G.R. No. 237428 *(Republic of the Philippines, represented by Solicitor General Jose C. Calida, petitioner, v. Maria Lourdes P.A. Sereno, respondent)*

Promulgated:

May 11, 2018

x -- x

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.
>
> 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

---

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).

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.

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

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."

---

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.

(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 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]

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

---

6 Annex "C," id.
7 Annex "D," id.
8 498 Phil. 395 (2005).
9 Par. 2.67, p. 65, *Comment Ad Cautelam*.

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 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

[10] Par. 2.69.7, p. 67, id.

> (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 Teresit 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.
>
> 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.
>
> 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 still there po.

---

[11] TSN, 12 February 2018, p. MLMR/XI – 2.

[12] Id. at MLMR/VI – 3.

REP. VELOSO. So hindi nila natanggap?

MS. TY-CAPACITE. Per this document, they did po.

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]

xxx

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 Members were not assigned to any particular office while we do now. So, Your

[13] Id. at HLEF/XXII – 2.
[14] Id. at HLEF/XXII – 3.

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)

xxx

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]

xxx

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:

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?

---

[15] Id. at LCLV/XIII – 2.

[16] Id. at HLEF/XXII – 4.

[17] Id. at MLMR/XXVI – 3.

> 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 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]

---

[18] Id. at MLMR/XXVI – 4.

[19] Id. at LCLV/XXIII – 1 to 3.

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:

> 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:

---

20 *Chief Justice Renato C. Corona v. Senate of the Philippines*, 691 Phil. 156, 170 (2012).
21 Id.
22 Id.

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-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
>
> 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

---

[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.

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. 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 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)

[25] 686 Phil. 571 (2010), En Banc, per J. Velasco.

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.

---

[26] Id. at 603-604.

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 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	ARTICLE XIII **ACCOUNTABILITY OF PUBLIC OFFICERS**	ARTICLE XI Accountability of Public Officers
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.	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.	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. 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 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:

---

27 *Macalintal v. Presidential Electoral Tribunal (Macalintal)*, 650 Phil. 326, 340 (2010), per J. Nachura.
28 142 Phil. 393 (1970), cited in *Macalintal,* supra.
29 Merriam-Webster Dictionary; at https://www.merriamwebster.com/dictionary/accountability.

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:

> 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]

[30] Records of the Deliberations of the Constitutional Commission, Volume II, p. 278.

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.
>
> 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
>
> (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 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]

---

31 Id. at 272.

32 See Records of the Deliberations of the Constitutional Commission, Volume II, p. 352.

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.

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

---

[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.

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;
>
> (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
>
> **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
>
> **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.

[35] Section 5 (5), Article VIII, 1987 Constitution.

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 highlight 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 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

---

[36] 491 Pa. 470 (1980); 421 A.2d 641.

[37] *Brinton v. Kerr*, 320 Pa. 62, 63-64, 181 A. 569, 570 (1935); *Schermer v. Franek*, 311 Pa. 341, 166 A. 878 (1933).

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 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

---

38 *Spykerman v. Levy*, 491 Pa. 470, 484-485 (1980).
39 406 Phil. 1(2001).
40 243 Phil. 167 (1988).
41 A.C. No. 4509, 5 December 1995, 250 SCRA xi-xiv.
42 601 Phil. 470 (2009).

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 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 <u>or</u> 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:

---

[43] *Santiago v. Guingona*, 359 Phil. 276, 302-303 (1998).

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. 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 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 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.

---

[44] Administrative Code, Section 35, Chapter 12, Title III, Book IV.
[45] Code of Professional Responsibility, Canon 13, Rule 13.02.

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.

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

---

[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).

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.

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 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 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.

[48] 255 Phil. 934 (1989).

> 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 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.

---

[49] Id. at 944-945.

[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.

> 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 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 transcendental importance. There, the

[51] 629 Phil. 629 (2010).

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)

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:

---

[52] TSN, Oral Arguments, 10 April 2018, pp. 26-27.

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]

xxx xxx xxx

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]

xxx xxx xxx

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...

---

53 Id. at 27.
54 Id. at 48.

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, 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:

---

[55] Id. at 57-58.

[56] Id. at 61.

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.

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)

xxx xxx xxx

[57] Id. at 147-148.

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...

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.

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

---

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.

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:

x x x x

> 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 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.

---

[63] Section 34, Rules 130, Rules of Court.

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.

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:

---

[64] As corrected on May 7, 2018.

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.

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 and 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, ituturing 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?*)

---

65 https://www.rappler.com/nation/201854-sereno-quo-warranto-destroy-judicial-independence. Last visited: 10 May 2018 7:14pm.

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?

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.
>
> 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.
>
> xxx xxx xxx

[66] Section 1, Rule 8 of A.M. No. 10-4-20-SC.

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.

SAMUEL R. MARTIRES
Associate Justice