



Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated July 8, 2014, which reads as follows:

“A.M. No. 14-07-01-SC-JBC (Re: Nomination of Solicitor General Francis H. Jardeleza for the Position of Associate Justice Vacated by Justice Roberto A. Abad) – Acting on the letter dated June 24, 2014 of Solicitor General Francis H. Jardeleza addressed to this Court, this Court, by a vote of 9-4, Resolves to NOTE the letter since the reliefs prayed for have become moot and academic in view of the transmittal by the Judicial and Bar Council of the list of nominees for Supreme Court Justice vice Justice Roberto A. Abad to the Office of the President. This Court’s action is without prejudice to any remedy, available in law and the rules that Solicitor General Jardeleza may still wish to pursue.” (Sereno, C.J., inhibited being the Ex Officio Chairperson of the Judicial and Bar Council. Brion, J., dissented and joined by Leonardo-De Castro, Bersamin, and Mendoza, JJ.) (adv9)

Very truly yours,


ENRIQUETA E. VIDAL
Clerk of Court *mqr*

(With Dissenting Opinion of Brion, J.)

Hon. Maria Lourdes P.A. Sereno (x)
Chief Justice
Supreme Court

Secretary Leila M. De Lima (x)
DOJ, P. Faura, Manila

Hon. Niel C. Tupas, Jr. (x)
House of Representatives
Batasan Hills, Diliman, Quezon City

Hon. Aquilino "Koko" Pimentel, Jr. (x)
Philippine Senate, GSIS Financial Center
1308 Roxas Blvd., Pasay City

Solicitor General Francis H. Jardeleza (x)
Office of the Solicitor General
134 Amorsolo St., Legaspi Village
Makati City

Judicial & Bar Council
Hon. Aurora Santiago Lagman (x).
Hon. Jose V. Mejia (x)
Hon. Ma. Milagros N. Fernan-Cayosa (x)
JBC Secretariat (x)
Supreme Court

Atty. Annaliza S. Ty- Capacite (x)
JBC Executive Officer
Judicial & Bar Council
Supreme Court

A.M. No. 14-07-01-SC-JBC
wmd 7814 (9) 71114

A handwritten signature in black ink, appearing to be a stylized name, possibly 'Annaliza S. Ty- Capacite', written over a thin horizontal line.

A.M. No. 14-07-01-SC-JBC – RE: NOMINATION OF SOLICITOR GENERAL FRANCIS H. JARDELEZA FOR THE POSITION OF ASSOCIATE JUSTICE VACATED BY JUSTICE ROBERTO A. ABAD.

Promulgated:

July 8, 2014

X-----X

DISSENTING OPINION

BRION, J.:

In our *En Banc* meeting of July 8, 2014, the Court resolved (with four [4] Members dissenting and Chief Justice Maria Lourdes P. A. Sereno inhibiting) to simply **NOTE** Solicitor General Francis H. Jardeleza's (*SolGen or SolGen Jardeleza*) letter-petition of June 24, 2014 "since the reliefs prayed for have become moot and academic... without prejudice to any remedy available in law and the rules that [he] may still wish to pursue."¹ [emphasis supplied].

I respectfully **dissent from this ruling and approach** as it is a conclusion based on a very superficial reading of SolGen Jardeleza's letter-petition and one that did not consider at all the letter-petition's **substantive content and the time requirements for filing available remedies.**

A. The reliefs prayed for understandingly relates only to remedies requested for the June 30, 2014 scheduled meeting of the Judicial and Bar Council (*the Council*) because they would be most material for that meeting. The letter-petition brought to the Court's attention matters relating to SolGen Jardeleza's nomination which he asked the Court to immediately act upon. Even common sense dictates that since the letter-petition addressed the June 30, 2014 coming event, the matters alleged should have been considered and acted upon through interim measures before the meeting took place.

The Court received the letter-petition on June 25, 2014 – a full five (5) days before the Council meeting – but it was never acted upon by the Chief Justice (who controls the scheduling of the *en banc* meetings and agenda) before the June 30, 2014 meeting of the Council took place.

¹ Resolution of July 8, 2014.

It is a matter of Court record that the letter-petition, *although received on June 25, 2014, was raffled only on July 1, 2014, i.e., a day after the Council meeting and only 30 minutes before the Court en banc meeting.*

In other words, the **Office of the Chief Justice sat on the letter-petition until after the Council meeting had been held.** In other matters requiring immediate Court action, the Chief Justice has the discretion to act on it immediately or else cause its immediate raffle to a Member-in-Charge for his or her action.

Under these circumstances, was there something wrong somewhere and should the letter-petition's reliefs be now considered immediately and totally moot and academic, particularly in light of the events that took place at the June 30, 2014 Council meeting?

B. It is now a matter of record that what the letter-petition feared actually took place on June 30, 2014 although under circumstances that have not been fully disclosed and made a matter of record to the Court.

Specifically, the Council convened, met, and voted on the nominees for the vacant Supreme Court position; **SolGen Jardeleza secured four (4) out of the six (6) votes** – the same number of votes that Judge Reynaldo B. Daway did. Yet, Judge Daway was included in the nomination list that the Council sent to the President, but SolGen Jardeleza was not.²

Is there something wrong somewhere that the Court should know *not only from the Chief Justice speaking ex parte to the Court, but also from the other parties involved?*

Under the circumstances, should the letter-petition be declared *moot and academic* as the majority's Resolution did?

Should not SolGen Jardeleza be heard further on what happened at the June 30, 2014 Council meeting?

Should the Chief Justice, when she spoke ex parte to the Court on the letter-petition, be considered to be speaking for the Council, or should the Council itself be heard considering especially that SolGen Jardeleza allegedly received four (4) votes from the six (6) Council members present?

C. The letter-petition made mention of a Manila Times report³ stating that the Supreme Court itself did not make any recommendation to the

² Council's Letter to the President of June 30, 2014.

³ Jomar Canlas, *High Court justices powers clipped*, The Manila Times, June 18, 2014; Jomar Canlas, *SC Justices Confront Sereno on Vacancy Issue*, The Manila Times June 19, 2014.

Council as Section 1, Rule 8 of JBC-009 Rules allow because the voting on the matter never took place.

Indeed, no Court recommendation was made as no voting took place; the Court did not have the opportunity to vote because of a communication by the Chief Justice that "some colleagues" requested that no voting should take place.

The matter is internal and need not be ventilated here, but the long and short of it is that the Court did not vote on its recommendees and some of its Members believe that misrepresentations have been made that to date remain unexplained.

Under the circumstances, should this incident not be added to what SolGen Jardeleza alleged in his letter-petition, as important considerations in taking into account the SolGen's overall allegations?

D. The letter-petition alleged that the Chief Justice was "blocking" SolGen Jardeleza's nomination, citing past circumstances that led him to this conclusion, in violation of the Council rules and in grave abuse of discretion.

The Council rules are explicit on the matter of opposition to an applicant and on the process that an opposition should take.⁴ They

⁴ Sections 1 and 3, Rule 4 of JBC-009 state:

RULE 4

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.

X X X

SEC. 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.

Also, Sections 2 to 6 of JBC-10 state:

SEC. 2. **The complaint or opposition shall be in writing, under oath and in ten (10) legible copies, together with its supporting annexes. It shall strictly relate to the qualifications of the candidate or lack thereof, as provided for in the Constitution, statutes, and the Rules of the Judicial and Bar Council, as well as resolutions or regulations promulgated by it.**

specifically provide as well for questions on the matter of “integrity” that the Chief Justice appears to have invoked in blocking the nomination of SolGen Jardeleza.

It was the application of the Council Rules that SolGen Jardeleza questioned before the Council voting took place, and this was allegedly committed with grave abuse of discretion because of the manner the violations took place.

Under the circumstances, should the Court simply consider the matter and the reliefs *moot and academic* because voting and the submission of the nomination list had already been made, *when the circumstances of the voting, the events that led to it, and the completeness of the list are the exact questions that are being raised?*

It may not be amiss at this point to remember that judicial power as provided under Section 1, Article VIII of the Constitution does not merely speak of grants of power that the courts may exercise; it speaks of the duty of the courts when grave abuse of discretion exists in any agency or instrumentality of government.

Under the majority’s ruling, could the Supreme Court itself have been remiss in fulfilling its duty? In case of doubt, should not the Court

The Secretary of the Council shall furnish the candidate a copy of the complaint or opposition against him. The candidate shall have five (5) days from receipt thereof within which to file his comment to the complaint or opposition, if he so desires.

SEC. 3. The Judicial and Bar Council shall fix a date when it shall meet in executive session to consider the qualification of the long list of candidates and the complaint or opposition against them, if any. The Council may, on its own, conduct a discreet investigation of the background of the candidates.

On the basis of its evaluation of the qualification of the candidates, the Council shall prepare the shorter list of candidates whom it desires to interview for its further consideration.

SEC. 4. The Secretary of the Council shall again cause to be published the dates of the interview of candidates in the shorter list in two (2) newspapers of general circulation. It shall likewise be posted in the websites of the Supreme Court and the Judicial and Bar Council.

The candidates, as well as their oppositors, shall be separately notified of the date and place of the interview.

SEC. 5. The interviews shall be conducted in public. During the interview, only the members of the Council can ask questions to the candidate. **Among other things, the candidate can be made to explain the complaint or opposition against him.**

SEC. 6. After the interviews, the Judicial and Bar Council shall again meet in executive session for the final deliberation on the short list of candidates which shall be sent to the Office of the President as a basis for the exercise of the Presidential power of appointment.



resolve it in favor of giving all the interested parties their day in court, instead of simply calling the reliefs academic?

E. Given the guarantees in the Council's rules upholding an applicant's due process rights, is it fair and reasonable to raise an objection against an applicant and summarily consider this without observing the written and established processes and guarantees?

Objections against SolGen Jardeleza's application were already raised by the Chief Justice herself without specifications of details during the June 5 and 16, 2014 Council meetings and finally during the June 30, 2014 deliberations of the Council, based on Section 2, Rule 10 of JBC-009, which states:

RULE 10
VOTING REQUIREMENTS

SEC. 2. *Votes required when integrity of a qualified applicant is challenged.* - In every case where the integrity of an applicant who is not otherwise disqualified for nomination is raised or challenged, **the affirmative vote of all the Members of the Council must be obtained for the favorable consideration of his nomination.** [emphasis supplied]

Since a Council member (its Chairman, no less) herself made the belated objection, **should the rules on opposition against an applicant be dispensed with and should the unanimous vote of the Council members still be required to overrule the objection?**

Note that under the Council Rules, when an objection is filed, an applicant is given the opportunity **to know the objection in writing** and the **time and opportunity to respond**. Note, too, that a unanimous vote is required to overrule an objection against an applicant's integrity. If an objection comes from a Council Member and the objector's positive vote is still required, then the rule is reduced to absurdity as it would mean that any member, by herself or himself, can already disqualify an applicant based on his or her objection. **Is this the intention of Rule 10, Section 2?**

Note lastly that despite the objection of the Chief Justice, SolGen Jardeleza received four (4) votes as a *nominee*.

Are these questions also mooted by the completion of the Council's voting and by the submission of the nomination list to the Office of the President?



E. Notably, the present administrative matter involves the exercise of the Court's constitutionally-granted supervisory power over the Council.⁵ The **power of supervision** includes "the power of a superior officer *to see to it that lower officers perform their functions in accordance with law.*"⁶

This supervisory power may be likened to the Court's administrative supervision over all courts and personnel thereof. We have repeatedly held that the resignation or retirement of court officials does not render moot or academic the administrative cases against them. The underlying rationale for this rule is **to uphold the greater interest of maintaining the integrity of the Judiciary.**

By analogy, the voting and nomination that occurred on June 30, 2014 cannot render moot and academic the present administrative matter. **The integrity of the nomination process is put to question by allegations of grave abuse of discretion.** Although the Court's supervisory powers does not allow us to intervene in the Council's "authority to discharge its principal function...., **the Court can supervise by ensuring the legality and correctness of [the Council's] exercise of their power as to means and manner, and interpreting for them the constitutional provisions, law, and regulations affecting the means and manner of the exercise of their powers** as the Supreme Court is the final authority on the interpretation of these instruments."⁷

F. The majority's Resolution made a reservation that its ruling is "*without prejudice to any remedy, available in law and the rules that the Solicitor General Jardeleza may still wish to pursue.*"

With due respect and apologies to the majority, this reservation is merely a *consuelo de bobo* under the circumstances of the nomination process in filling a vacancy to the Supreme Court.

Under the Constitution, the President only has ninety (90) days from the time the vacancy occurred within which to fill up the vacancy. As the Court has itself stated in a landmark case,⁸ this is necessary to prevent a hiatus in the Court for any extended period of time. Since the vacancy occurred on May 22, 2014, then the President only has up to August 20, within which to fill the vacancy, so that **he is now left with 41 days to perform his duty.**

⁵ Constitution, Article VIII, Section 8(1).

⁶ *Bito-Onon v. Fernandez*, G.R. No. 139813, January 31, 2001.

⁷ Author's Separate Opinion in *De Castro v. Judicial and Bar Council (JBC)*, G.R. No. 191002, March 17, 2010, 615 SCRA 666,793-794.

⁸ in *De Castro v. Judicial and Bar Council (JBC)*, G.R. No. 191002, March 17, 2010, 615 SCRA 666.

The President also can only fill up the vacancy from among the nominees of the Council,⁹ so that when an applicant is excluded by the Council, he or she stands no chance of being appointed. This might have been the reason why SolGen Jardeleza was very watchful and critical of the events and happenings in the Council.

With a list submitted to the President who can now exercise his discretion as mandated by the Constitution, is not every day of delay working to favor of those who wish to block SolGen Jardeleza's nomination and appointment to the Court?

If the letter-petition of SolGen Jardeleza and the events that may be disclosed to the Court and to the public, turn out to be meritorious, *i.e., if indeed there had been moves violative of SolGen Jardeleza's constitutional rights*, would not every day of delay be a continuing violation of our basic law and, contrarily, a continuing success as well of those who have been violating this law?

To state what every lawyer knows, filing a remedy under the Rules of Court is not an expeditious process. The preparation and the initial consideration by the Court alone can already eat up the better part of a month in a period when a month constitutes 2/3 of the allowable time to act by multi-parties who are by no means coordinating their moves with one another.

This is where the majority's ruling becomes devious – although it has nominally given SolGen Jardeleza a right of recourse, the same recourse would defeat the very right he wishes to protect.

Isn't this clever and ingenious to the point of malice?

These questions, among others, led me to suggest to the Court in my SUMMARY & PRELIMINARY EVALUATION, the following recommendations whose thrust is to hear all the parties in a very expeditious manner.

“III. PRELIMINARY EVALUATION AND RECOMMENDATION

- A. Under these facts, laws and rules, when SolGen Jardeleza alleged that his application was “blocked” on the basis of an opposition raised only during the final deliberations and after the public interview, he effectively alleged his claim that he had been denied his due process right in violation of the Council rules.
- B. Since the Supreme Court has supervisory power over the JBC, it may conduct an inquiry into the matter and direct the parties to comment. The Court may likewise invoke its authority to inquire since grave abuse of

⁹ Constitution, Article VIII, Section 9.

discretion involving the exercise of discretion by the Council (an instrumentality of Government under the Judiciary) or by the Chief Justice (a very senior official of the Government) has been alleged.

- C. While some basis for inquiry might have already been established, **the Court is not formally and fully aware of what actually took place at the Council meetings.** Note may be taken, however, that what SolGen Jardeleza feared under his letter of June 24, 2014 transpired: he was voted upon; he secured the required votes; and he was not included in the list of nominees. The role of the Chief Justice in all these is unclear, thus giving rise to the need to formally and fully hear from her.
- D. Under the circumstances, the Court should, at the very least, inquire from SolGen Jardeleza **what exactly he wants to do** with his submitted letter, and **to give him the opportunity to supplement his allegations** if he intends to proceed with the matter.
- E. Because of the time constraints in the exercise of the President's power of appointment (he only has 90 days from May 22, 2014 within which to appoint a replacement), the Court should only give SolGen Jardeleza five (5) days from receipt of our directive to comment or to file a supplement and/or memorandum to his letter-petition, after which the Council and the Chief Justice should be given a similar five (5) days from receipt within which to file their own comments. [A period for reply may be necessary if new factual and legal matters are alleged.]

The periods should not be extendible. The submissions should be supported by affidavits and other submissions the parties rely upon to support their respective cases. In this manner, the case can be submitted for deliberation well before the end of July, and the Court can reach its decision before the President's constitutional deadline to appoint. In any event, the President should be formally notified of the Court's action on this matter so he can consider how he should discharge his constitutionally-granted power of appointment.

- F. In light of the sensitivity of the Solicitor General's role in government, the allegations made against the Chief Justice and the Council, and the already admitted role of the media in this case, and the absolute need to safeguard State interest, a most prudent approach is to reflect the directive in the Court's action to keep all matters strictly confidential subject to media communications that the Court shall direct.

I submitted (and quote here as well, as part of this Dissent) my recommended Resolution that would have seen the Court's proper discharge of its duty under the Constitution by recognizing the letter-petition, giving every party his or her or its chance to be heard, and allowing the Court to make a consideration that would not be pre-ordained.

"DRAFT RESOLUTION

After due consideration of Solicitor General Francis H. Jardeleza's letter of June 24, 2014 on the matter in caption; of the events within the Court's judicial notice; of the laws and rules involved; and of the potential

sensitivity of the matters that may be touched upon in the Court's inquiry into the present matter, the Court **RESOLVES**:

1. To **DIRECT** Solicitor General Francis H. Jardeleza to manifest within a **NON-EXTENDIBLE** period of five (5) days from receipt of this Resolution whether he wishes to pursue action on his letter of June 24, 2014.

If he does so wish, he is given the option to file, *within the same non-extendible period*, a supplemental submission and/or memorandum with the Court explicitly stating his cause or causes of action; attaching the affidavits and other materials he relies upon and his supporting legal arguments;

2. To **DIRECT** the Judicial and Bar Council and its Chairman, Chief Justice Maria Lourdes P.A. Sereno, collectively or separately if they so wish, to file within a **NON-EXTENDIBLE** period of five (5) days from service of Solicitor General Francis H. Jardeleza's supplemental submission and/or memorandum, their comment/s and/or memorandum on the Solicitor General's submissions, incorporating in this submission/s their supporting affidavits, other evidentiary materials, and legal arguments;
3. To **DIRECT** Solicitor General Francis H. Jardeleza to file, if warranted, a reply memorandum within a **NON-EXTENDIBLE** period of three (3) days from receipt of the comment/s and/or memorandum. The reply shall be confined solely to newly alleged factual matters and legal arguments, and any reply violating this condition shall be expunged from the records.

Thereafter, no further submissions shall be entertained and the matter shall be deemed submitted for the Court's resolution;

4. To **ORDER** that the service of all pleadings and submissions shall be *by personal service* to the Chairman of the Judicial and Bar Council (or in the event of her inhibition, to the Acting Chairman), and to Solicitor General Francis H. Jardeleza at the Office of the Solicitor General, **in sealed envelopes**. Filing with the Court shall be made *directly and personally with the Clerk of the Supreme Court* or with the alternate designated by the Court, **similarly in sealed envelopes**.
5. To **ORDER** the parties to **STRICTLY CONFINE** their submissions to facts and arguments directly relevant to this issue, since the issue presented in this administrative matter refers solely to **grave abuse of discretion** in relation with the Judicial and Bar Council's processes and proceedings in the nomination for the position of Associate Justice of the Court vacated by retired Associate Justice Roberto A. Abad;
6. To **STRICTLY PROHIBIT AND BAR** the parties from alleging in their submissions any *unnecessary or irrelevant* personal matter and confidential information touching on national security or confidential State matter, in light of the Solicitor General's role in government, the allegations made against the Chief Justice and the

Council, the already admitted role of the media in this case, and the absolute need to safeguard State interest.

If an absolute necessity exists for such submission, the justification shall be given to the Court in a separate confidential Manifestation generally describing the matter sought to be disclosed and the justification showing the absolute need for disclosure. Any actual disclosure or need for clarification and/or hearing shall only be made **before the Court in executive session** under such rules and conditions that the Court shall impose; and

7. To **WARN** and **STRICTLY BAR** the parties from disclosing any confidential information **RELATING TO THIS CASE** – including the disclosure of this Resolution and all pleadings, submissions and memoranda – to the media. Any needed disclosure or announcement to the media relating to this case shall be made solely by and at the direction of this Court.

Let a copy of this Resolution be furnished the President of the Philippines, Benigno Simeon C. Aquino, Jr., for his information.

SO ORDERED.”



ARTURO D. BRION
Associate Justice