

**EN BANC**

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

Promulgated:

May 11, 2018

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**CONCURRING AND DISSENTING OPINION**

**VELASCO, JR., J.:**

I share the view that the remedy of *quo warranto* is available to unseat, in the extreme, even an impeachable officer. This submission, however, should be assayed against the backdrop where the respondent's eligibility and qualifications have been passed upon by the Judicial and Bar Council (JBC) before she was nominated. As her nomination, which is matter of public record, has not been timely challenged, much less nullified, the JBC's findings on her eligibility and qualification should be respected.

***Quo Warranto is available even against impeachable officers***

Section 2, Article XI of the 1987 Constitution provides that a member of the Supreme Court, among other officials, may be removed from office by way of impeachment proceedings "for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust," viz:

**ARTICLE XI**

***Accountability of Public Officers***

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

Nothing in the adverted provision, however, precludes a resort to *quo warranto* as a means to unseat a member of this Court or any impeachable officer. After all, a *quo warranto* and impeachment proceedings are anchored on different grounds and governed by different procedural mechanisms.

On one hand, a removal by impeachment presupposes that the officer subject of the proceeding had *legally assumed his office*, which in turn means he had all the qualifications and none of the qualifications therefor. His assumption to office was legal but a *subsequent act* (*i.e.*, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust) rendered him unworthy to remain in office and so he must be removed by impeachment proceedings.

A *quo warranto* proceeding, on the other hand, is brought against a person who is alleged to have usurped, intruded into, or unlawfully held or exercised a public office.<sup>1</sup> Section 1, Rule 66 of the Rules of Court provides, thus:

SECTION 1. Action by Government against individuals. — An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:

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

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

As pointed out by the Republic, the postulate that *quo warranto* is available even against an impeachable officer is recognized in the 2010 Rules of the Presidential Electoral Tribunal,<sup>2</sup> which allows the initiation of an Election Protest against the President and Vice-President—both impeachable officers—by the filing a petition for *quo warranto*. The Rules pertinently provide:

RULE 14. How Initiated. — An election contest is initiated by the filing of an election protest or a petition for *quo warranto* against the President or Vice-President. An election protest shall not include a petition for *quo warranto*. A petition for *quo warranto* shall not include an election protest. (R13)

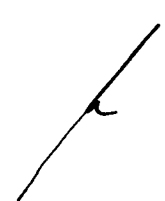
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RULE 16. Quo Warranto. — A verified petition for *quo warranto* contesting the election of the President or Vice-President on the ground of ineligibility or disloyalty to the Republic of the Philippines may be filed by any registered voter who has voted in the election concerned within ten days after the proclamation of the winner. (R16)

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<sup>1</sup> *Arquero v. Court of Appeals*, 673 Phil. 545 (2011).

<sup>2</sup> The 2010 Rules of the Presidential Electoral Tribunal, A.M. No. 10-4-29-SC, May 4, 2010.



In fact, this special civil action proceedings is not a case of first impression. Indeed, the Court had previously assumed jurisdiction over a petition for *quo warranto* seeking the ouster of an impeachable officer. In *Estrada v. Desierto*,<sup>3</sup> this Court took cognizance of a *quo warranto* petition commenced by Joseph Ejercito Estrada against then sitting President Gloria Macapagal-Arroyo even after she has taken her oath and assumed her office.

The acknowledgment by this Court of the availability of the petition for *quo warranto* against an impeachable officer neither strengthens nor weakens the tribunal, as some have insinuated. Wielding the power to inquire into the legitimacy of an impeachable officer's appointment or election does not make the tribunal vulnerable nor omnipotent. On the contrary, by allowing a *quo warranto* petition even against an impeachable officer, the Court does no more but adhere to its judicial duty to exercise jurisdiction "over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus."<sup>4</sup> It does not depart from any established precedents, let alone stray from the rule of law.

***Nullity of the JBC Nomination is a condition sine qua non to the filing of a petition for quo warranto against a member of the Supreme Court***

That being said, I do not subscribe to the hypothesis that the instant petition for *quo warranto* can unseat respondent Chief Justice Maria Lourdes P. A. Sereno.

Unlike the other impeachable officers listed in the adverted Section 2, Article XI of the 1987 Constitution, the members of the Supreme Court and the Ombudsman and her deputies, for that matter, had to pass through rigorous scrutiny by an office created by constitutional mandate—the Judicial and Bar Council (JBC).<sup>5</sup> Sections 8 and 9, Article VIII of the Constitution explicitly provide that only those who were short listed by the JBC can be appointed to this Court, *viz*:

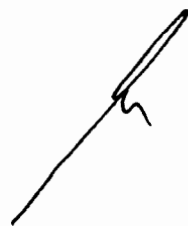
SECTION 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

(2) The regular Members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the

<sup>3</sup> *Estrada v. Desierto*, 406 Phil. 1 (2001).

<sup>4</sup> Section 5, Article VIII, The 1987 Constitution.

<sup>5</sup> See also Executive Order No. 216. *Effectivity of the Creation of a Judicial and Bar Council*.



Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.

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**(5) The Council shall have the principal function of recommending appointees to the Judiciary.** It may exercise such other functions and duties as the Supreme Court may assign to it.

**SECTION 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy.** Such appointments need no confirmation.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.<sup>6</sup>

In *Villanueva v. Judicial and Bar Council*,<sup>7</sup> the Court elucidated on the primary function of the JBC. At the minimum, the JBC is charged with the duty of screening aspiring justices, making certain that those who are nominated for an appointment to the Supreme Court possess all the eligibilities and qualifications set by the Constitution<sup>8</sup> for a judicial post:<sup>9</sup>

As an offspring of the 1987 Constitution, the JBC is mandated to recommend appointees to the judiciary and only those nominated by the JBC in a list officially transmitted to the President may be appointed by the latter as justice or judge in the judiciary. Thus, the JBC is burdened with a great responsibility that is imbued with public interest as it determines the men and women who will sit on the judicial bench. While the 1987 Constitution has provided the qualifications of members of the judiciary, this does not preclude the JBC from having its own set of rules and procedures and providing policies to effectively ensure its mandate.

**The functions of searching, screening, and selecting are necessary and incidental to the JBC's principal function of choosing and recommending nominees for vacancies in the judiciary for appointment by the President.** However, the Constitution did not lay down in precise terms the process that the JBC shall follow in determining applicants' qualifications. In carrying out its main function, the JBC has the authority to set the standards/criteria in choosing its nominees for every vacancy in the judiciary, subject only to the minimum qualifications

<sup>6</sup> Emphasis supplied.

<sup>7</sup> G.R. No. 211833, April 7, 2015.

<sup>8</sup> **ARTICLE VIII**

*Judicial Department*

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**SECTION 7.** (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

(2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.

(3) A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.

<sup>9</sup> See *Jardeleza v. Sereno*, G.R. No. 213181, August 19, 2014.

required by the Constitution and law for every position. The search for these long held qualities necessarily requires a degree of flexibility in order to determine who is most fit among the applicants. Thus, the JBC has sufficient but not unbridled license to act in performing its duties.

JBC's ultimate goal is to recommend nominees and not simply to fill up judicial vacancies in order to promote an effective and efficient administration of justice. Given this pragmatic situation, the JBC had to establish a set of uniform criteria in order to ascertain whether an applicant meets the minimum constitutional qualifications and possesses the qualities expected of him and his office. Thus, the adoption of the five-year requirement policy applied by JBC to the petitioner's case is necessary and incidental to the function conferred by the Constitution to the JBC.

### ***Equal Protection***

There is no question that **JBC employs standards to have a rational basis to screen applicants who cannot be all accommodated and appointed to a vacancy in the judiciary, to determine who is best qualified among the applicants, and not to discriminate** against any particular individual or class.

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That is the situation here. In issuing the assailed policy, the JBC merely exercised its discretion in accordance with the constitutional requirement and its rules that a member of the Judiciary must be of proven competence, integrity, probity and independence. **“To ensure the fulfillment of these standards in every member of the Judiciary, the JBC has been tasked to screen aspiring judges and justices, among others, making certain that the nominees submitted to the President are all qualified and suitably best for appointment. In this way, the appointing process itself is shielded from the possibility of extending judicial appointment to the undeserving and mediocre and, more importantly, to the ineligible or disqualified.”**<sup>10</sup>


Thus, the rules applicable during respondent's nomination and subsequent appointment reflected this Constitutional prescription and ensured that only those who are found to possess all the constitutional and statutory qualifications will be nominated for appointment to this Court. In this regard, the *Judicial and Bar Council Resolution No. JBC-009*<sup>11</sup> set forth the specific parameters to objectively approximate and assess the subjective qualifications of “competence, integrity, probity, and independence”<sup>12</sup> of the applicants for the erstwhile vacancy in this Court:

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<sup>10</sup> *Villanueva*, supra note 7. Emphasis and underscoring supplied.

<sup>11</sup> October 18, 2000. Later amended by *The Revised Rules of the Judicial and Bar Council*, JBC No. 2016-01, September 20, 2016.

<sup>12</sup> Section 7(3), Article VIII of the 1987 Constitution.



**RULE 2***Constitutional and Statutory Qualifications for Appointment*

SECTION 1. *Qualifications applicable to all Members of the Judiciary and the Ombudsman and his deputies.* — (a) No person may be appointed Member of the Supreme Court or any lower collegiate court or as Ombudsman or deputy Ombudsman unless he is natural-born citizen of the Philippines (CONST. Art. VIII, Section 7, par. 1; *Id.*, Art. XI, Section 8).

(b) No person may be appointed judge of any court lower than a collegiate court unless he is a citizen of the Philippines (CONST. Art. VIII, Section 7, par. 2).

(c) A Member of the Judiciary must be of proven competence, integrity, probity and independence (*id.*, *id.*, par. 3) and a member of the Philippine Bar (*id.*, *id.*, par. 2).

SECTION 2. *Additional qualifications for Members of the Supreme Court.* — No person shall be appointed Member of the Supreme Court unless he is at least forty years of age and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines. (*id.*, *id.*, par. 1).

**RULE 3***Competence of Applicants*

SECTION 1. *Guidelines in determining competence.* — In determining the competence of the applicant or recommendee for appointment, the Council shall consider his educational preparation, experience, performance and other accomplishments of the applicant.

SECTION 2. *Educational preparation.* — The Council shall evaluate the applicant's (a) scholastic record up to the completion of the degree in law and other baccalaureate and post-graduate degrees obtained; (b) bar examination performance; (c) civil service eligibilities and grades in other government examinations; (d) academic awards, scholarships or grants received/obtained; and (e) membership in local or international honor societies or professional organizations.

SECTION 3. *Experience.* — The experience of the applicant in the following shall be considered:

(a) Government service, which includes that in the Judiciary (Court of Appeals, Sandiganbayan, and courts of the first and second levels); the Executive Department (Office of the President proper and the agencies attached thereto and the Cabinet); the Legislative Department (elective or appointive positions); Constitutional Commissions or Offices; Local Government Units (elective and appointive positions); and quasi-judicial bodies.

(b) Private Practice, which may either be general practice, especially in courts of justice, as proven by, among other documents, certifications from Members of the Judiciary and the IBP and the

affidavits of reputable persons; or specialized practice, as proven by, among other documents, certifications from the IBP and appropriate government agencies or professional organizations, as well as teaching or administrative experience in the academe; and

(c) Others, such as service in international organizations or with foreign governments or other agencies.

SECTION 4. *Performance.* — (a) The applicant who is in the government service shall submit his performance ratings, which shall include a verified statement as to such performance for the past three years.

(b) For incumbent Members of the Judiciary who seek a promotional or lateral appointment, performance may be based on landmark decisions penned; court records as to status of docket; reports of the Office of the Court Administrator; verified feedback from the IBP; and a verified statement as to his performance for the past three years, which shall include his caseload, his average monthly output in all actions and proceedings, the number of cases deemed submitted and the date they were deemed submitted, and the number of this decisions during the immediately preceding two-year period appealed to a higher court and the percentage of affirmance thereof.

SECTION 5. *Other accomplishments.* — The Council shall likewise consider other accomplishments of the applicant, such as authorship of law books, treatises, articles and other legal writings, whether published or not; and leadership in professional, civic or other organizations.

#### **RULE 4**

##### *Integrity*

SECTION 1. *Evidence of integrity.* — The Council shall take every possible step to verify the applicant's record of and reputation for honesty, integrity, incorruptibility, irreproachable conduct and fidelity to sound moral and ethical standards. For this purpose, the applicant shall submit to the Council certifications or testimonials thereof from reputable government officials and non-governmental organizations, and clearances from the courts, National Bureau of Investigation, police, and from such other agencies as the Council may require.

SECTION 2. *Background check.* — The Council may order a discreet back-ground check on the integrity, reputation and character of the applicant, and receive feedback thereon from the republic, which it shall check or verify to validate the merits thereof.

SECTION 3. *Testimony of parties.* — The Council may receive written opposition to an applicant on ground of his moral fitness and, at its discretion, the Council may receive the testimony of the oppositor at a hearing conducted for the purpose, with due notice to the applicant who shall be allowed to cross-examine the oppositor and to offer countervailing evidence.



SECTION 4. *Anonymous complaints.* — Anonymous complaints against an applicant shall not be given due course, unless there appears on its face a probable cause sufficient to engender belief that the allegations may be true. In the latter case, the Council may either direct a discreet investigation or require the applicant to comment thereon in writing or during the interview.

SECTION 5. *Disqualification.* — The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman or Deputy Ombudsman:

1. Those with pending criminal or regular administrative cases;
  2. Those with pending criminal cases in foreign courts or tribunals;
- and
3. Those who have been convicted in any criminal case; or in administrative case, where the penalty imposed is at least a fine of more than P10,000, unless he has been granted judicial clemency.

SECTION 6. *Other instances of disqualification.* — Incumbent judges, officials or personnel of the Judiciary who are facing administrative complaints under informal preliminary investigation (IPI) by the Office of the Court Administrator may likewise be disqualified from being nominated if, in the determination of the Council, the charges are serious or grave as to affect the fitness of the applicant for nomination.

For purposes of this Section and of the preceding Section 5 insofar as pending regular administrative cases are concerned, the Secretary of the Council shall, from time to time, furnish the Office of the Court Administrator the name of an applicant upon receipt of the application/recommendation and completion of the required papers; and within ten days from receipt thereof the Court Administrator shall report in writing to the Council whether or not the applicant is facing a regular administrative case or an IPI case and the status thereof. In regard to the IPI case, the Court Administrator shall attach to his report copies of the complaint and the comment of the respondent.

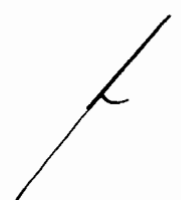
## RULE 5

### *Probity/Independence*

SECTION 1. *Evidence of probity and independence.* — Any evidence relevant to the candidate's probity and independence such as, but not limited to, decisions he has rendered if he is an incumbent member of the judiciary or reflective of the soundness of his judgment, courage, rectitude, cold neutrality and strength of character shall be considered.

SECTION 2. *Testimonials of probity and independence.* — The Council may likewise consider validated testimonies of the applicant's probity and independence from reputable officials and impartial organizations.

Acknowledging that the JBC “takes every possible step to verify an applicant's track record for the purpose of determining whether or not he is





qualified for nomination”<sup>13</sup> and that it conducts an arduous screening process to evaluate the applicants’ “competence, integrity, probity, and independence” and all other matters bearing on their fitness for judicial office, the JBC “retains a very wide degree of freedom and autonomy in the vetting of the applicants for vacant positions in the Judiciary.”<sup>14</sup> The august body’s independent determination of the qualifications and fitness of judicial applicants is considered discretionary;<sup>15</sup> the selection of the candidates whose names will be in the list to be submitted to the President lies within the discretion of the JBC.<sup>16</sup> Thus, absent any showing that the council exceeded its authority or gravely abused its discretion, it cannot be compelled, not even by this Court, to amend a list already submitted or add or delete a name in the list of nominees for appointment to a judicial post.<sup>17</sup>

**As a constitutional body vested with the power and wide latitude in screening and selecting applicants to the Judiciary,<sup>18</sup> the JBC is more than entitled to the presumption of regularity in the performance of its constitutional duty. Its determination as to respondent’s possession of all the qualifications and eligibilities for appointment to this Court must accordingly be accorded with respect; it cannot be capriciously set aside without even impleading the council and allowing it to justify its action.<sup>19</sup>**

To my mind then, **the nullification of the JBC’s nomination of respondent to a position in this Court is a precondition before the Court could grant a *quo warranto* petition** and declare her without right or claim to post she holds on the ground of ineligibility. As there was no attempt to assail and contest, much less, nullify the JBC’s findings that respondent possessed all the qualifications to be appointed to this Court, **the independent constitutional body’s determination of the respondent’s eligibility to her judicial post must stand.**

The **prematurity** of this recourse becomes all the more plain considering the fact that the JBC was not given the opportunity to review its own decision. The allegations thrown against the respondent ultimately boils down to her lack of integrity. However, JBC-009 already conceived that an applicant’s integrity may be questioned and, for that purpose required a unanimous vote for the challenged applicant’s inclusion in the list of nominees. It stated:

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<sup>13</sup> *Jardeleza v. Sereno*, G.R. No. 213181, August 19, 2014.

<sup>14</sup> *Jardeleza v. Sereno*, G.R. No. 213181 (Notice), January 21, 2015.

<sup>15</sup> See Justice Leonen’s Dissent in *Umali v. Judicial and Bar Council*, G.R. No. 228628, July 25, 2017.

<sup>16</sup> *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 706-707 (2010)

<sup>17</sup> See *Villanueva*, supra note 7.

<sup>18</sup> *Id.*

<sup>19</sup> See *Republic v. Spouses Lazo*, 744 Phil. 367 (2014), citing *Republic v. Nolasco*, 496 Phil. 853 (2005).

**RULE 10***Voting Requirements*

SECTION 1. *Votes required for inclusion as nominee.* — No applicant shall be considered for nomination for appointment to a judicial position unless he shall obtain the affirmative vote of at least a majority of all the Members of the Council.

SECTION 2. *Votes required when integrity of a qualified applicant is challenged.* — In every case when a integrity of an applicant who is not otherwise disqualified for nomination is raised or challenged, **the affirmative vote of all the members of the Council must be obtained for the favorable consideration of his nomination.**

No one, however, raised or challenged respondent's integrity when she was first included in the list of nominees to a post in this Court in 2010. And again, when she was nominated for appointment to the Office of the Chief Justice in 2012, no one questioned her qualifications. The Republic cannot hide behind the dictum that estoppel will not lie against the state. Like all general rules, this principle admits of exceptions in the interest of justice and fair play.<sup>20</sup> This Court has said so in every conceivable turn: "the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations . . . , the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals."<sup>21</sup>

In sum, a *quo warranto* petition under Rule 66 of the Rules of Court and under Section 5, Article VIII of the 1987 Constitution can be filed against any member of the Supreme Court, the Ombudsman and the members of the Civil Service Commission, Commission on Elections and Commission on Audit before the Supreme Court. On the other hand, a *quo warranto* petition can only be filed against the President or Vice President before the Presidential Electoral Tribunal.

With respect to the members of the Supreme Court and the Ombudsman, who need a nomination from the Judicial and Bar Council, no petition for *quo warranto* can be filed against any of them without first filing a petition for *certiorari* against the Judicial and Bar Council and the official sought to be removed to nullify the nomination made by the council for said impeachable official.

This is a prerequisite to afford due process to the JBC to defend its decision to nominate the official based on its findings and decision that the latter possesses all the qualifications and none of the disqualifications prescribed by the Constitution and pertinent laws. Otherwise, the constitutional duty and the importance of the JBC as a constitutional body will be denigrated and downplayed as its actions or decisions can easily be


<sup>20</sup> *Commissioner of Internal Revenue v. Court of Appeals*, 335 Phil. 219 (1997).

<sup>21</sup> *Republic v. Court of Appeals*, 361 Phil. 319 (1999).

circumvented though a petition for *quo warranto* without giving it its day in court. The bottomline is the nullification of the nomination of the challenged official by the JBC should be first obtained to pave the way for the ouster of an unfit or unqualified official.

A becoming regard of the respondent's position as the Chief Justice of this Court and the head of the government's Judicial Department, requires, at the very least, the strictest compliance with the all the requisites before *quo warranto* proceedings should be initiated.

**WHEREFORE**, I vote to **DISMISS** the petition.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice