

A.M. NO. 17-07-05-SC – RE: MEMORANDUM DATED JULY 10, 2017 FROM ASSOCIATE JUSTICE TERESITA J. LEONARDO-DE CASTRO

A.M. NO. 18-02-13-SC – RE: LETTER OF RESIGNATION OF ATTY. BRENDA JAY ANGELES MENDOZA, PHILJA CHIEF OF OFFICE FOR THE PHILIPPINE MEDIATION CENTER

Promulgated:

July 3, 2018

x-----x

SEPARATE OPINION

CAGUIOA, J.:

At the outset, it may be advisable to clarify the Court’s power of appointment of court officials and employees.

Justice Teresita J. Leonardo-De Castro has posited that Article VIII, Section 5, paragraph 6 of the 1987 Constitution is cited as vesting upon the Supreme Court the power to appoint all officials and employees of the Judiciary in accordance with the Civil Service Laws. She asserts further that: “Hence, unless duly delegated by Court resolution, the power to appoint court officials and employees can only be exercised by the Court *en banc*.”¹

It is not disputed that the Court adopted A.M. No. 99-12-08-SC (Revised) on April 22, 2003 which provides in paragraph II(a): “To **REFER** to the Chairmen of the Divisions for their appropriate action or resolution, for and in behalf of the Court *En Banc*, administrative matters relating to, or in connection with x x x Appointment and revocation or renewal of appointments of regular (including coterminous), temporary, casual, or contractual personnel in the Supreme Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts (including the Sharia’h courts), the Philippine Judicial Academy (PHILJA), and the Judicial and Bar Council (JBC); officers and members of existing committees; and consultants.” However, Justice De Castro takes the position, citing *Manalang v. Quitariano*,² that the term “personnel” is used generally to refer to subordinate officials or clerical employees of an office or enterprise, and not to managers, directors or heads thereof and should not include high ranking officials or highly technical and/or policy determining third level positions below that of the Chief Justice and Associate Justices.

¹ Memorandum dated July 10, 2017 from J. De Castro, p. 3.

² 94 Phil. 903, 910 (1954).



A.M. No. 05-9-29-SC dated September 27, 2005 enumerates the highly technical and/or policy-determining third level positions below that of the Chief Justice and Associate Justices, including those in the PHILJA and the JBC. It also provides that any third level position with Salary Grade 26 or higher which may thereafter be created in the Court, PHILJA or JBC will, unless otherwise indicated, be deemed highly technical or policy-determining.

Chapter Two of the Supreme Court Human Resources Manual (SC HR Manual), entitled “Personnel Policies and Procedures,” which was approved by the Court *En Banc* as A.M. No. 00-6-1-SC dated January 31, 2012 provides the procedure in filling Career Positions, which include the Chief Justice’s assessment of the merits of the Selection and Promotion Board’s recommendation for appointment and the selection of appointees to third-level positions which have been classified by the Court as highly technical and/or policy-determining pursuant to A.M. No. 05-9-29-SC dated September 27, 2005 by the Chief Justice with the concurrence of the Chairmen of the Divisions pursuant to A.M. No. 99-12-08-SC.

There is, as well, no question that the delegation of the power to appoint personnel by the Court *En Banc* to the Chief Justice with the concurrence of the Division Chairmen is clearly within the inherent power of the Court *En Banc*. There is also no dispute that this delegation was impelled by the desire to lessen the administrative burden of the Court *En Banc*. With the adoption of the SC HR Manual in 2012 by the Court *En Banc*, there is no question in my mind that this desire subsisted then and that the pros and cons of such delegation were surely ventilated and thoroughly discussed.

Proceeding to the matter on the appointment of Atty. Brenda Jay C. Angeles-Mendoza (Atty. Angeles-Mendoza) as Philippine Mediation Center Office (PMCO) Chief of Office, the Comment dated October 27, 2017 of the PHILJA Acting Chancellor, Justice Romeo Callejo, Sr., proposes that the validity of the appointment should be determined based on the resolution of two sub-issues, namely: (1) whether the PHILJA through a Resolution of the Board of Trustees (BOT) is mandated to recommend the appointment of Atty. Angeles-Mendoza as PMCO Chief of Office under Section 2(B) of Administrative Order (A.O.) No. 33-2008 issued on February 12, 2008 (adopting A.M. No. 08-2-5-SC-PHILJA); and (2) whether the Court *En Banc* should act on and approve or deny the recommendation of the PHILJA BOT for the appointment of Atty. Angeles-Mendoza. I concur that this proposal is the correct approach.

Sub-issue No. 1

Section 2(B) of A.O. No. 33-2008 provides in part: “The Philippine Mediation Center Office shall have a PHILJA Chief of Office for PMC who



shall be appointed by the Court, **upon recommendation of PHILJA**, for a term of two years without prejudice to subsequent reappointment.”

The PHILJA Comment outlined the procedure that had been followed in Atty. Angeles-Mendoza’s appointment, thus: (a) The PHILJA Management Committee created a Screening Committee chaired by PHILJA Chancellor Justice Adolfo S. Azcuna, with PHILJA Vice Chancellor Justice Callejo, Sr. and Academic Affairs Chief of Office Justice Delilah Vidallon-Magtolis, as members; (b) The Screening Committee interviewed and screened the five applicants; (c) The PHILJA, through Chancellor Justice Azcuna, submitted a “Report and Recommendation” to Chief Justice Sereno.

Apparently, Atty. Angeles-Mendoza was appointed to her present office based on that Recommendation. Memorandum Order No. 26-2016, entitled “Appointing the Philippine Judicial Academy (PHILJA) Chief of Office for the Philippine Mediation Center,” contains the following WHEREAS clauses:

WHEREAS, evaluations have been made based on the criteria for the selection of the most qualified applicants;

WHEREAS, the Philippine Judicial Academy has submitted its recommended applicant to the position, for a term of two (2) years, without prejudice to subsequent reappointment.

Essentially, the PHILJA takes the position that the Recommendation by PHILJA Chancellor Justice Azcuna based on the results of the Screening Committee’s evaluation of the applicants for the subject position is substantially a “recommendation of PHILJA,” and is in accord with Section 2(B) of A.O. No. 33-2008. The contrary view is that such Recommendation is insufficient because what is required is a Resolution by the PHILJA BOT, the principal argument being that PHILJA, being a juridical entity, can only act through its BOT.

Based on PHILJA’s Comment, the selection and recommendation of the Chief of Office of PMCO since retired Deputy Court Administrator (DCA) Bernardo Ponferrada’s appointment up to Atty. Angeles-Mendoza’s appointment did not follow a specific procedure. While there was a PHILJA BOT Resolution in the appointment of then Judge Geraldine Faith Econg as Chief of Office of the PMCO, the designation of retired Justice Marina Buzon as Acting Chief of Office was through a recommendation letter of Chancellor Justice Azcuna. PHILJA’s Comment also admits that DCA Ponferrada was not recommended by the BOT of PHILJA. In other words, based on this representation of historical antecedents, the Court’s practice in the appointment of the PHILJA PMCO Chief of Office has not been consistent.

PHILJA, in asserting that the appointment of Atty. Angeles-Mendoza was valid, cites certain administrative issuances (A.M. No. 01-1-04-SC dated September 23, 2000, Revised A.O. No. 02-2009 dated March 10, 2015 and Section 2[A] of A.O. No. 33-2008) where the PHILJA BOT's action is expressly required, unlike in Section 2(B) of A.O. No. 33-2008 which only mentions "recommendation of PHILJA."

While there may be a need to clarify what actions require PHILJA BOT approval and recommendation and whether a specific BOT resolution is required to accompany such approval and recommendation, I take the view, in respect of Atty. Angeles-Mendoza's appointment, that the failure to follow the "strict view," *i.e.*, requiring a BOT Resolution, as espoused by Justice De Castro, is not a fatal defect that cannot be remedied. To date, and this is not disputed, the PHILJA BOT has not revoked Chancellor Justice Azcuna's recommendation of Atty. Angeles-Mendoza's appointment. Neither has the PHILJA BOT questioned Chancellor Justice Azcuna's action. Moreover, as Atty. Angeles-Mendoza had stated in her Memorandum, she had been invited to attend meetings of the PHILJA BOT to report and answer queries about important PMC policy matters.³ In other words, the fact that PHILJA BOT has not, to date, done any act to countermand the actions of Chancellor Justice Azcuna's recommendation and action leads me to believe that there has, at the very least, been an implied ratification of Chancellor Justice Azcuna's recommendation.

In this regard, the Court should not lose sight of the fact that the appointment of Atty. Angeles-Mendoza was signed not only by the Chief Justice, but also by the two other most senior justices of the Court. The three most senior members of the Court, who have the authority to appoint the PMCO Chief of Office as discussed below, have found the Recommendation by PHILJA Chancellor Justice Azcuna compliant and sufficient.

Sub-issue No. 2

Proceeding to the second sub-issue, the PMCO Chief of Office has a Salary Grade of 30 which is the same as that of an Associate Justice of the Court of Appeals. A.M. No. 05-9-29-SC (September 27, 2005) provides that any third level position with Salary Grade 26 or higher which may thereafter be created in the Court, PHILJA or JBC will, unless otherwise indicated, be deemed highly technical or policy-determining. In turn, the SC HR Manual (approved on January 31, 2012) provides that the appointment and the selection of appointees to third-level positions which have been classified by the Court as highly technical and/or policy-determining pursuant to A.M. No. 05-9-29-SC requires only the approval of the Chief Justice with the concurrence of the Chairmen of the Divisions pursuant to A.M. No. 99-12-08-SC.

³ Memorandum dated October 20, 2017 by Atty. Brenda Jay C. Angeles-Mendoza, p. 7, C.2.



I submit that regardless of what has been the practice in the past, if ever there was such a “practice,” the SC HR Manual should now be viewed as taking precedence and should be followed.

In the Court’s Resolution, it is observed that:

The Resolution dated September 29, 2005 in A.M. No. 05-9-29-SC was issued after A.M. No. 99-12-08-SC (Revised). However, A.M. No. 05-9-29-SC itself does not state that it modifies, amends, or supplements A.M. No. 99-12-08-SC (Revised). A.M. No. 05-9-29-SC does not contain any express grant to the Chairpersons of the Division[s] the power to appoint all personnel enumerated in it. Moreover, as shown above, some positions listed in A.M. No. 05-9-29-SC continue to be appointed by the Court *En Banc*. Thus, A.M. No. 05-9-29-SC cannot serve as a clear and unequivocal source of the delegated power of appointment of all third-level personnel to the Chairpersons of the Divisions.⁴

It will be recalled that then Judge Geraldine Faith A. Econg, who was Chief of Office of the PMCO, was promoted Associate Justice of the Sandiganbayan in January 2016,⁵ and Atty. Angeles-Mendoza’s appointment as PHILJA Chief of Office of the PMCO took effect on June 28, 2016.⁶

Given the timeline, the SC HR Manual, which was approved by the Court *En Banc* as A.M. No. 00-6-1-SC dated January 31, 2012, was then in effect.

The SC HR Manual states:

Chapter Two
PERSONNEL POLICIES AND PROCEDURES

The Supreme Court shall have (a) the power to appoint all officials and employees of the Judiciary; and (b) administrative supervision over all courts and personnel thereof, conformably with the 1987 Constitution.⁷

Appointments of personnel in the Judiciary shall be referred to the Chief Justice and the Chairpersons of the Divisions.⁸

I. Classes of Positions:⁹

Positions in the Civil Service are classified into Career and Non-Career service.

A. Career Service is characterized by

⁴ *Ponencia*, p. 28.

⁵ Comment, *J. Romeo J. Callejo, Jr., Acting Chancellor, PHILJA*, p. 11.

⁶ Memorandum Order No. 26-2016 signed by *C.J. Sereno*, Chairperson of the Second Division *J. Carpio*, and Chairperson of the Third Division *J. Velasco, Jr.*

⁷ CONSTITUTION, Art. VIII, Sec. 5(6).

⁸ See Administrative Matter (AM) No. 99-12-08-SC, January 18, 2000.

⁹ CSC Omnibus Rules Implementing Book V, EO 292 and Other Pertinent Civil Service Laws.



1. entrance based on merit and fitness to be determined by competitive examination or highly technical qualifications;
2. opportunity for advancement to higher career positions; and
3. security of tenure.

Positions in the Career Service are grouped into three major levels as follows.

1. First-Level – x x x
2. Second-Level – x x x
3. Third-Level – includes the positions from Court Attorney V to Chiefs of Offices which have been classified by the Court as highly technical and/or policy determining pursuant to AM No. 05-9-29-SC, dated September 27, 2005.

B. Non-Career Service is characterized by

x x x x

Since the SC HR Manual expressly took into consideration both A.M. No. 05-9-29-SC and A.M. No. 99-12-08-SC (Revised), I see no ambiguity or vagueness in the delegated power of appointment by the Chief Justice and the Chairpersons of the Second and Third Divisions. As of its adoption on January 31, 2012, the SC HR Manual should govern the appointments of personnel in the Judiciary. Since it was adopted prior to Atty. Angeles-Mendoza's appointment, the SC HR Manual should control and be applied accordingly to determine the validity of Atty. Angeles-Mendoza's appointment. The appointment of Atty. Angeles-Mendoza by the Chief Justice and the Chairpersons of the Second and Third Divisions of the Court is, as stated earlier, in conformity with the SC HR Manual.

I take the position that the observation in the Resolution that the rules of appointment in the SC HR Manual "have been inconsistently applied, or contradict this Court's own practices"¹⁰ does not *per se* invalidate the appointment of Atty. Angeles-Mendoza because her appointment was consistent with the SC HR Manual. There is legal basis for her appointment, and until the SC HR Manual is amended or superseded, it must be accorded legal respect.

That the Resolution now seeks to exclude from "[t]he delegation to the Chief Justice and the Chairpersons of the Divisions in [the SC HR Manual] of the power of appointment and revocation or renewal of appointments x x x in this Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts (including the Sharia'h courts), the Philippine Judicial Academy, and the Judicial and Bar Council x x x personnel with salary grades 29 and higher, and those with judicial rank"¹¹ is a recognition that such

¹⁰ Ponencia, p. 28.

¹¹ Id. at 38-39.



delegation at least insofar as the appointment of the PMCO Chief of Office with Salary Grade of 30 is concerned exists and is in effect.

While Justice De Castro opines that the SC HR Manual is a “mere compilation of laws, issuances and circulars governing personnel and records management for the Judiciary and it is not intended to repeal, modify, or set aside existing rules, regulations, or resolutions specifically adopted by the Court *en banc*,” I invite attention to the *Foreword* of the SC HR Manual written by former Justice Arturo D. Brion who states that “[t]he Manual’s current updating was made by the Judicial Reform Support Project (JRSP) Sub-Committee on Enhancing Institutional Integrity CWC-SB (*Sub-Committee*) with the objective of having “a single repository of all laws, issuances and circulars governing personnel and records management for the entire Judiciary.”¹²

In private institutions, an HR Manual or employee handbook is required to be read and conformed to prior to employment. It is part of the employment contract. This is so because the current policies on personnel, including their appointment, promotion, separation, benefits, privileges, leaves and travel, are part thereof. To a private employee, it is a Bible so to speak of what he expects from his employer and *vice-versa*.

Thus, the SC HR Manual is not inconsequential and non-binding. To be sure, I refer to the following *Message* of the late Chief Justice Renato C. Corona:

x x x the *Human Resource Manual* [is] a specific set of guidelines for us men and women in the Judiciary in the exercise of our duties as administrators of justice.

x x x x

The Judiciary’s high regard for integrity dismisses any argument for the redundancy of the *Manual* in ensuring the proper functioning of our courts. Indeed, just as it cannot be overemphasized that the credibility of our courts depends on the confidence of the people in the Judiciary, so can we not over stress to members of the Court the need for a clean, competent, and cohesive judicial workforce. This *Manual*, covering justices, judges, officials, and employees in courts all over the country, gives members of the judicial branch a clearer picture of the exacting standards required from us in the delivery of judicial services, from the moment we enter the Judiciary, to every minute spent at work, to the time we leave the service.¹³

Moreover, the SC HR Manual is the “result of a series of consultative, collaborative, and comprehensive study, [and] serves to benefit both the public and the courts. On one hand, it draws up a framework within which

¹² *Foreword* of former Associate Justice Arturo D. Brion, Chairperson of JRSP Sub-Committee on Institutional Integrity CWC-B, Human Resource Manual of the Supreme Court, Republic of the Philippines (2012), p. xi.

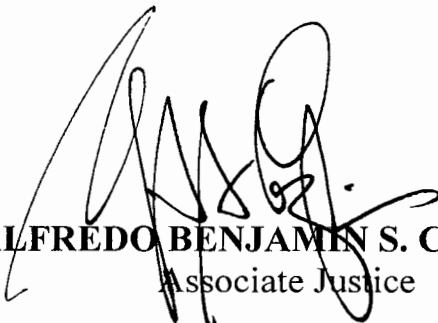
¹³ *Message* of the late Chief Justice Renato C. Corona, id. at ix-x.

we in the Judiciary are to perform our duties towards an effective, efficient, and economic administration of justice. It also provides a system of checks and controls to make us accountable as we serve the public. On the other hand, the *Manual* also lays down policies to protect the welfare of court officials and employees, giving us the means to assert our rights as members of the Court. As a guide, the *Manual* also serves to steer personnel to the right direction, allowing us to achieve both professional and personal growth.”¹⁴

If this matter involving Atty. Angeles-Mendoza calls for revisiting, at this juncture, the delegation policy of the power to appoint personnel after almost five years of effectivity of the SC HR Manual, then it is incumbent upon all to pinpoint exactly the parameters wherein the present policy needs improvement, if any. In this regard, the lessons learned, if any, from the five-year implementation of the policy are valuable. To totally disregard the existing policy is, I believe, a step backward. Indeed, with the gargantuan loads of the individual justices on judicial matters, there is, in my case, a legitimate concern to be relieved of administrative matters — which thereby supports the continuance of the delegation policy.

Given the foregoing, it is my position that the appointment of Atty. Angeles-Mendoza as PHILJA Chief of Office for the PMCO is valid. I believe that a resolution in favor of validity is not only legally sound, it is also the equitable position to take under the circumstances. I say this because there is no question that Atty. Angeles-Mendoza, considering the major accomplishments she has, to date, achieved as PMCO Chief of Office,¹⁵ has no fault in any of these developments. As well, her contributions in the Supreme Court Technical Working Groups¹⁶ may be for naught if her appointment is deemed invalid.

While the intervening resignation¹⁷ of Atty. Angeles-Mendoza may have rendered the issue on the validity of her appointment moot and academic, a resolution in favor of validity will remove any black mark that this unfortunate matter may have cast upon her career in the judiciary. Surely, as an innocent, she rightfully deserves this.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

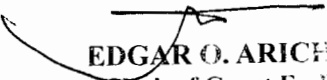
¹⁴ *Message of the late Chief Justice Renato C. Corona*, id. at x.

¹⁵ Atty. Angeles-Mendoza's Memorandum, pp. 6-7.

¹⁶ See id. at 7.

¹⁷ Per Letter of Atty. Angeles-Mendoza dated February 20, 2018.

CERTIFIED TRUE COPY



EDGAR O. ARICHETA
Clerk of Court En Bala
Supreme Court