more in accord with the purpose of the JBC to rid the appointment process to the Judiciary from political pressure as the President has to choose only from the nominees for one particular vacancy. Otherwise, the President can choose whom he pleases, and thereby completely disregard the purpose for the creation of the JBC. The JBC clarifies that it numbered the vacancies, not to influence the order of precedence, but for practical reasons, *i.e.*, to distinguish one list from the others and to avoid confusion. The JBC also points out that the acts invoked against the JBC are based on practice or custom, but "practice, no matter how long continued, cannot give rise to any vested right." The JBC, as a constitutional body, enjoys independence, and as such, it may change its practice from time to time in accordance with its wisdom.

---

2 Motion for Reconsideration-in-Intervention, pp. 18-19.

3 Art. VIII, 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.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

Lastly, the JBC moves for the inhibition of the *ponente* of the assailed Decision based on Canon 3, Section 5 of the New Code of Judicial Conduct for Philippine Judiciary.[4] The JBC alleges that the *ponente*, as consultant of the JBC from 2014 to 2016, had personal knowledge of the voting procedures and format of the short lists, which are the subject matters of this case. The *ponente* was even present as consultant during the meeting on October 26, 2015 when the JBC voted upon the candidates for the six new positions of Associate Justice of the Sandiganbayan created under Republic Act No. 10660. The JBC then expresses its puzzlement over the *ponente's* participation in the present proceedings, espousing a position contrary to that of the JBC. The JBC questions why it was only in her Decision in the instant case did the *ponente* raise her disagreement with the JBC as to the clustering of nominees for each of the six simultaneous vacancies for Sandiganbayan Associate Justice. The JBC further quoted portions of the assailed Decision that it claims bespoke of the *ponente's* "already-arrived-at" conclusion as to the alleged ill acts and intentions of the JBC. Hence, the JBC submits that such formed inference will not lend to an even-handed consideration by the *ponente* should she continue to participate in the case.

Ultimately, the JBC prays:

> IN VIEW OF THE FOREGOING, it is respectfully prayed that the DECISION dated 29 November 2016 be reconsidered and set aside and a new one be issued granting the Motion for Intervention of the JBC.
>
> It is likewise prayed that the ponente inhibit herself from further participating in this case and that the JBC be granted such other reliefs as are just and equitable under the premises.[5]

The JBC subsequently filed a Motion for Reconsideration-in-Intervention (Of the Decision dated 29 November 2016), praying at the very beginning that it be deemed as sufficient remedy for the technical deficiency of its Motion for Intervention (*i.e.*, failure to attach the pleading-in-

---

4 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 the 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;
(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[.]

5 *Rollo*, p. 277.

intervention) and as Supplemental Motion for Reconsideration of the denial of its Motion for Intervention.

The JBC, in its latest Motion, insists on its legal interest, injury, and standing to intervene in the present case, as well as on the timeliness of its Motion for Intervention.

The JBC proffers several reasons for not immediately seeking to intervene in the instant case despite admitting that it received copies of the appointments of the six Sandiganbayan Associate Justices from the Office of the President (OP) on January 25, 2016, to wit: (a) Even as its individual Members harbored doubts as to the validity of the appointments of respondents Michael Frederick L. Musngi (Musngi) and Geraldine Faith A. Econg (Econg) as Sandiganbayan Associate Justices, the JBC agreed as a body in an executive session that it would stay neutral and not take any legal position on the constitutionality of said appointments since it "did not have any legal interest in the offices of Associate Justices of the Sandiganbayan"; (b) None of the parties prayed that the act of clustering by the JBC be declared unconstitutional; and (c) The JBC believed that the Court would apply the doctrine of presumption of regularity in the discharge by the JBC of its official functions and if the Court would have been inclined to delve into the validity of the act of clustering by the JBC, it would order the JBC to comment on the matter.

The JBC impugns the significance accorded by the *ponente* to the fact that Chief Justice Maria Lourdes P. A. Sereno (Sereno), Chairperson of the JBC, administered the oath of office of respondent Econg as Sandiganbayan Associate Justice on January 25, 2016. Chief Justice Sereno's act should not be taken against the JBC because, the JBC reasons, Chief Justice Sereno only chairs the JBC, but she is not the JBC, and the administration of the oath of office was a purely ministerial act.

The JBC likewise disputes the *ponente's* observation that clustering is a totally new practice of the JBC. The JBC avers that even before Chief Justice Sereno's Chairmanship, the JBC has generally followed the rule of one short list for every vacancy in all first and second level trial courts. The JBC has followed the "one list for every vacancy" rule even for appellate courts since 2013. The JBC even recalls that it submitted on August 17, 2015 to then President Benigno Simeon C. Aquino III (Aquino) four separate short lists for four vacancies in the Court of Appeals; and present during the JBC deliberations were the *ponente* and Supreme Court Associate Justice Presbitero J. Velasco, Jr. (Velasco) as consultants, who neither made any comment on the preparation of the short lists.

On the merits of the Petition, the JBC maintains that it did not exceed its authority and, in fact, it only faithfully complied with the literal language of Article VIII, Section 9 of the 1987 Constitution, when it prepared six short lists for the six vacancies in the Sandiganbayan. It cites the cases of

Atong Paglaum, Inc. v. Commission on Elections[6] and *Ocampo v. Enriquez*,[7] wherein the Court allegedly adopted the textualist approach of constitutional interpretation.

The JBC renounces any duty to increase the chances of appointment of every candidate it adjudged to have met the minimum qualifications. It asserts that while there might have been favorable experiences with the past practice of submitting long consolidated short lists, past practices cannot be used as a source of rights and obligations to override the duty of the JBC to observe a straightforward application of the Constitution.

The JBC posits that clustering is a matter of legal and operational necessity for the JBC and the only safe standard operating procedure for making short lists. It presents different scenarios which demonstrate the need for clustering, *viz.*, (a) There are two different sets of applicants for the vacancies; (b) There is a change in the JBC composition during the interval in the deliberations on the vacancies as the House of Representatives and the Senate alternately occupy the *ex officio* seat for the Legislature; (c) The applicant informs the JBC of his/her preference for assignment in the Cebu Station or Cagayan de Oro Station of the Court of Appeals because of the location or the desire to avoid mingling with certain personalities; (d) The multiple vacancies in newly-opened first and second level trial courts; and (e) The dockets to be inherited in the appellate court are overwhelming so the JBC chooses nominees for those particular posts with more years of service as against those near retirement.

To the JBC, it seems that the Court was in a hurry to promulgate its Decision on November 29, 2016, which struck down the practice of clustering by the JBC. The JBC supposes that it was in anticipation of the vacancies in the Court as a result of the retirements of Supreme Court Associate Justices Jose P. Perez (Perez) and Arturo D. Brion (Brion) on December 14, 2016 and December 29, 2016, respectively. The JBC then claims that it had no choice but to submit two separate short lists for said vacancies in the Court because there were two sets of applicants for the same, *i.e.*, there were 14 applicants for the seat vacated by Justice Perez and 17 applicants for the seat vacated by Justice Brion.

The JBC further contends that since each vacancy creates discrete and possibly unique situations, there can be no general rule against clustering. Submitting separate, independent short lists for each vacancy is the only way for the JBC to observe the constitutional standards of (a) one list for every vacancy, and (b) choosing candidates of competence, independence, probity, and integrity for every such vacancy.

It is also the asseveration of the JBC that it did not encroach on the President's power to appoint members of the Judiciary. The JBC alleges

---

6 707 Phil. 754 (2013).

7 G.R. Nos. 225973, 225984, 226097, 226116, 226117, 226120, & 226294, November 8, 2016.

that its individual Members gave several reasons why there was an apparent indication of seniority assignments in the six short lists for the six vacancies for Sandiganbayan Associate Justice, particularly: (a) The JBC can best perform its job by indicating who are stronger candidates by giving higher priority to those in the lower-numbered list; (b) The indication could head off the confusion encountered in *Re: Seniority Among the Four Most Recent Appointments to the Position of Associate Justices of the Court of Appeals*;[8] and (c) The numbering of the lists from 16th to 21st had nothing to do with seniority in the Sandiganbayan, but was only an ordinal designation of the cluster to which the candidates were included.

The JBC ends with a reiteration of the need for the *ponente* to inhibit herself from the instant case as she appears to harbor hostility possibly arising from the termination of her JBC consultancy.

The prayer of the JBC in its Motion for Reconsideration-in-Intervention reads:

> IN VIEW OF THE FOREGOING, it is respectfully prayed that JBC's Motion for Reconsideration-in-Intervention, Motion for Intervention and Motion for Reconsideration with Motion for Inhibition of Justice Teresita J. Leonardo-De Castro of the JBC be granted and/or given due course and that:
>
> 1. the Court's pronouncements in the Decision dated 29 November 2016 with respect to the JBC's submission of six shortlists of nominees to the Sandiganbayan be modified to reflect that the JBC is deemed to have followed Section 9, Article VIII of the Constitution in its practice of submitting one shortlist of nominees for every vacancy, including in submitting on 28 October 2015 six lists to former President Benigno Simeon C. Aquino III for the six vacancies of the Sandiganbayan, or for the Court to be completely silent on the matter; and
>
> 2. the Court delete the treatment as a separate administrative matter of the alleged new rules and practices of the JBC, particularly the following: (1) the deletion or non-inclusion of Rule 8, Section 1 of JBC-009 in JBC No. 2016-1, or the Revised Rules of the Judicial and Bar Council; and (2) the removal of incumbent Senior Associate Justices of the Supreme Court as consultants of the JBC, referred to in pages 35 to 40 of the Decision. And as a consequence, the Court excuse the JBC from filing the required comment on the said matters.[9]

---

8 646 Phil. 1 (2010).

9 Supra note 2 at 32.

II
THE RULING OF THE COURT

There is no legal or factual basis for the ponente to inhibit herself from the instant case.

The Motion for Inhibition of the *Ponente* filed by the JBC is denied.

The present Motion for Inhibition has failed to comply with Rule 8, Section 2 of the Internal Rules of the Supreme Court,[10] which requires that "[a] motion for inhibition must be in writing and **under oath** and shall state the grounds therefor." Yet, even if technical rules are relaxed herein, there is still no valid ground for the inhibition of the *ponente*.

There is no ground[11] for the mandatory inhibition of the *ponente* from the case at bar.

The *ponente* has absolutely no personal interest in this case. The *ponente* is not a counsel, partner, or member of a law firm that is or was the counsel in the case; the *ponente* or her spouse, parent, or child has no pecuniary interest in the case; and the *ponente* is not related to any of the parties 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.

The *ponente* is also not privy to any proceeding in which the JBC discussed and decided to adopt the unprecedented method of clustering the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice into six separate short lists, one for every vacancy. The *ponente* does not know when, how, and why the JBC adopted the clustering method of nomination for appellate courts and even the Supreme Court.

---

10 A.M. No. 10-4-20-SC, May 4, 2010.

11 Rule 8, Section 1 of the Internal Rules of the Supreme Court provides:

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 a 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.

With due respect to Chief Justice Sereno, it appears that when the JBC would deliberate on highly contentious, sensitive, and important issues, it was her policy as Chairperson of the JBC to hold executive sessions, which excluded the Supreme Court consultants. At the JBC meeting held on October 26, 2015, Chief Justice Sereno immediately mentioned at the beginning of the deliberations "that, as the Council had always done in the past when there are multiple vacancies, the voting would be on a per vacancy basis."[12] Chief Justice Sereno went on to state that the manner of voting had already been explained to the two *ex officio* members of the JBC who were not present during the meeting, namely, Senator Aquilino L. Pimentel III (Pimentel) and then Department of Justice (DOJ) Secretary Alfredo Benjamin S. Caguioa (Caguioa).[13] Then the JBC immediately proceeded with the voting of nominees. This *ponente* was not consulted before the JBC decision to cluster nominees was arrived at and, therefore, she did not have the opportunity to study and submit her recommendation to the JBC on the clustering of nominees.

It is evident that prior to the meeting on October 26, 2015, the JBC had already reached an agreement on the procedure it would follow in voting for nominees, *i.e.*, the clustering of the nominees into six separate short lists, with one short list for each of the six newly-created positions of Sandiganbayan Associate Justice. That Senator Pimentel and DOJ Secretary Caguioa, who were not present at the meeting on October 26, 2015, were informed beforehand of the clustering of nominees only proves that the JBC had already agreed upon the clustering of nominees prior to the said meeting.

Notably, Chief Justice Sereno inaccurately claimed at the very start of the deliberations that the JBC had been voting on a per vacancy basis "as the Council had always done," giving the impression that the JBC was merely following established procedure, when in truth, the clustering of nominees for simultaneous or closely successive vacancies in a collegiate court was a new practice only adopted by the JBC under her Chairmanship. In the Decision dated November 29, 2016, examples were already cited how, in previous years, the JBC submitted just one short list for simultaneous or closely successive vacancies in collegiate courts, including the Supreme Court, which will again be presented hereunder.

As previously mentioned, it is the practice of the JBC to hold executive sessions when taking up sensitive matters. The *ponente* and Associate Justice Velasco, incumbent Justices of the Supreme Court and then JBC consultants, as well as other JBC consultants, were excluded from such executive sessions. Consequently, the *ponente* and Associate Justice Velasco were unable to participate in and were kept in the dark on JBC proceedings/decisions, particularly, on matters involving the nomination of candidates for vacancies in the appellate courts and the Supreme Court. The

---

12 Judicial and Bar Council Minutes, 10-2015, October 26, 2015, Monday, *En Banc* Conference Room, New Supreme Court Building, 10:00 a.m., p. 2.

13 Now Associate Justice of the Supreme Court.

matter of the nomination to the Supreme Court of now Supreme Court Associate Justice Francis H. Jardeleza (Jardeleza), which became the subject matter of *Jardeleza v. Sereno*,[14] was taken up by the JBC in such an executive session. This *ponente* also does not know when and why the JBC deleted from JBC No. 2016-1, "The Revised Rules of the Judicial and Bar Council," what was Rule 8, Section 1 of JBC-009, the former JBC Rules, which gave due weight and regard to the recommendees of the Supreme Court for vacancies in the Court. The amendment of the JBC Rules could have been decided upon by the JBC when the *ponente* and Associate Justice Velasco were already relieved by Chief Justice Sereno of their duties as consultants of the JBC. The JBC could have similarly taken up and decided upon the clustering of nominees for the six vacant posts of Sandiganbayan Associate Justice during one of its executive sessions prior to October 26, 2015.

Hence, even though the *ponente* and the other JBC consultants were admittedly present during the meeting on October 26, 2015, the clustering of the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice was already *fait accompli*. Questions as to why and how the JBC came to agree on the clustering of nominees were no longer on the table for discussion during the said meeting. As the minutes of the meeting on October 26, 2015 bear out, the JBC proceedings focused on the voting of nominees. It is stressed that the crucial issue in the present case pertains to the clustering of nominees and not the nomination and qualifications of any of the nominees. This *ponente* only had the opportunity to express her opinion on the issue of the clustering of nominees for simultaneous and closely successive vacancies in collegiate courts in her *ponencia* in the instant case. As a Member of the Supreme Court, the *ponente* is duty-bound to render an opinion on a matter that has grave constitutional implications.

Neither is there any basis for the *ponente's* voluntary inhibition from the case at bar. Other than the bare allegations of the JBC, there is no clear and convincing evidence of the *ponente's* purported bias and prejudice, sufficient to overcome the presumption that she had rendered her assailed *ponencia* in the regular performance of her official and sacred duty of dispensing justice according to law and evidence and without fear or favor. Significant herein is the following disquisition of the Court on voluntary inhibition of judges in *Gochan v. Gochan*,[15] which is just as applicable to Supreme Court Justices:

> **In a string of cases, the Supreme Court has said 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 to the

---

14 G.R. No. 213181, August 19, 2014, 733 SCRA 279.

15 446 Phil. 433, 447-448 (2003).

> poor and the rich, the weak and the strong, the lonely and the well-connected. (Emphasis supplied.)

Furthermore, it appears from the admitted lack of consensus on the part of the JBC Members as to the validity of the clustering shows that the conclusion reached by the *ponente* did not arise from personal hostility but from her objective evaluation of the adverse constitutional implications of the clustering of the nominees for the vacant posts of Sandiganbayan Associate Justice. It is unfortunate that the JBC stooped so low in casting aspersion on the person of this *ponente* instead of focusing on sound legal arguments to support its position. There is absolutely no factual basis for the uncalled for and unfair imputation of the JBC that the *ponente* harbors personal hostility against the JBC presumably due to her removal as consultant. The *ponente's* removal as consultant was the decision of Chief Justice Sereno, not the JBC. The *ponente* does not bear any personal grudge or resentment against the JBC for her removal as consultant. The *ponente* does not view Chief Justice Sereno's move as particularly directed against her as Associate Justice Velasco had been similarly removed as JBC consultant. The *ponente* has never been influenced by personal motive in deciding cases. The *ponente*, instead, perceives the removal of incumbent Supreme Court Justices as consultants of the JBC as an affront against the Supreme Court itself as an institution, since the evident intention of such move was to keep the Supreme Court in the dark on the changes in rules and practices subsequently adopted by the JBC, which, to the mind of this *ponente*, may adversely affect the exercise of the supervisory authority over the JBC vested upon the Supreme Court by the Constitution.

All the basic issues raised in the Petition had been thoroughly passed upon by the Court in its Decision dated November 29, 2016 and the JBC already expressed its disinterest to question President Aquino's "cross-reaching" in his appointment of the six new Sandiganbayan Associate Justices.

Even if the Motion for Reconsideration and Motion for Reconsideration-in-Intervention of the JBC, praying for the grant of its Motion for Intervention and the reversal of the Decision dated November 29, 2016, are admitted into the records of this case and the issues raised and arguments adduced in the said two Motions are considered, there is no cogent reason to reverse the Decision dated November 29, 2016, particularly, in view of the admission of the JBC of the lack of unanimity among the JBC members on the issue involving the clustering of nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice and their disinterest to question the "cross-reaching" or non-observance by President Aquino of such clustering.

Hence, the Court will no longer belabor the issue that only three JBC Members signed the Motion for Intervention and Motion for

Reconsideration and only four JBC Members signed the Motion for Reconsideration-in-Intervention, as well as the fact that Chief Justice Sereno, as Chairperson of the JBC, did not sign the three Motions.

To determine the legal personality of the signatories to file the JBC Motions, the Court has accorded particular significance to who among the JBC Members signed the Motions and to Chief Justice Sereno's act of administering the oath of office to three of the newly-appointed Sandiganbayan Associate Justices, including respondent Econg, in resolving the pending Motions of the JBC. However, in its Motion for Reconsideration-in-Intervention, the JBC now reveals that not all of its Members agree on the official position to take in the case of President Aquino's appointment of the six new Sandiganbayan Associate Justices. Thus, the position of the JBC on the clustering of the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice rests on shaky legal ground.

The JBC takes exception as to why the Court allowed the Petition at bar even when it did not strictly comply with the rules, as it was filed beyond the 60-day period for filing a petition for *certiorari*. The Court, in its Decision dated November 29, 2016, gave consideration to petitioners' assertion that they had to secure first official copies of the six short lists before they were able to confirm that President Aquino, in appointing the six new Sandiganbayan Associate Justices, actually disregarded the clustering of nominees into six separate short lists. While the Court is hard-pressed to extend the same consideration to the JBC which made no immediate effort to explain its failure to timely question or challenge the appointments of respondents Econg and Musngi as Sandiganbayan Associate Justices whether before the OP or the courts, the Court will nevertheless now allow the JBC intervention by considering the issues raised and arguments adduced in the Motion for Reconsideration and Motion for Reconsideration-in-Intervention of the JBC in the interest of substantial justice.

Incidentally, it should be mentioned that the JBC reproaches the Court for supposedly hurrying the promulgation of its Decision on November 29, 2016 in anticipation of the impending vacancies in the Supreme Court due to the retirements of Associate Justices Perez and Brion in December 2016. On the contrary, it appears that it was the JBC which hurriedly proceeded with the two separate publications on August 4, 2016 and August 18, 2016 of the opening of the application for the aforesaid vacancies, respectively, which was contrary to previous practice, even while the issue of clustering was set to be decided by the Court. Moreover, a scrutiny of the process the Petition went through before its promulgation negates any haste on the part of the Court. Bear in mind that the Petition at bar was filed on May 17, 2016 and petitioners' Reply, the last pleading allowed by the Court in this case, was filed on August 3, 2016. The draft *ponencia* was calendared in the agenda of the Supreme Court *en banc*, called again, and deliberated upon several times before it was actually voted upon on November 29, 2016. Indeed, it appears

that it was the JBC which rushed to release the separate short lists of nominees for the said Supreme Court vacancies despite knowing the pendency of the instant Petition and its own filing of a Motion for Intervention herein on November 28, 2016. The JBC went ahead with the release of separate short lists of nominees for the posts of Supreme Court Associate Justice vice retired Associate Justices Perez and Brion on December 2, 2016 and December 9, 2016, respectively.

Even if the Court allows the intervention of the JBC, as it will now do in the case at bar, the arguments of the JBC on the merits of the case fail to persuade the Court to reconsider its Decision dated November 29, 2016.

a. The clustering of nominees for the six vacancies in the Sandiganbayan by the JBC impaired the President's power to appoint members of the Judiciary and to determine the seniority of the newly-appointed Sandiganbayan Associate Justices.

Noteworthy is the fact that the Court unanimously voted that in this case of six simultaneous vacancies for Sandiganbayan Associate Justice, the JBC acted beyond its constitutional mandate in clustering the nominees into six separate short lists and President Aquino did not commit grave abuse of discretion in disregarding the said clustering.

The JBC invokes its independence, discretion, and wisdom, and maintains that it deemed it wiser and more in accord with Article VIII, Section 9 of the 1987 Constitution to cluster the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice into six separate short lists. The independence and discretion of the JBC, however, is not without limits. It cannot impair the President's power to appoint members of the Judiciary and his statutory power to determine the seniority of the newly-appointed Sandiganbayan Associate Justices. The Court cannot sustain the strained interpretation of Article VIII, Section 9 of the 1987 Constitution espoused by the JBC, which ultimately curtailed the President's appointing power.

In its Decision dated November 29, 2016, the Court ruled that the clustering impinged upon the President's appointing power in the following ways: The President's option for every vacancy was limited to the five to seven nominees in each cluster. Once the President had appointed a nominee from one cluster, then he was proscribed from considering the other nominees in the same cluster for the other vacancies. All the nominees applied for and were found to be qualified for appointment to any of the vacant Associate Justice positions in the Sandiganbayan, but the JBC failed to explain why one nominee should be considered for appointment to the position assigned to one specific cluster only. Correspondingly, the nominees' chance for appointment was restricted to the consideration of the

one cluster in which they were included, even though they applied and were found to be qualified for all the vacancies. Moreover, by designating the numerical order of the vacancies, the JBC established the seniority or order of preference of the new Sandiganbayan Associate Justices, a power which the law (Section 1, paragraph 3 of Presidential Decree No. 1606[16]), rules (Rule II, Section 1(b) of the Revised Internal Rules of the Sandiganbayan[17]), and jurisprudence (*Re: Seniority Among the Four Most Recent Appointments to the Position of Associate Justices of the Court of Appeals*[18]), vest exclusively upon the President.

b. Clustering can be used as a device to favor or prejudice a qualified nominee.

The JBC avers that it has no duty to increase the chances of appointment of every candidate it has adjudged to have met the minimum qualifications for a judicial post. The Court does not impose upon the JBC such duty, it only requires that the JBC gives all qualified nominees **fair and equal opportunity** to be appointed. The clustering by the JBC of nominees for simultaneous or closely successive vacancies in collegiate courts can actually be a device to favor or prejudice a particular nominee. A favored nominee can be included in a cluster with no other strong contender to ensure his/her appointment; or conversely, a nominee can be placed in a cluster with many strong contenders to minimize his/her chances of appointment.

Without casting aspersion or insinuating ulterior motive on the part of the JBC – which would only be highly speculative on the part of the Court – hereunder are different scenarios, using the very same circumstances and nominees in this case, to illustrate how clustering could be used to favor or prejudice a particular nominee and subtly influence President Aquino's appointing power, had President Aquino faithfully observed the clustering.

The six nominees actually appointed by President Aquino as Sandiganbayan Associate Justices were the following:

---

16 Sec. 1. *Sandiganbayan; composition; qualifications; tenure; removal and compensation.* – 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.

17 Sec. 1. *Composition of the Court and Rule on Precedence.* –

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.

18 Supra note 8.

VACANCY IN THE SANDIGANBAYAN	PERSON APPOINTED	SHORT LISTED FOR	FORMER POSITION HELD
16th Associate Justice	Michael Frederick L. Musngi	21st Associate Justice	Undersecretary for Special Concerns/ Chief of Staff of the Executive Secretary, OP, for 5 years
17th Associate Justice	Reynaldo P. Cruz	19th Associate Justice	Undersecretary, Office of the Executive Secretary, OP, for 4-1/2 years
18th Associate Justice	Geraldine Faith A. Econg	21st Associate Justice	Former Judge, Regional Trial Court (RTC), Cebu, for 6 years Chief of Office, Philippine Mediation Center (PMC) Philippine Judicial Academy (PHILJA)
19th Associate Justice	Maria Theresa V. Mendoza-Arcega	17th Associate Justice	Judge, RTC, Malolos Bulacan, for 10 years
20th Associate Justice	Karl B. Miranda	20th Associate Justice	Assistant Solicitor General, Office of the Solicitor General (OSG), for 15 years
21st Associate Justice	Zaldy V. Trespeses	18th Associate Justice	Judicial Staff Head, Office of the Chief Justice (OCJ), Supreme Court, for 2 years

It would be safe to say that all the aforementioned six nominees were strong contenders. If all six nominees were placed in the same cluster, then only one of them would have been actually appointed as Sandiganbayan Associate Justice and the other five could no longer be considered for the still unfilled vacancies. If then Atty. Zaldy V. Trespeses (Trespeses), Judicial Staff Head, OCJ, was included in the cluster with respondent Econg, PHILJA Chief of Office for PMC, and respondent Musngi, Undersecretary for Special Concerns and Chief of Staff of the Executive Secretary, OP, then he would have lesser chance of being appointed as he would have to vie for a single vacancy with two other strong contenders; and only one of the three would have been appointed. Evidently, the appointments to the six simultaneous vacancies for Sandiganbayan Associate Justice would have been different by simply jumbling the clusters of nominees. Even if we go back in history, had the JBC clustered the nominees for the posts vacated by Supreme Court Associate Justices Leonardo A. Quisumbing (Quisumbing) and Minita V. Chico-Nazario (Chico-Nazario), and if Associate Justices Perez and Jose Catral Mendoza (Mendoza) were together in the same cluster, then only one of them would have been appointed. Also, had the JBC clustered the nominees for the vacancies resulting from the retirements of Supreme Court Associate Justices Antonio Eduardo B. Nachura

(Nachura) and Conchita Carpio Morales (Carpio Morales), and if Associate Justices Bienvenido L. Reyes (Reyes) and Estela M. Perlas-Bernabe (Perlas-Bernabe) were together in the same cluster, then the appointment of one of them would have already excluded the other.

c. There are no objective criteria, standards, or guidelines for the clustering of nominees by the JBC.

The problem is that the JBC has so far failed to present a legal, objective, and rational basis for determining which nominee shall be included in a cluster. Simply saying that it is the result of the deliberation and voting by the JBC for every vacancy is unsatisfactory. A review of the voting patterns by the JBC Members for the six simultaneous vacancies for Sandiganbayan Associate Justice only raises more questions and doubts than answers. It would seem, to the casual observer, that the Chief Justice and the four regular JBC Members exercised block voting most of the time. Out of the 89 candidates for the six vacancies, there were a total of 37 qualified nominees spread across six separate short lists. Out of the 37 qualified nominees, the Chief Justice and the four regular JBC Members coincidentally voted for the same 28 nominees **in precisely the same clusters**, only varying by just one vote for the other nine nominees.

It is also interesting to note that all the nominees were listed only once in just one cluster, and all the nominees subsequently appointed as Sandiganbayan Associate Justice were distributed among the different clusters, except only for respondents Econg and Musngi. Was this by chance or was there already an agreement among the Chief Justice and the regular JBC Members to limit the nomination of a candidate to a specific cluster for one specific vacancy, thus, excluding the same candidate from again being nominated in a different cluster for another vacancy? It is understandable that the Chief Justice and the four regular JBC Members would agree on whom to nominate because their nominations were based on the qualifications of the candidates. What is difficult to comprehend is how they determined the distribution of the nominees to the different clusters in the absence of any criteria or standard to be observed in the clustering of nominees. This was never explained by the JBC in any of its Motions even when the issue of clustering is vital to this case. Resultantly, the Court also asks why were respondents Econg and Musngi nominated in a single cluster? And why was then Atty. Trespeses not included in the same cluster as respondents Econg and Musngi, or the clusters of then Undersecretary Reynaldo P. Cruz, RTC Judge Maria Theresa V. Mendoza-Arcega, or Assistant Solicitor General Karl B. Miranda? Furthermore, what criteria was used when Chief Justice Sereno and the other four regular JBC Members voted for then Atty. Trespeses for only one particular cluster, *i.e.*, for the 18th Sandiganbayan Associate Justice, and nowhere else? Atty. Trespeses did not receive any vote in the other clusters except for the lone

vote for him of an *ex officio* JBC Member for the vacancy for the 21st Sandiganbayan Associate Justice.

The Court emphasizes that the requirements and qualifications, as well as the powers, duties, and responsibilities are the same for all vacant posts in a collegiate court, such as the Sandiganbayan; and if an individual is found to be qualified for one vacancy, then he/she is found to be qualified for all the other vacancies – there are no distinctions among the vacant posts. It is improbable that the nominees expressed their desire to be appointed to only a specific vacant position and not the other vacant positions in the same collegiate court, when neither the Constitution nor the law provides a specific designation or distinctive description for each vacant position in the collegiate court. The JBC did not cite any cogent reason in its Motion for Reconsideration-in-Intervention for assigning a nominee to a particular cluster/vacancy. The Court highlights that without objective criteria, standards, or guidelines in determining which nominees are to be included in which cluster, the clustering of nominees for specific vacant posts seems to be at the very least, totally arbitrary. The lack of such criteria, standards, or guidelines may open the clustering to manipulation to favor or prejudice a qualified nominee.

d. There is technically no clustering of nominees for first and second level trial courts.

The Court further points out that its Decision dated November 29, 2016 only discussed vacancies in collegiate courts. The constant referral by the JBC to separate short lists of nominees for vacant judgeship posts in first and second level trial courts as proof of previous clustering is inapt. The separate short lists in such situations are technically not clustering as the vacancies happened and were announced at different times and candidates applied for specific vacancies, based on the inherent differences in the location and jurisdiction of the trial courts, as well as the qualifications of nominees to the same, hence, justifying a separate short list for each vacant post.

e. While clustering of nominees was observed in the nominations for vacancies in the Court of Appeals in 2015, it escaped scrutiny as the appointments to said vacancies were not challenged before the Court.

As an example of previous clustering in a collegiate court, the JBC attached to its Motion for Reconsideration-in-Intervention a transmittal letter dated August 17, 2015 of the JBC addressed to President Aquino, which divided the nominees into four clusters for the four vacancies for Court of Appeals Associate Justice. The JBC contends that during the deliberations on said nominations, the *ponente* and Supreme Court Associate Justice

Velasco were both present as JBC consultants but did not raise any objection.

While it may be true that the JBC already observed clustering in 2015, it is still considered a relatively new practice, adopted only under Chief Justice Sereno's Chairmanship of the JBC. The clustering then escaped scrutiny as no party questioned the appointments to the said vacancies. The view of the consultants was also not solicited or requested by the JBC. The Court now observes that the vacancies for Court of Appeals Associate Justice in 2015 were not all simultaneous or closely successive, most of which occurring months apart, specifically, vice the late Associate Justice Michael P. Elbinias who passed away on November 20, 2014; vice retired Associate Justice Rebecca De Guia-Salvador, who opted for early retirement effective on January 31, 2015; vice Associate Justice Hakim S. Abdulwahid, who compulsorily retired on June 12, 2015; and vice Associate Justice Isaias P. Dicdican who compulsorily retired on July 4, 2015. Even so, the JBC published a single announcement for all four vacancies on March 15, 2015, with the same deadlines for submission of applications and supporting documents. This is in stark contrast to the two-week interval between the compulsory retirements of Supreme Court Associate Justices Perez and Brion on December 14, 2016 and December 29, 2016, respectively, for which the JBC still made separate publications, required submission of separate applications, separately processed the applications, and submitted separate short lists. Additionally, it is noteworthy that the nominations for the four vacant posts of Court of Appeals Associate Justice were contained in a single letter dated August 17, 2015, addressed to President Aquino, through then Executive Secretary Paquito N. Ochoa, Jr., whereas in the case of the Sandiganbayan, the JBC submitted six separate letters, all dated October 26, 2015, transmitting one short list for each of the six vacancies. The separate letters of transmittal further reinforce the intention of the JBC to prevent the President from "cross-reaching" or disregarding the clustering of nominees for the six vacancies for Sandiganbayan Associate Justice and, thus, unduly limit the President's exercise of his power to appoint members of the Judiciary.

f. The separate short lists for the current vacancies in the Supreme Court are not in issue in this case, but has been brought up by the JBC in its Motion for Reconsideration-in-Intervention.

The Court takes the occasion herein to clarify that the application of its ruling in the Decision dated November 29, 2017 to the situation involving closely successive vacancies in a collegiate court may be properly addressed in an actual case which squarely raises the issue. It also bears to stress that the current vacancies in the Supreme Court as a result of the compulsory retirements of Associate Justices Perez and Brion are **not in issue in this**

case, but has been brought to the fore by the JBC itself in its Motion for Reconsideration-in-Intervention. Therefore, the Court will refrain from making any pronouncements on the separate short lists of nominees submitted by the JBC to President Rodrigo Roa Duterte (Duterte) on December 2, 2016 and December 9, 2016 so as not to preempt the President's decision on how to treat the separate short lists of nominees for the two current vacancies in the Supreme Court. The Court will only address the statements made by the JBC in relation to said short lists by reciting some relevant historical facts relating to the filling-up of previous vacancies in the Supreme Court.

The JBC avers that it had no choice but to submit separate short lists of nominees to President Duterte for the vacancies for Supreme Court Associate Justice vice Associate Justices Perez and Brion, who retired on December 14, 2016 and December 29, 2016, respectively, because there were different sets of applicants for each, with 14 applicants for the seat vacated by Associate Justice Perez and 17 applicants for the seat vacated by Associate Justice Brion. The situation is the own doing of the JBC, as the JBC announced the expected vacancies left by the compulsory retirements of Associate Justices Perez and Brion, which were merely two weeks apart, through two separately paid publications on August 4, 2016 and August 18, 2016, respectively, in newspapers of general circulation; invited the filing of separate applications for the vacancies with different deadlines; and separately processed the applications of candidates to the said vacancies. The JBC would inevitably end up with two different sets of nominees, one set for the position vacated by Justice Perez and another set for that vacated by Justice Brion, notwithstanding that the JBC undeniably found all nominees in both sets to be qualified to be appointed as Associate Justice of the Supreme Court, as they all garnered at least four votes.

There had been no similar problems in the past because the JBC jointly announced simultaneous or closely successive vacancies in the Supreme Court in a single publication, invited the filing by a candidate of a single application for all the vacancies on the same deadline, jointly processed all applications, and submitted a single list of qualified nominees to the President, thus, resulting in a simple, inexpensive, and efficient process of nomination. Such was the case when the JBC announced the two vacancies for Supreme Court Associate Justice following the retirements of Associate Justices Quisumbing and Chico-Nazario in 2009. Pertinent portions of the JBC publication are reproduced below:

> The Judicial and Bar Council (JBC) announces the opening, for application or recommendation, of the: two (2) forthcoming vacant positions of **ASSOCIATE JUSTICE OF THE SUPREME COURT vice Hon. Leonardo A. Quisumbing and Hon. Minita V. Chico-Nazario**, who will compulsorily retire on 6 November and 5 December 2009, respectively, x x x
>
> Applications or recommendation for the two (2) positions in the Supreme Court must be submitted not later than **28 September 2009**

(Monday) x x x to the JBC Secretariat, 2nd Flr. Centennial Bldg., Supreme Court, Padre Faura St., Manila (Tel. No. 552-9512; Fax No. 552-9607; email address jbc_supreme court@yahoo.com.ph or jbc@sc.judiciary.gov.ph). Applicants or recommendees must submit six (6) copies of the following:

x x x x

The JBC, then headed by Supreme Court Chief Justice Reynato S. Puno, submitted to President Gloria Macapagal-Arroyo (Macapagal-Arroyo) a single short list dated November 29, 2009 with a total of six nominees for the two vacancies for Supreme Court Associate Justice, from which, President Macapagal-Arroyo appointed Associate Justices Perez and Mendoza.

The JBC again announced the two vacancies for Supreme Court Associate Justice due to the retirements of Associate Justices Nachura and Carpio Morales, thus:

The Judicial and Bar Council (JBC) announces the opening, for application or recommendation, of the following positions:

1. **ASSOCIATE JUSTICE OF THE SUPREME COURT (vice Hon. Antonio Eduardo B. Nachura and Hon. Conchita Carpio Morales**, who will compulsorily retire on 13 and 19 June 2011, respectively);

x x x x

Applications or recommendations for vacancies in nos. 1-3 must be filed on or before **28 March 2011 (Monday)** x x x to the JBC Secretariat, 2nd Flr. Centennial Bldg., Supreme Court, Padre Faura St., Manila (Tel. No. 552-9512; Fax No. 552-9598; email address jbc supremecourt@yahoo.com.ph. Those who applied before these vacancies were declared open must manifest in writing their interest on or before the said deadline. In case of recommendations, the recommendees must signify their acceptance either in the recommendation letter itself or in a separate document.

New applicants or recommendees for positions in the appellate courts must submit the following on or before **4 April 2011 (Monday)** x x x:

x x x x

The single short list dated June 21, 2011, submitted by the JBC, under the Chairmanship of Supreme Court Chief Justice Renato C. Corona, presented, for President Aquino's consideration, six nominees for the two vacant posts of Supreme Court Associate Justice, with President Aquino subsequently appointing Associate Justices Reyes and Perlas-Bernabe.

How the new procedure adopted by the JBC of submitting two separate lists of nominees will also affect the seniority of the two Supreme Court Associate Justices to be appointed to the current vacancies is another

issue that may arise because of the new JBC procedure. Unlike the present two separate lists of nominees specifying the vacant post to which they are short-listed for appointment, the short list of nominees submitted by the JBC before did not identify to which of the vacant positions, when there are more than one existing vacancies, a qualified candidate is nominated to as there was only one list of nominees for all vacancies submitted to the President. Correspondingly, the appointment papers issued by the President, as in the cases of Supreme Court Associate Justices Perez, Mendoza, Reyes, and Perlas-Bernabe, did not specify the particular vacant post to which each of them was appointed. The appointment papers of the afore-named Supreme Court Associate Justices were all similarly worded as follows:

> Pursuant to the provisions of existing laws, you are hereby appointed **ASSOCIATE JUSTICE OF THE SUPREME COURT**.
>
> By virtue hereof, you may qualify and enter upon the performance of the duties and functions of the office, furnishing this Office and the Civil Service Commission with copies of your Oath of Office.

As earlier stated, the Court makes no ruling on the above-mentioned divergence between the procedures in the nomination for existing vacancies in the Supreme Court followed by the JBC before and by the present JBC as it may be premature to do so and may prejudge whatever action President Duterte may take on the two separate short lists of nominees for the current Supreme Court vacancies which were submitted by the JBC.

g. The designation by the JBC of numbers to the vacant Sandiganbayan Associate Justice posts encroached on the President's power to determine the seniority of the justices appointed to the said court.

The JBC contends in its Motion for Reconsideration-in-Intervention that its individual members have different reasons for designating numbers to the vacant Sandiganbayan Associate Justice posts. The varying reason/s of each individual JBC Members raises the concern whether they each fully appreciated the constitutional and legal consequences of their act, *i.e.*, that it encroached on the power, solely vested in the President, to determine the seniority of the justices appointed to a collegiate court. Each of the six short lists submitted by the JBC to President Aquino explicitly stated that the nominees were for the Sixteenth (16th), Seventeenth (17th), Eighteenth (18th), Nineteenth (19th), Twentieth (20th), and Twenty-First (21st) Sandiganbayan Associate Justice, respectively; and on the faces of said short lists, it could only mean that President Aquino was to make the appointments in the order of seniority pre-determined by the JBC, and that nominees who applied for any of the vacant positions, requiring the same qualifications, were deemed to be qualified to be considered for appointment only to the one vacant

position to which his/her cluster was specifically assigned. Whatever the intentions of the individual JBC Members were, they cannot go against what has been clearly established by law,[19] rules,[20] and jurisprudence.[21] In its Decision dated November 29, 2016, the Court already adjudged that:

> Evidently, based on law, rules, and jurisprudence, the numerical order of the Sandiganbayan Associate Justices cannot be determined until their actual appointment by the President.
>
> It also bears to point out that part of the President's power to appoint members of a collegiate court, such as the Sandiganbayan, is the power to determine the seniority or order of preference of such newly appointed members by controlling the date and order of issuance of said members' appointment or commission papers. By already designating the numerical order of the vacancies, the JBC would be establishing the seniority or order of preference of the new Sandiganbayan Associate Justices even before their appointment by the President and, thus, unduly arrogating unto itself a vital part of the President's power of appointment.[22]

It is also not clear to the Court how, as the JBC avowed in its Motion for Reconsideration, the clustering of nominees for simultaneous vacancies in collegiate courts into separate short lists can rid the appointment process to the Judiciary of political pressure; or conversely, how the previous practice of submitting a single list of nominees to the President for simultaneous vacancies in collegiate courts, requiring the same qualifications, made the appointment process more susceptible to political pressure. The 1987 Constitution itself, by creating the JBC and requiring that the President can only appoint judges and Justices from the nominees submitted by the JBC, already sets in place the mechanism to protect the appointment process from political pressure. By arbitrarily clustering the nominees for appointment to the six simultaneous vacancies for Sandiganbayan Associate Justice into separate short lists, the JBC influenced the appointment process and encroached on the President's power to appoint members of the Judiciary and determine seniority in the said court, beyond its mandate under the 1987 Constitution. As the Court pronounced in its Decision dated November 29, 2016, the power to recommend of the JBC cannot be used to restrict or limit the President's power to appoint as the latter's prerogative to choose someone whom he/she considers worth appointing to the vacancy in the Judiciary is still paramount. As long as in the end, the President appoints someone nominated by the JBC, the appointment is valid, and he, not the JBC, determines the seniority of appointees to a collegiate court.

Finally, the JBC maintains that it is not bound by the Decision dated November 29, 2016 of the Court in this case on the ground that it is not a

---

19 Section 1, paragraph 3 of Presidential Decree No. 1606, supra note 16.

20 Rule II, Section 1(b) of the Revised Internal Rules of the Sandiganbayan, supra note 17.

21 *Re: Seniority Among the Four Most Recent Appointments to the Position of Associate Justices of the Court of Appeals,* supra note 8.

22 *Rollo*, p. 238.

party herein. The JBC prays in its Motion for Reconsideration and Motion for Reconsideration-in-Intervention, among other reliefs and remedies, for the Court to reverse its ruling in the Decision dated November 29, 2016 denying the Motion for Intervention of the JBC in the present case. However, **the Court has now practically allowed the intervention of the JBC in this case,** by taking into consideration the issues raised and arguments adduced in its Motion for Reconsideration and Motion for Reconsideration-in-Intervention, but which the Court found to be unmeritorious.

To recapitulate, the Petition at bar challenged President Aquino's appointment of respondents Econg and Musngi as Sandiganbayan Associate Justices, which disregarded the clustering by the JBC of the nominees for the six simultaneous vacancies in said collegiate court into six separate short lists. The Court ultimately decreed in its Decision dated November 29, 2016 that:

> President Aquino validly exercised his discretionary power to appoint members of the Judiciary when he disregarded the clustering of nominees into six separate shortlists for the vacancies for the 16th, 17th, 18th, 19th, 20th, and 21st Sandiganbayan Associate Justices. President Aquino merely maintained the well-established practice, consistent with the paramount Presidential constitutional prerogative, to appoint the six new Sandiganbayan Associate Justices from the 37 qualified nominees, as if embodied in one JBC list. This does not violate Article VIII, Section 9 of the 1987 Constitution which requires the President to appoint from a list of at least three nominees submitted by the JBC for every vacancy. To meet the minimum requirement under said constitutional provision of three nominees per vacancy, there should at least be 18 nominees from the JBC for the six vacancies for Sandiganbayan Associate Justice; but the minimum requirement was even exceeded herein because the JBC submitted for the President's consideration a total of 37 qualified nominees. All the six newly appointed Sandiganbayan Associate Justices met the requirement of nomination by the JBC under Article VIII, Section 9 of the 1987 Constitution. Hence, the appointments of respondents Musngi and Econg, as well as the other four new Sandiganbayan Associate Justices, are valid and do not suffer from any constitutional infirmity.[23]

The declaration of the Court that the clustering of nominees by the JBC for the simultaneous vacancies that occurred by the creation of six new positions of Associate Justice of the Sandiganbayan is unconstitutional was only incidental to its ruling that President Aquino is not bound by such clustering in making his appointments to the vacant Sandiganbayan Associate Justice posts. Other than said declaration, the Court did not require the JBC to do or to refrain from doing something insofar as the issue of clustering of the nominees to the then six vacant posts of Sandiganbayan Associate Justice was concerned.

---

23 Id. at 242.

As for the other new rules and practices adopted by the JBC which the Court has taken cognizance of and docketed as a separate administrative matter (*viz.*, ***Item No. 2***: the deletion or non-inclusion in JBC No. 2016-1, or the Revised Rules of the Judicial and Bar Council, of Rule 8, Section 1 of JBC-009; and ***Item No. 3***: the removal of incumbent Senior Associate Justices of the Supreme Court as consultants of the Judicial and Bar Council, referred to in pages 45 to 51 of the Decision dated November 29, 2016), the JBC is actually being given the opportunity to submit its comment and be heard on the same. The administrative matter was already raffled to another *ponente*, thus, any incident concerning the same should be consolidated in the said administrative matter.

Regarding the Separate Opinion of Associate Justice Caguioa, it must be pointed out that he has conceded that the President did not commit an unconstitutional act in "disregarding the clustering done by the JBC" when he chose Associate Justices of the Sandiganbayan "outside" of the "clustered" lists provided by the JBC.

WHEREFORE, premises considered, except for its motion/prayer for intervention, which the Court has now granted, the 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) of the Judicial and Bar Council are **DENIED** for lack of merit.

Nota bene: The Court has agreed not to issue a ruling herein on the separate short lists of nominees submitted by the Judicial and Bar Council to President Rodrigo Roa Duterte for the present vacancies in the Supreme Court resulting from the compulsory retirements of Associate Justices Jose P. Perez and Arturo D. Brion because these were not in issue nor deliberated upon in this case, and in order not to preempt the decision the President may take on the said separate short lists in the exercise of his power to appoint members of the Judiciary under the Constitution.

SO ORDERED.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

No part
MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Senior Associate Justice, Presiding

I concur in the result. (Please see separate opinion. The November 29, 2016 Decision does not apply to closely successive vacancies like those created with the ~~~~ retirement of Justices Brion and Perez.

PRESBITERO J. VELASCO, JR.
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

I concur in the result, and also join the separate opinion of J. Leonen

(ON LEAVE)
BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

I concur in the result. See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

See Separate Opinion.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ANTONIO T. CARPIO
Senior Associate Justice