SC: Sereno ineligible to hold the Chief Justice position for lack of integrity

REPUBLIC of the PHILIPPINES, represented by SOLICITOR GENERAL JOSE C. CALIDA,	**G.R. No. 237428**
Petitioner,	Present:
	SERENO, *C.J.,**
	CARPIO,
	VELASCO, **JR.,**
	LEONARDO-DE CASTRO,
	PERALTA,
	BERSAMIN,
	DEL CASTILLO,
	PERLAS-BERNABE,
- versus -	LEONEN,
	JARDELEZA,
	CAGUIOA,
	MARTIRES,
	TIJAM,
	REYES, JR., and
	GESMUNDO, *JJ.*
	Promulgated:
	May 11, 2018
MARIA LOURDES P.A. SERENO	
Respondent.	

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

DECISION

TIJAM, J.:

Whoever walks in integrity and with moral character walks securely, but he who takes a crooked way will be discovered and punished.

-The Holy Bible, Proverbs 10:9 (AMP)

Integrity has, at all times, been stressed to be one of the required qualifications of a judge. It is not a new concept in the vocation of administering and dispensing justice. In the early l 600's, Francis Bacon, a philosopher, statesman, and jurist, in his *"Essay L VI: Of Judicature"* said - "'[a]bove all things, integrity is the Judge's portion and proper virtue." Neither is integrity a complex concept necessitating esoteric philosophical disquisitions to be understood. Simply, it is a qualification of being honest, truthful, and having steadfast adherence to moral and ethical principles. Integrity connotes being consistent - doing the right thing in accordance with the law and ethical standards every time. Hence, every judicial officer in any society is required to comply, not only with the laws and legislations, but with codes and canons of conduct and ethical standards as well, without derogation. As Thomas Jefferson remarked, "it is of great importance to set a resolution, never not to be shaken, never to tell an untruth. There is no vice so mean, so pitiful, so contemptible and he who permits himself to tell a lie once, finds it much easier to do it a second and third time, till at length it becomes habitual, he tells lies without attending to it, and truths without the world's believing him. This falsehood of the tongue leads to that of the heart and in time depraves all its good dispositions." Mental dishonesty and moral mischief breed all that integrity is not.

In our jurisdiction, one cannot be qualified to be a member of the Judiciary, lacking such mandatory requirement of "proven integrity". Inevitably, an appointee to the position of Chief Justice of the Supreme Court must be the exemplar of honesty, probity and integrity. The purpose of this requirement is self-evident as the Chief Justice heads the Judiciary and adjudicates cases as a member of the Court that "has the last word on what the law is." Together with other Justices, the Chief Justice also disciplines members of the Bar for misconduct. The significance of probity and integrity as a requirement for appointment to the Judiciary is underscored by the fact that such qualifications are not explicitly required of the President, the Vice President or the Members of Congress under the Constitution. The Constitution, thus, demands in no uncertain terms that the Chief Justice be the embodiment of moral and ethical principles. He or she must be of unquestionable character, possessed of moral authority to demand obedience to the law and to impose a rule of conduct. Indeed, one who exacts compliance with the law and ethical standards should be their foremost adherent.

No one is above the law and the Constitution, not even a Chief Justice who took an oath to protect and defend the Constitution and obey the laws of the land. The Court in *Francisco, Jr. v. The House of Representatives* says it tritely - "the Chief Justice is not above the law and neither is any other member of this Court." All public officers whether in the Executive, Legislative or Judicial departments are bound to follow the law. If a public officer violates the law, he or she shall suffer punishment, sanctions and adverse consequences. The obligatory force of the law is necessary because once we allow exceptions, concessions, waiver, suspension or non- application to those who do not want to follow the law, nobody else will obey the law.

In this unprecedented case for *quo warranto* against the incumbent Chief Justice, the Republic entreats this Court to declare Maria Lourdes P .A. Sereno (respondent) ineligible to hold the highest post in the Judiciary for failing to regularly disclose her assets, liabilities and net worth as a member of the career service prior to her appointment as an Associate Justice, and later as Chief Justice, of the Supreme Court, in violation of the Constitution, the Anti-Graft Law, and the Code of Conduct and Ethical Standards for Public Officials and Employees. The Republic accordingly seeks the nullification of respondent's appointment, asserting that her failure to file the required disclosures and her failure to submit the same to the Judicial and Bar Council show that she is not possessed of "proven integrity" demanded of every aspirant to the Judiciary.

The Case

Invoking the Court's original jurisdiction under Section 5(1), Article VIII of the Constitution in relation to the special civil action under Rule 66 of the Rules of Court, the Republic of the Philippines (Republic), through the Office of the Solicitor General (OSG) filed the present Petition for the issuance of the extraordinary writ of *quo warranto* to declare as void respondent's appointment as Chief Justice of the Supreme Court and to oust and altogether exclude respondent therefrom.

The Antecedents

From November 1986 to June 1, 2006, or spanning a period of 20 years, respondent served as a member of the faculty of the University of the Philippines-College of Law (UP or UP College of Law), initially as a temporary faculty member (from November 1986 to Dec. 31, 1991) and thereafter, as a permanent faculty member until her resignation therefrom on June 1, 2006. As a regular faculty member, respondent was paid by the month by UP.

Based on the records of the U.P. Human Resources Development Office (U.P. HRD0), respondent was on official leave from the U.P. College of Law for the following periods:

June 1, 2000	-	May 31, 2001
June 1, 2001	-	May 31, 2002
Nov. 1, 2003	-	May 31, 2004
June 1, 2004	-	Oct. 31, 2004
Nov. 1, 2004	-	Feb. 10, 2005

Feb. 11, 2005	-	Oct. 31, 2005
Nov. 15, 2005	-	May 31, 2006

While being employed at the U.P. College of Law, or from October 2003 to 2006, respondent was concurrently employed as legal counsel of the Republic in two international arbitrations: (a) *PIATCO v. Republic of the Philippines and MIAA;* and (b) *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines* (PIATCO cases).

The Personal Data Sheet (PDS) accomplished under oath by respondent further details, among others, the following engagements/services rendered by her for various government agencies:

Incidentally, the U.P. HRDO certified that there was no record on respondent's 201 file of any permission to engage in limited practice of profession. Her engagement as legal counsel for the Republic continued until 2009.

Despite having been employed at the U.P. College of Law from November 1986 to June 1, 2006, the record of the U.P. HRDO only contains the Statement of Assets, Liabilities and Net Worth (SALN) for 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002, filed by respondent. On the other hand, the records of the Central Records Division of the Office of the Ombudsman yields that there is no SALN filed by respondent for calendar years 1999 to 2009 except for the SALN ending December 1998 which was subscribed only in August 2003 and transmitted by the U.P. HRDO to the Ombudsman only on December 16, 2003. Belatedly, in respondent's *Ad Cautelam Manifestation/Submission,* she attached a copy of her SALN for 1989 which she supposedly sourced from the "filing cabinets" or "drawers of UP" Similarly, despite having been employed as legal counsel of various government agencies from 2003 to 2009, there is likewise no showing that she filed her SALNs for these years, except for the SALN ending December 31, 2009 which was unsubscribed and filed before the Office of the Clerk of Court only on June 22, 2012.

After having served as a professor at the U.P. College of Law until 2006, and thereafter as practitioner in various outfits including as legal counsel for the Republic until 2009, the respondent submitted her application for the position of Associate Justice of the Supreme Court in July 2010.

In support of her application as Associate Justice, respondent submitted to the Office of Recruitment Selection and Nomination (ORSN) of the Judicial and Bar Council (JBC) her SALN for the year 2006. This SALN for 2006 bears no stamp received by the U.P. HRDO and was signed on July 27, 2010. According to respondent, the JBC considered her nomination for the position of Associate Justice as that of a private practitioner and not as a government employee. Only recently, in a letter to the ORSN dated February 2, 2018, likewise attached to her *Ad Cautelam* Manifestation/Submission, respondent would explain that such SALN was really intended to be her SALN as of July 27, 2010. Respondent further explained during the Oral Arguments that she merely downloaded the SALN form and forgot to erase the year "2006" printed thereon and that she was not required by the ORSN to submit a subscribed SALN.

Thus, as the certifications executed by the U.P. HRDO, the Ombudsman and the ORSN of the JBC stand, the only SALNs available on record and filed by respondent were those for the calendar years 1985, 1989, 1990, 1991, 1993, 1994, 1995, 1996, 1997, 1998, and 2002 or eleven (11) SALNs filed in her 20-year government service in U.P. No SALNs were filed from 2003 to 2006 when she was employed as legal counsel for the Republic. Neither was there a SALN filed when she resigned from U.P. College of Law as of June 1, 2006 and when she supposedly re-entered government service as of August 16, 2010.

In tabular form, respondent's inclusive years in government employment *vis-a-vis* the SALNs filed by her and available on record are as follows: *(See page 12)*

A month after, or on August 13, 2010, respondent was appointed by then President Benigno C. Aquino III (President Aquino III) as Associate Justice, and on August 16, 2010, respondent took her oath of office as such.

When the position of the Chief Justice was declared vacant in 2012, the JBC announced the opening for application and recommendation of the position of Chief Justice. During the 2012 deliberations for the position of the Chief Justice, the members of the JBC *En Banc* were Associate Justice Diosdado M. Peralta (Justice Peralta) as Acting *ex officio* Chairman; Undersecretary Michael Frederick L. Musngi as *ex officio* member *vice* Leila M. De Lima; Senator Francis Joseph G. Escudero and Representative Niel Tupas as *ex officio* members representing the Congress; Justice Regino C. Hermosisima Jr. as regular member representing the retired Supreme Court Justices; Justice Aurora Santiago Lagman as regular member representing the Private Sector; Atty. Maria Milagros N. Fernan-Cayosa as regular member representing the Integrated Bar of the Philippines; and Atty. Jose V. Mejia as regular member representing the academe. The JBC Executive Committee (Execom) was composed of the JBC Regular Members and assisted by the Office of the Executive Officer (OEO) headed by Atty. Annaliza S. Ty-Capacite (Atty. Capacite).

The JBC announcement was preceded by an *En Banc* meeting held on June 4, 2012 wherein the JBC agreed to require the applicants for the Chief Justice position to submit, instead of the usual submission of the SALNs for the last two years of public service, all previous SALNs up to December 31, 2011 for those in government service. However, for the other judicial vacancies, the JBC required the submission of only two SALNs. Accordingly, in the Announcement published on June 5, 2012, the JBC specifically directed the candidates for the Chief Justice post to submit, in addition to the usual documentary requirements, the following:

(1) Sworn Statement of Assets, Liabilities, and Networth (SALN):

a. for those in the government: **all previous SALNs (up to 31 December 2011)**

b. for those from the private sector: SALN as of 31 December 2011

(2) Waiver in favor of the JBC of the confidentiality of local and foreign bank accounts under the Bank Secrecy Law and Foreign Currency Deposits Act. (Emphasis ours)

The JBC announcement further provided that "applicants with incomplete or out-of-date documentary requirements will not be interviewed or considered for nomination."

Nevertheless, the JBC *En Banc* subsequently agreed to extend the deadline for the filing of applications or recommendations to July 2, 2012 and the submission of the other documentary requirements to July 17, 2012.

On June 25, 2012, the JBC *En Banc* resolved not to require the incumbent Supreme Court Justices who are candidates for the Chief Justice position to submit other documentary requirements, particularly the required clearances. Instead, the JBC *En Banc* required the incumbent Justices to submit only the SALNs, bank waiver, medical certificate, laboratory results and the PDS.

On July 2, 2012, respondent accepted several nominations from the legal and the evangelical community for the position of Chief Justice and in support of her nomination, respondent submitted to the ORSN her SALNs for the years 2009, 2010, and 2011. Respondent also executed a waiver of confidentiality of her local and foreign bank accounts.

On July 6, 2012, or even before the deadline of the submission of the documentary requirements on July 17, 2012, the JBC *En Banc* came up with a long list of the candidates totaling twenty-two (22), respondent included, and scheduled the public interview of said candidates on July 24-27, 2012.

On July 20, 2012, the JBC in its Special *En Banc* Meeting, deliberated on the candidates for the position of Chief Justice with incomplete documentary requirements. In particular, the JBC examined the list of candidates and their compliance with the required submission of SALNs. The minutes of the JBC deliberation reveal as follows:

x x x x

The Executive Officer asked for clarification, particularly with respect to SALNs, whether five (5) SALNs would constitute a substantial compliance if the candidate has been in the government service for twenty (20) years.

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 Teresita 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.

x x x x. (Emphasis ours)

Because there were several candidates with incomplete documentary requirements, the JBC *En Banc* agreed to again extend the deadline for the submission of the lacking requirements to July 23, 2012 and that the determination of whether a candidate has substantially complied with the requirements be delegated to the Execom. It also appears that the JBC *En Banc* further agreed that the candidates who fail to complete the requirements on said date are to be excluded from the list of candidates 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.

Thus, on July 20, 2012, the ORSN, through its then Chief Atty. Richard Pascual (Atty. Pascual), inquired as to respondent's SALNs for the years 1995, 1996, 1997 and 1999. During the Congressional hearings on impeachment, Atty. Pascual would later on testify that he asked respondent to submit her SALNs from 1996 to 2006, or spanning a period of 10 years. During the Oral Arguments, respondent would maintain that Atty. Pascual only required her to submit her SALNs from 1995-1999 and did not ask for her more recent SALNs. Either way, the years requested from respondent are within the period (1986 to 2006) covered by her employment with the U.P. College of Law.

In response, the respondent, in the afternoon of July 23, 2012, transmitted a letter of even date to the JBC, which stated:

x x x x

As I had noted in my Personal Data Sheet, after my resignation from government service in 2006, as a professor at the University of the Philippines, I became a full-time private practitioner. Hence, when I was nominated for the position of Associate Justice of the Supreme Court in 2010, my nomination was considered as that of a private practitioner, and not as a government employee. Thus, the requirements imposed on me in connection with the consideration of my name, were those imposed on nominees from the private sector, and my earlier-terminated government service, did not control nor dominate the kind of requirements imposed on me.

Considering that most of my government records in the academe are more than fifteen years old, it is reasonable to consider it infeasible to retrieve all of those files.

In any case, the University of the Philippines has already cleared me of all academic/administrative responsibilities, money and property accountabilities and from administrative charges as of 01 June 2006. Since it is the ministerial duty of the Head of the Office to ensure that the SALNs of its personnel are properly filed and accomplished (CSC Resolution No. 060231 dated 01 February 2006 and CSC Memorandum Circular No. 10-2006 dated 17 April 2006), this clearance can be taken as an assurance that my previous government employer considered the SALN requirements to have been met. A copy of the Clearance dated 19 September 2011 issued by the University of the Philippines is hereby attached.

In the 05 June 2012 Announcement, the Judicial and Bar Council imposed the requirement of submitting all previous SALNs for those in the government. As I pointed out earlier, my service in government is not continuous. The period of my private practice between my service in the University of the Philippines ending in 2006 and my appointment to the Supreme Court in 2010 presents a break in government service. Hence, in compliance with the documentary requirements for my candidacy as Chief Justice, I submitted only the SALNs from end of 2009 up to 31 December 2011, since I am considered to have been returned to public office and rendered government service anew from the time of my appointment as Associate Justice on 16 August 2010.

Considering that I have been previously cleared from all administrative responsibilities and accountabilities from my entire earlier truncated

government service, may I kindly request that the requirements that I need to comply with, be similarly viewed as that from a private sector, before my appointment to the Government again m 2010 as Associate Justice of the Supreme Court.

x x x x

The letter dated July 23, 2012 was received by the Office of the Administrative and Financial Services (OAFS) and copies thereof were received by the offices of the JBC regular members, the ORSN and the OE0. The letter, however, was neither examined by the JBC regular members nor was it deliberated upon either by the JBC *En Banc* or the Execom. Although the determination of whether a candidate has substantially complied with the documentary requirements was delegated to the Execom, the latter could not produce any minutes of the meeting or record that the members thereof deliberated on the July 23, 2012 letter of respondent.

On the scheduled date of the interview on July 24, 2012, despite respondent's submission of only 3 SALNs, Atty. Pascual prepared a Report- Re: Documentary Requirements and SALN of candidates for the Position of Chief Justice of the Philippines wherein respondent was listed as applicant No. 14 with an opposite annotation that she had "COMPLETE REQUIREMENTS" and a note stating "Letter 7/23/12 - considering that her government records in the academe are more than 15 years old, it is reasonable to consider it infeasible to retrieve all those files."

The JBC then proceeded to interview the candidates, including respondent who was interviewed on July 27, 2012. On August 6, 2012, the ORSN prepared a list of the 20 candidates, respondent included, *vis-a-vis* their SALN submissions. Opposite respondent's name was an enumeration of the SALNs she submitted, *i.e.,* 2009, 2010 and 2011 and an excerpt from her July 23, 2012 letter that "considering that [respondent's] government records in the academe are more than 15 years old, it is reasonable to consider it infeasible to retrieve all those files." On August 13, 2012, the JBC voted on who would be included in the short list and on the same day, transmitted to the President its nominations for the position of Chief Justice, as follows:

1. Carpio, Antonio T.
2. Abad, Roberto A.
3. Brion, Arturo D.
4. Jardeleza, Francis H.
5. Sereno, Maria Lourdes P.A.
6. Zamora, Ronaldo B.
7. Leonardo-De Castro, Teresita J.
8. Villanueva, Cesar L.

A month after respondent's acceptance of her nomination, or on August 24, 2012, respondent was appointed by then President Aquino III as Chief Justice of the Supreme Court. ·

On August 30, 2017, or five years after respondent's appointment as Chief Justice, an impeachment complaint was filed by Atty. Larry Gadon (Atty. Gadon) against respondent with the Committee on Justice of the House of Representatives (House Committee on Justice) for culpable violation of the Constitution, corruption, high crimes, and betrayal of public trust. The complaint also alleged that respondent failed to make truthful declarations in her SALNs.

The impeachment complaint was endorsed by several members of the House and, thereafter, was found to be sufficient in form and substance. The respondent filed her answer to the impeachment complaint. After the filing of the reply and the rejoinder, the House Committee on Justice conducted several hearings on the determination of probable cause, the last of which was held on February 27, 2018.

During these hearings, it was revealed that respondent purportedly failed to file her SALNs while she was a member of the faculty of the U.P. College of Law and that she filed her SALN only for the years 1998, 2002 and 2006. During the hearing on February 7, 2018 of the House Committee on Justice, Justice Peralta, as a resource person being then the acting *ex-officio* Chairman of the JBC, further claimed that during the JBC deliberations in 2012, he was not made aware that respondent submitted incomplete SALNs nor that respondent's letter dated July 23, 2012 to the JBC was ever deliberated upon. This was confirmed by Atty. Fernan- Cayosa; by Atty. Capacite, who emphasized that based on the rubber stamp received, only the offices of the JBC regular members, the ORSN and the OEO were furnished copies of the letter; and by Atty. Pascual on the basis of the transmittal letter.

The foregoing sworn declarations made during the hearings before the House Committee on Justice spawned two relevant incidents: *one,* the proposal of the House Committee for this Court to investigate on the proceedings of the JBC relative to the nomination of respondent as Chief Justice which is now presently docketed as A.M. No. 17-11-12 and A.M. No. 17-11-17-SC; and *two,* the Letter dated February 21, 2018 of Atty. Eligio Mallari to the OSG requesting that the latter, in representation of the Republic, initiate a *quo warranto* proceeding against respondent.

Thus, the present petition.

The Case for the Republic

The Republic, through the OSG, claims that an action for *quo warranto* is the proper remedy to question the validity of respondent's appointment. It alleges that the instant petition is seasonably filed within the one-year reglementary period under Section 11, Rule 66, of the Rules of Court since respondent's transgressions only came to light during the proceedings of the House Committee on Justice on the allegations of the impeachment complaint filed against her. Alternatively, the Republic claims that it has an imprescriptible right to bring a *quo warranto* petition under the maxim *nullum tempus occurit regi.*

In justifying resort to a petition for *quo warranto,* the Republic argues that *quo warranto* is available as a remedy even as against impeachable officers, like respondent. The Republic argues that a petition for *quo warranto* is different from the impeachment proceedings because the writ of *quo warranto* is being sought to question the validity of her appointment, while the impeachment complaint accuses her of committing culpable violation of the Constitution and betrayal of public trust while in office. Citing the 2010 Rules of the Presidential Electoral Tribunal (PET) and the cases of *Funa v. Chairman Villar* and *Nacionalista Party v. De Vera,* the Republic argues that *quo warranto* may be resorted to even against impeachable officers and that the respondent's assumption of the position as Chief Justice under the color of an executive appointment is a public wrong correctible by *quo warranto.*

The Republic seeks to oust respondent from her position as Chief Justice on the ground that the latter failed to show that she is a person of proven integrity, which is an indispensable qualification for membership in the Judiciary under Section 7(3), Article VIII of the Constitution. According to the Republic, because respondent failed to fulfill the JBC requirement of filing the complete SALNs, her integrity remains unproven. The Republic posits that the JBC's ostensible nomination of respondent does not extinguish the fact that the latter failed to comply with the SALN requirement, as the filing thereof remains to be a constitutional and statutory requirement.

In sum, the Republic contends that respondent's failure to submit her SALNs as required by the JBC disqualifies her, at the outset, from being a candidate for the position of Chief Justice. Lacking her SALNs, respondent has not proven her integrity, which is a requirement under the Constitution. The Republic thus concludes that since respondent is ineligible for the position of Chief Justice for lack of proven integrity, she has no right to hold office and may therefore be ousted *via quo warranto.*

The Case for the Respondent

Being circumspect in the examination of every pleading and document on record, this Court observes that, initially, the Comment *Ad Cautelam* dated March 16, 2018 filed before Us was neither signed by the respondent herself nor verified to have been read by her and attested by her that the allegations therein are true and correct of her personal knowledge or based on authentic records. This Court is not unaware that under the Rules of Court, specifically Section 4, Rule 7, not all pleadings need to be under oath, verified, or accompanied by an affidavit. In fact, the rules on *quo warranto* do not require the filing of such comment, but pursuant to the dictates of the fundamental right of due process and also the desire of this Court to dispose of this case judiciously, impartially, and objectively, this Court gave the respondent the opportunity to be heard and oppose the allegations in the petition by requiring her to file a comment thereto. Thus, this Court anticipated a response from the respondent to take such opportunity to settle the uncertainty of her nomination and appointment through her comment to the petition. What was received by this Court, however, was an unverified Comment repudiating the Court's jurisdiction, merely signed by counsel, who appeared to be representing the respondent.

Wary of the legal implications of such unverified pleading, *i.e.* possible refutation of the allegations stated therein and repudiation of the signing counsel's authority to represent, this Court in its April 3, 2018 Resolution set as a condition for the conduct of Oral Arguments prayed for by respondent,

that the latter affirm and verify under oath the truth and veracity of the allegations in the Comment *Ad Cautelam* filed by counsel supposedly on her behalf.

In an *Ad Cautelam* Partial Compliance/Manifestation dated April 5, 2018, respondent affirmed and verified under oath the truth and veracity of the allegations in the said Comment *Ad Cautelam* through a Verification dated April 6, 2018 attached therein.

In the said Comment *Ad Cautelam,* respondent argues that, on the strength of Section 2, Article XI of the 1987 Constitution and the cases of *Mayor Lecaroz v. Sandiganbayan, Cuenca v. Hon. Fernan, In Re: First Indorsement from Hon. Gonzales,* and *Re: Complaint-Affidavit for Disbarment Against Senior Associate Justice Antonio T. Carpio,* the Chief Justice may be ousted from office only by impeachment. Respondent contends that the use of the phrase "may be removed from office" in Section 2, Article XI of the Constitution does not signify that Members of the Supreme Court may be removed through modes other than impeachment. According to respondent, the clear intention of the framers of the Constitution was to create an exclusive category of public officers who can be removed only by impeachment and not otherwise.

It is likewise the argument of respondent that since a petition for *quo warranto* may be filed before the RTC, such would result to a conundrum because a judge of lower court would have effectively exercised disciplinary power and administrative supervision over an official of the Judiciary much higher in rank and is contrary to Sections 6 and 11, Article VIII of the Constitution which vests upon the Supreme Court disciplinary and administrative power over all courts and the personnel thereof. She theorizes that if a Member of the Supreme Court can be ousted through *quo warranto* initiated by the OSG, the Congress' "check" on the Supreme Court through impeachment would be rendered inutile.

Respondent argues that the present petition is time-barred as Section 11, Rule 66 provides that a petition for *quo warranto* must be filed within one (1) year from the "cause of ouster" and not from the "discovery" of the disqualification. Respondent contends that the supposed "failure" to file the required SALNs allegedly took place for several years from 1986 to 2006, thus, the "cause of ouster" existed even before the respondent was appointed as Chief Justice on August 24, 2012. Therefore, as early as her appointment, the Republic, through the OSG, already had a cause of action to seek her ouster. Even assuming that the one-year prescriptive period may be counted from the Republic's "discovery" of the disqualification, the petition would still be time-barred since the Republic would have made such a "discovery" through U.P., considering that the U.P. HRDO is required to submit a list of employees who failed to file their SALNs.

Respondent avers that the Court cannot presume that she failed to file her SALNs because as a public officer, she enjoys the presumption that her appointment to office was regular. According to respondent, the Republic failed to overcome this presumption as the documents relied upon by it, *i.e.,* certifications from the U.P. HRDO and the Ombudsman, do not categorically state that respondent failed to file her SALNs. On the contrary, respondent points out that the U.P. HRDO had certified that she had been cleared of all administrative responsibilities and charges as of June 1, 2006 and that there was no pending administrative charge against her.

It is likewise the contention of respondent that public officers without pay or those who do not receive compensation are not required to file a SALN. Thus, respondent argues that for the periods that she was on official leave without pay, she was actually not required to file any SALN for the inclusive years. She adds that to require the submission of SALNs as an absolute requirement is to expand the qualifications provided for under the Constitution.

Nonetheless, respondent represents that she continues to recover and retrieve her missing SALNs and will present them before the Senate sitting as the Impeachment Tribunal and not to this Court considering her objections to the latter's exercise of jurisdiction.

Respondent also stresses that the failure to file SALNs or to submit the same to the JBC has no bearing on one's integrity. The submission of SALNs was simply among the additional documents which the JBC had required of the applicants for the position of Chief Justice. It is respondent's position that the non-filing of SALN is not a ground for disqualification unless the same was already the subject of a pending criminal or administrative case or if the applicant had already been finally convicted for a criminal offense involving said failure to file SALNs. In this case, respondent points out that the JBC was made aware as early as July 20, 2012 that respondent had not submitted to the JBC her SALNs as a U.P. professor and yet none of them invoked Section 2, Rule 10 of JBC-009 or the "integrity rule."

Respondent likewise contends that the issue of whether an applicant for the position of Chief Justice is a person of "proven integrity" is a question "constitutionally committed to the JBC" and is therefore a political question which only the JBC could answer, and it did so in the affirmative when it included respondent's name in the shortlist of nominees for the position of Chief Justice.

The Republic's Reply

In refuting respondent's arguments, the Republic justifies its resort to the unconventional method of *quo warranto.* The Republic cites the cases of *Estrada v. Desierto* and *Lawyers League for a Better Philippines and/or Oliver Lozano v. President Corazon Aquino et al.* where this Court took cognizance of a petition for *quo warranto* to oust an impeachable official. It reiterates its argument that it seeks respondent's ouster, not on account of commission of impeachable offenses, but because of her ineligibility to assume the position of Chief Justice.

The Republic maintains that the phrase "may be removed from office" in Section 2, Article XI of the Constitution means that Members of the Supreme Court may be removed through modes other than impeachment and disagrees with respondent's interpretation that the word "may" qualifies only the penalty imposable after the impeachment trial, *i.e.,* removal from office. The Republic claims that respondent's interpretation would lead to an absurd situation in the event that the Senate imposes a lesser penalty, like suspension of the President, which would result in a vacancy in the position not intended by the Constitution. This is because vacancy in the Office of the President occurs only in case of death, permanent disability, removal from office, or resignation, in which event the Vice President shall become the President to serve the unexpired term.

Invoking the *verba legis* principle in statutory construction, the Republic claims that Section 2, Article XI of the Constitution does not expressly prohibit resort to other means to remove impeachable officers in position.

Contrary to respondent's claim that this Court has no disciplinary authority over its incumbent members, the Republic cites Section 13 of A.M. No. 10-4-20-SC which created a permanent Committee on Ethics and Ethical Standards, tasked to investigate complaints involving graft and corruption and ethical violations against members of the Supreme Court. The Republic points out that such Ethics Committee conducted the investigation in A.M. No. 10-7-17-SC and A.M. No. 09-2-19-SC.

Meanwhile, in support of its claim that the petition is not time-barred, the Republic explains that the State has a continuous interest in ensuring that those who partake of its sovereign powers are qualified. It argues that the one-year period provided under Section 11 of Rule 66 merely applies to individuals who are claiming rights to a public office, and not to the State. To consider the instant petition as time-barred, the Republic argues, is to force the State to spend its resources in favor of an unqualified person.

Further, the Republic claims that even if it be assumed that the one-year period applies against the State, it cannot be deemed to have been notified of respondent's failure to file her SALNs. It argues that it has no statutory obligation to monitor compliance of government employees other than its own. It alleges that SALNs are not published; hence it has no feasible way of taking cognizance of respondent's failure to file SALN.

In any case, the Republic claims that the unique circumstances of the instant case behoove this Court to be liberal in interpreting the one-year reglementary period.

As to the question on jurisdiction, the Republic contends that the Supreme Court is clothed with the authority to determine respondent's qualifications and eligibility to hold the position of the Chief Justice. It argues that the determination of this issue is not a political question because such issue may be resolved through the interpretation of the pertinent prov1s1ons of the Constitution, laws, JBC rules, and Canons of Judicial Ethics.

Going to the fundamental issue of respondent's eligibility to hold the position of Chief Justice, the Republic reiterates that respondent failed to comply with the requirement of submitting SALNs and thus has failed to prove her integrity. Further, the Republic cites respondent's gross misrepresentation in stating that her reason for non-submission of SALNs was because she could no longer retrieve all of such SALNs. According to the Republic, respondent's allegation seems to imply that she did file her SALNs when the Certifications from the U.P. and the Ombudsman state otherwise.

The Republic posits that respondent's lack of integrity is further bolstered by her failure to disclose to the JBC that she failed to file her SALN 11 times during her tenure as U.P. Law Professor.

Integrity, the Republic claims, is simply faithful adherence to the law, and the filing of SALN is a qualification implied from the requirement of integrity.

The filing of SALN is not an additional requirement unduly imposed on applicants to positions in the Judiciary. When respondent failed to file her SALN, she did not comply with the Constitution, laws and appropriate codes of conduct. There is no need to allege or prove graft and corruption in order to prove an aspiring magistrate's lack of integrity.

Finally, the Republic contends that the presumption of regularity cannot be applied in respondent's favor. The Republic claims that such presumption attaches only to official acts and not to all acts of officials. The presumption, according to the Republic, applies only to official acts specified by law as an official duty or to a function attached to a public position. In this case, the filing of SALN is neither an official duty nor a function attached to a position of a U.P. College of Law Professor. In any case, the Republic claims that it has successfully disputed such presumption through the Certifications it presented from U.P. and the Ombudsman.

The Republic's Memorandum

In addition to the arguments put forth by the Republic in the Petition and the Reply, the Republic further justified its non-inclusion of the JBC in the instant petition. It contends that since the petition only disputes the respondent's eligibility to become the Chief Justice, the Solicitor General correctly instituted the *quo warranto* petition only against respondent.

Insisting on respondent's lack of integrity, the Republic argues that respondent had the legal obligation to disclose to the JBC that she failed to file her SALNs at least 11 times, citing the case of *OCA v. Judge Estacion Jr.*

The Republic also argues that respondent's claim of good faith is not a defense. Republic Act (R.A.) No. 3019 and R.A. No. 6713 are special laws and are thus governed by the concept of *malum prohibitum,* wherein malice or criminal intent is completely immaterial. Thus, her act of blaming the Review and Compliance Committee of U.P. for its failure to inform her that she had no SALNs on file does not exonerate her. The Republic further notes that respondent resorted to the fallacy of *tu quoque* - a diversionary tactic by using the fault of others to justify one's own fault.

Believing in the strength of its case, the Republic underscores its contention that the respondent was not able to dispute the evidence put forth by the Republic that she failed to religiously file her SALNs throughout her entire stint in the government. The Republic claims that it is futile for respondent to merely allege during the Oral Arguments that she filed her SALNs and wi11 produce them before the Senate. Respondent's admissions during the Oral Arguments, together with the U.P. HRDO's certification, prove that she did not religiously file her SALNs as required by law.

As to the applicability of this Court's ruling in *Concerned Taxpayer* v. *Doblada, Jr.,* the Republic argues that the case is not on all fours with the instant petition. The *Doblada* ruling, according to the OSG, did not involve issues on qualifications to public office unlike the present petition. Second, unlike in *Doblada,* respondent in this case failed to offer any countervailing evidence to disprove the Certifications by the U.P. HRDO and the Ombudsman. Lastly, the statement in *Doblada* relied upon by the respondent is a mere *dictum.* The issue therein is centered on Doblada's unexplained wealth. Furthermore, *Doblada* was decided only in 2005 or after respondent violated the legal requirement on the filing of SALNs.

The Respondent's Memorandum

Respondent insists that she can be removed from office only through impeachment. In addition to the arguments raised in her Comment *Ad Cautelam,* respondent asserts that impeachment was chosen as the method of removing certain high-ranking government officers to shield them from harassment suits that will prevent them from performing their functions which are vital to the continued operations of government. Such purpose, according to respondent, would be defeated if Section 2, Article XI of the Constitution would not be construed as providing an exclusive means for the removal of impeachable officers. Respondent argues that it would be absurd for the framers of the Constitution to provide a very cumbersome process for removing said officers only to allow a less difficult means to achieve the same purpose.

Respondent contends that the Republic, in citing the 2010 PET Rules and the cases of *Estrada v. Desierto* and *Lawyers League for a Better Philippines and/or Oliver Lozano v. President Corazon Aquino et al.,* erroneously lumps together the Chief Justice, the President and the Vice- President, simply because they are all impeachable officers. Respondent argues that there are substantial distinctions between the President and Vice- President on the one hand, and Members of the Supreme Court on the other: first, unlike Section 4, Article VII of the 1987 Constitution vesting in the Court the power to be the "sole judge" of all contests relating to the qualifications of the President and the Vice-President, there is no similar provision with respect to the other impeachable officials, *i.e.,* the Members of this Court, the Members of the Constitutional Commission or the Ombudsman; and second, the President and Vice President are elected officials while the other impeachable officers are appointive officials.

Respondent also argues that there is not a single pronouncement in *Funa v. Chairman Villar* and *Nacionalista Party v. De Vera* (by way of a ruling or *obiter dictum)* to the effect that an impeachable officer may be ousted through a writ of *quo warranto,* and that both cases were not even for *quo warranto.*

Respondent maintains that whether respondent was a person of ''proven integrity" when she applied for the position of Chief Justice is a political question outside the jurisdiction of this Honorable Court, which only the JBC and the President as the appointing authority could determine. She avers that the application of the political question doctrine is not confined to the President or Congress, as the Republic supposedly argues, but extends to other government departments or officers exercising discretionary powers, such as the JBC which uses its wisdom and discretion in determining whether an applicant to the Judiciary is a person of "proven" integrity.

Respondent also contends that absent any challenge to her nomination and appointment on the ground of grave abuse of discretion on the part of the JBC and the President, her appointment can no longer be questioned.

Respondent reiterates that the instant petition is time-barred. She argues that the Republic cannot rely on *Agcaoili vs. Suguitan* because it mentioned the principle *nullum temus occurit regi* or "no time runs against the king" only in passing, as the "general rule concerning limitation of action in *quo warranto* proceedings." She avers that *Agcaoili* is in fact authority for the principle that prescription will definitely run against the State if the rule or statute clearly so provides.

Respondent avers that she complied with the SALN laws as Professor of the U.P. College of Law and that the law presumes regularity in the filing of SALNs. According to respondent, that at least 11 of her SALNs have been found tends to prove a pattern of filing, rather than non-filing.

Respondent argues that the burden of proof in *quo warranto* proceedings falls on the party who brings the action and that based on *Doblada,* the Republic failed to discharge this burden. Respondent claims that the records of the U.P. HRDO are incomplete and unreliable and there was no categorical statement in its Certification that she failed to file her SALNs for the years 1986, 1987, 1988, 1989, 1992, 1999, 2000, 2001, 2003, 2004, 2005, and 2006. Further, she avers that the records of the Office of the Ombudsman are even more incomplete and unreliable, thus, any certification from said office would likewise be insufficient to prove that she failed to file11 other SALNs while she was a U.P. Professor.

Respondent contends that she has actually presented preponderant evidence that she filed her SALNs. She avers that she has recovered 11 of her U.P. SALNs and she has direct proof that she executed at least 12 SALNs as a U.P. Professor. She stresses that the U.P. HRDO has thrice "cleared" her of all administrative responsibilities and administrative charges.

Respondent also claims that she was not even required to file a SALN from 1986 to 1991 because her status and appointment then was merely temporary. According to her, the fact that she served as counsel for the Republic for the PIATCO cases in 2004, 2005 and 2006 does not negate her defense that under the law, she was not required to file her SALNs for the years when she was on leave and ·was not receiving compensation arising from public office *(i.e.,* 2001, 2004, 2005 and 2006).

Respondent's Memorandum also sought to address certain matters raised during the Oral Arguments.

As to where her SALNs are, respondent avers that some of her SALNs were in fact found in the records of the U.P. HRDO, and she was able to retrieve copies of some of her SALNs from the U.P. Law Center. Without prejudice to her jurisdictional objections, she attached them to the Memorandum. She argues that the fact that the SALNs for certain years are missing cannot give rise to the inference that they were not filed. She points out that U.P. was only required to keep the SALNs for a period of ten (10) years after receipt of the statement, after which the SALN may be destroyed.

In explaining her statement before the JBC that her SALNs were irretrievable, respondent avers that she honestly could not retrieve copies from U.P. over the course of a weekend given to her to complete her missing documentary requirements. She declares that she did not keep copies of her SALNs and she was not required to do so by law.

Respondent asserts that her 2009 SALN was not belatedly filed. She explains that her 2009 SALN is an entry SALN which she originally filed on September 16, 2010 within thirty (30) days after her assumption of office as an Associate Justice of the Supreme Court. According to her, the revised 2009 SALN which has the annotation "revised as of 22 June 2012," is a revised version executed in June 2012 to more accurately reflect the acquisition cost of certain assets declared in 2010.

With respect to the purported 2006 SALN, respondent avers that it was not the SALN required by RA 6713, but a mere statement of her assets which the JBC requested as a tool to determine her assets for comparison with her income tax returns. She explains that she merely happened to use a downloadable SALN form which she filled up and dated as of the time of its writing, *i.e.,* July 27, 2010. She claims that she never misrepresented the same to be her 2006 exit SALN from U.P. According to her, she in fact considers her 2006 SALN as one of the missing SALNs she is still trying to locate.

Respondent claims that she could not recall all the circumstances why her 1998 SALN was executed only in 2003 which, according to her, was reasonable since it happened l5 years ago. She claims that there is no law prohibiting her from submitting the same, and the fact that the SALN was filed serves the purpose of the law and negates any intention to hide unexplained wealth.

It is also respondent's position that the omission of her husband's signature on her 2011 SALN was inadvertent and was not an offense. According to her, it could not adversely impact on her integrity absent any allegation or finding that she acquired ill-gotten wealth. She argues that the Civil Service Commission's Guidelines which require the signature of the spouse who is not a public officer, was promulgated only in January 2013.

With regard to the jewelry she acquired from 1986 to 1991 which were supposedly declared in her 1991 SALN but were undeclared in her 1990 SALN, respondent avers that these assets were actually declared in her 1985 and 1989 SALNs, and they were consistently declared in all her subsequent SALNs beginning 1991. According to respondent, she should not be faulted for her inadvertent omission to declare such assets in her 1990 SALN as her declaration of the same thereafter is consistent with good faith and cured whatever error there may have been in her 1990 SALN. She argues that said assets were not manifestly disproportionate to her lawful income and even as a U.P. Professor, she could have afforded to purchase jewelry worth Pl5,000.00 over a span of six (6) years.

Finally, respondent argues that it is an "unreasonable and oppressive" interpretation of the law to reckon her entry SALN as Associate Justice of the Court from the date of her appointment (August 16, 2010) and not from December 31, 2009 when it was actually filed. Respondent contends that R.A. No. 6713 only requires that the SALN be filed "within thirty days after assumption of office" - a directive she supposedly complied with. She argues that while the Implementing Rules and Regulations of R.A. No. 6713 state that the SALN should be reckoned from the first day of service, the law provides for a review and compliance procedure which requires that a reporting individual first be informed and provided an opportunity to take necessary corrective action should there be any error in her SALN. Respondent avers that she did not receive any notice or compliance order informing her that her entry SALN was erroneous, and she was not directed to take the necessary corrective action.

The Respondent's Reply/Supplement to Memorandum

At the close of the Oral Argument, granted upon respondent's *Ad Cautelam* motion, the Court specifically required the parties to submit their respective memoranda within a non-extendible period of ten (10) days, after which, the petition shall be submitted for decision. Notwithstanding such clear directive from the Court, and even without being required to, respondent moves (again *A d Cautelam)* for the inclusion of her Reply/Supplement to her memorandum filed beyond the period granted by the Court to the parties. The belated filing of said Reply/Supplement in disregard of the Court's directive merits its non-admission. Nevertheless, as the Court remains circumspect of the pleadings submitted by the parties and in accordance with the dictates of due process and fair play, respondent's Reply/Supplement to her Memorandum, albeit filed *Ad Cautelam,* is admitted.

Respondent raises two points in her Reply/Supplement: *first,* the new matter of tax fraud allegedly committed by her; and *second,* the forum- shopping allegedly committed by the Republic.

Respondent sought to address the inclusion of the charge of tax fraud allegedly committed by her relative to the fees she received in the PIATCO cases which respondent argues to have been raised by the Republic only in its memorandum. Respondent denies having concealed or under declared her income in the PIATCO cases. She further points out that the Summary and the Powerpoint presentation prepared by BIR Deputy Commissioner Guballa and which were attached to the Republic's memorandum were incomplete, inaccurate and merely preliminary. In any case, respondent avers that BIR Deputy Commissioner Guballa himself found that respondent had "substantially declared all income (legal fees) from the PIATCO case in her ITRs from years 2004 to 2009 BUT there were certain discrepancies."

Respondent also accuses the Republic of having committed deliberate forum-shopping in filing the action for *quo warranto* even when the impeachment proceeding was already pending before the House of Representatives. Contending that all the elements of forum-shopping are present, respondent points to the (1) identity of parties between the *quo warranto* action and the impeachment case inasmuch as the House Committee on Justice is also part of the Government; (2) identity of causes of action considering that the *quo warranto* case is based on respondent's alleged lack of proven integrity for failure to file all her SALNs when she was teaching at the U.P. College of Law and for concealing her true income and evasion of taxes which were the same attacks on her eligibility and qualifications as enumerated in the Articles of Impeachment; and (3) identity in the relief sought as both the *quo warranto* and the impeachment sought her removal from the Office of the Chief Justice.

The Motions for Intervention

Through a Joint Motion for Leave to Intervene and Admit Attached Comment-In-Intervention, movant-intervenors composed of (1) former CEO of PAG-IBIG Fund, Zorayda Amelia Capistrano Alonzo, (2) peace & human rights advocate Remedios Mapa Suplido, (3) urban poor advocate Alicia Gentolia Murphy, (4) Chairperson of Pambansang Kilusan ng mga Samahang Magsasaka (PAKISAMA) Noland Merida Penas, (5) Fr. Roberto Reyes, and (6) poet, feminist & youth advocate Reyanne Joy P. Librado (Capistrano, *et al.,)* seek to intervene in the present petition as citizens and taxpayers.

The comment-in-intervention is a virtual echo of the arguments raised in respondent's comment that *quo warranto* is an improper remedy against impeachable officials who may be removed only by impeachment and that the application of the PET rules are limited only to the President and Vice President who are elective, and not appointive, officials. Movant-intervenors similarly argue that the petition is already time-barred as the cause of action arose upon respondent's appointment as Chief Justice on August 24, 2012 or almost six (6) years ago.

Capistrano *et al.* argue that it is not incumbent upon respondent to prove to the JBC that she possessed the integrity required by the Constitution for members of the Judiciary; rather, the *onus* of determining whether or not she qualified for the post fell upon the JBC. They also posit that nowhere in the Constitution is the submission of all prior SALNs required; instead, what is required is that all aspiring justices of the Court must have the imprimatur of the JBC, the best proof of which is a person's inclusion in the shortlist.

Capistrano *et al.* persuade that respondent's explanation that her government records in the academe for 15 years are irretrievable is reasonable and that respondent did not mislead the JBC. On the contrary, they claim that the JBC accepted her explanation when it deemed respondent as qualified. In doing so, they conclude, that the JBC determined that she possessed the integrity as required by the Constitution.

A few hours after the filing of the Capistrano *et. al.'s* Comment-in- Intervention, another set of intervenors composed of: (1) BAYAN MUNA Representative (Rep.) Carlos Isagani Zarate; (2) ACT Teachers Partylist Rep. Antonio Tinio & Francisca Castro; (3) GABRIELA Women's Party Rep. Emerenciana De Jesus & Arlene Brosas; (3) ANAKPAWIS Partylist Rep. Ariel Casilao; (5) KABATAAN Partylist Rep. Sarah Jane Elago; (6) Convenors and members of Movement Against Tyranny (MAT), namely: Francisco A. Alcuaz, Bonifacio P. Ilagan, & Col. George A. Rabusa (Ret.); (7) Former Senator Rene A.V. Saguisag; (8) Bishop Broderick S. Pabillo, D.D.; (9) Secretary Gen. of Bagong Alyansang Makabayan (BAYAN) Renato M. Reyes, Jr.; (10) Member of MDD Youth (an Affiliate of Aksyon Demokratiko) Kaye Ann Legaspi; and (11) Secretary General of National Union of People's Lawyers Atty. Ephraim B. Cortez (Zarate, *et al.,)* filed a Motion for Leave to File Motion to Intervene and Opposition-in- Intervention, pursuant to Rule 19 of the Rules of Court. They claim that as citizens and taxpayers, they have a legal interest in the matter of respondent's ouster or removal.

Zarate *et al.* raise the similar argument that the Chief Justice of the Supreme Court may only 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 and that it is only the Congress who has the power to remove the Chief Justice through the exclusive mode of impeachment.

They further argue that the issue of respondent's non-submission of complete SALNs, without more, does not have the effect of putting to question her integrity as she did not conceal her SALNs. They argue that the qualification of having a "proven integrity" is a standard subject to the discretion of,

first, the JBC who submits the list of qualified candidates; and *second,* of the President, who will select among the shortlist whom to appoint as Chief Justice.

Movant-Intervenor Rene A.V. Saguisag subsequently filed a Supplement to Motion for Leave to File Motion to Intervene and Opposition-in-Intervention *Cum* Petition to Recuse seeking the inhibition of unnamed Members of this Court who "may have prematurely thrown their weight on the other side, actually or perceptually" on the ground that respondent is entitled to an impartial arbiter.

As well, the Integrated Bar of the Philippines (IBP) filed its Motion for Leave to File and to Admit Attached Opposition-in-Intervention as an organization of all Philippine lawyers, having the fundamental duty to uphold the Constitution and an interest in ensuring the validity of the appointments to the Judiciary. The IBP's arguments reflect the arguments of the respondent and the other movant-intervenors that the *quo warranto* petition is time-barred and is unavailable against an impeachable officer. The IBP further argues that the determination of whether respondent is of "proven integrity" belongs to the JBC and which question the Court cannot inquire into without violating the separation of powers. It is likewise the contention of the IBP that the petition is fatally flawed since the JBC never required the submission of respondent's SALNs from 2001 to 2006.

Also seeking to intervene in the instant petition, Senators Leila M. De Lima (Senator De Lima) and Antonio F. Trillanes IV (Senator Trillanes) as citizens, taxpayers, and senators of the Republic, filed a Motion to Intervene and Admit Attached Opposition-In-Intervention *(Ad Cautelam)* on April 4, 2018.

In the said Motion, Senators De Lima and Trillanes assert that they possess a clear legal interest, both personal and official, in the subject matter of the Republic's petition to oust the Chief justice on the ground that she does not possess the constitutional requirement of integrity. According to Senators De Lima and Trillanes, they have the right and duty to uphold the Constitution and to oppose government actions that are clearly and patently unconstitutional. It is also Senators De Lima and Trillanes' theory that the instant *quo warranto* case is aimed to deprive the Senate of its jurisdiction as the impeachment tribunal. They argue that their mandated duty as judges in the possible impeachment trial of the Chief Justice will be pre-empted and negated if the *quo warranto* petition will be granted. Their claimed legal interest in their intervention in and opposition to the petition for *quo warranto* is mainly anchored upon their duty and prerogatives as Senators- judges in an impeachment trial and to protect the institution of impeachment as a mode of enforcing accountability.

Senators De Lima and Trillanes' Opposition-In-Intervention is a mere reiteration of the respondent's argument that this Court has no jurisdiction over a petition for *quo warranto* against an impeachable officer. They argue that the Chief Justice of the Supreme Court is, by express provision of the Constitution, removable from office exclusively by impeachment. They also aver that the ground raised in the petition for *quo warranto* - lack of integrity for failing to submit one's SALN - is part of the allegations in the impeachment case being heard in the House of Representatives. Thus, they argue that the use of an identical ground in a *quo warranto* proceeding directly undermines the jurisdiction of the Senate to hear and decide impeachment cases and the prerogative of the senators to try the same.

Senators De Lima and Trillanes also advance the argument that the Constitution identifies and enumerates only three qualifications for appointment to the Supreme Court: (1) natural born citizenship; (2) age, *i.e.,* at least forty years; and (3) an experience of at least 15 years either as judge of a lower court or in the practice of law in the Philippines. They assert that the filing of a SALN, taking of psychological or physical examination, and similar requirements, are merely discretionary administrative requirements for consideration of the JBC, not Constitutional requirements, hence, can be waived, removed entirely, or adjusted by the JBC in the exercise of its discretion. According to the said movant- intervenors, Section 7(3), Article VIII of the 1987 Constitution, which states that,"[a] Member of the Judiciary must be a person of proven competence, integrity, probity, and independence", does not speak of objective constitutional qualifications, but only of subjective characteristics of a judge. They, therefore, contend that "qualifications" such as citizenship, age, and experience are enforceable while "characteristics" such as competence, integrity, probity, and independence are mere subjective considerations.

Corollarily, Senators De Lima and Trillanes argue that the subjective considerations are not susceptible to analysis with tools of legal doctrine. Hence, questions on this matter are for the consideration of political institutions under the Constitution, *i.e.,* the JBC and the President (prior to appointment) and the House of Representatives and the Senate (after appointment).

The Motions for Inhibition

By way of separately filed motions, respondent seeks affirmative relief, in the form of the inhibition of five (5) Justices of the Court, the jurisdiction of which she questions and assails. Respondent prays for the inhibition of Associate Justices Lucas P. Bersamin, Diosdado M. Peralta, Francis H. Jardeleza, Noel Gimenez Tijam, and Teresita J. Leonardo-De Castro from hearing and deciding the present petition.

In common, respondent imputes actual bias on said Justices for having testified before the House Committee on Justice on the impeachment complaint. In particular, respondent considered Justice Bersamin's allusion to respondent as a "dictator" and his personal resentment about the supposed withdrawal of the privilege previously enjoyed by the members of the Court to recommend nominees to vacant positions in the Judiciary, as evidence of actual bias.

Justice Peralta's inhibition, on the other hand, is being sought because as then Acting *ex officio* Chairperson of the JBC when respondent was nominated for appointment as Chief Justice, he would have personal knowledge of disputed evidentiary facts concerning the proceedings and for having served as a material witness in the matter in controversy.

Justice Jardeleza's inhibition is sought on the ground that his testimony before the House Committee on Justice reveals that he harbors ill feelings towards respondent on account of the latter's challenge to his integrity during the nomination process for the Associate Justice position *vice* Justice Roberto A. Abad which he characterized as "inhumane".

Respondent seeks the inhibition of Justice Tijam based on the latter's statement as quoted in a Manila Times article to the effect that if respondent continues to ignore and to refuse to participate in the impeachment process, she is clearly liable for culpable violation of the Constitution.

Respondent likewise made mention that Justice Tijam and Justice Bersamin wore a touch of red during the "Red Monday" protest on March 12, 2018 wherein judges and court employees reportedly called on respondent to make the supreme sacrifice and resign.

Respondent also calls for the inhibition of Justice De Castro for having allegedly prejudged the issue as regards the validity of respondent's nomination and appointment in 2012 when Justice De Castro testified under oath during the House Committee on Justice hearings that respondent should have been disqualified from the shortlist on account of the SALNs she allegedly failed to submit.

At the last minute, respondent also seeks to disqualify Justice Samuel R. Martires for his purported insinuations during the Oral Arguments questioning her "mental" or "psychological" fitness on the basis of her belief that God is "the source of everything in (her) life."

Respondent also prays that the *Ad Cautelam* Respectful Motions for Inhibitions of Associate Justices Peralta, Leonardo-De Castro, Jardeleza, Tijam, Bersamin and Martires be resolved by the Court *En Banc,* without the participation of the Justices she seeks to disqualify:

The Issues

From the arguments raised by the parties and the issues as delineated in the Advisory governing the special Oral Arguments by way of accommodation to respondent, the paramount issues to be resolved by the Court are:

1. Whether the Court can assume jurisdiction and give due course to the instant petition for *quo warranto* against respondent who is an impeachable officer and against whom an impeachment complaint has already been filed with the House of Representatives;

2. Whether the petition is out rightly dismissible on the ground of prescription;

3. Whether respondent is eligible for the position of Chief Justice:

   a. Whether the determination of a candidate's eligibility for nomination is the sole and exclusive function of the JBC and whether such determination partakes of the character of a political question outside the Court's supervisory and review powers;

b. Whether respondent failed to file her SALNs as mandated by the Constitution and required by the law and its implementing rules and regulations; and if so, whether the failure to fill SALNs voids the nomination and appointment of respondent as Chief Justice;

c. Whether respondent failed to comply with the submission of SALNs as required by the JBC; and if so, whether the failure to submit SALNs to the JBC voids the nomination and appointment of respondent as Chief Justice;

d. In case of a finding that respondent is ineligible to hold the position of Chief Justice, whether the subsequent nomination by the JBC and the appointment by the President cured such ineligibility.

4. Whether respondent is a *de Jure* or *de facto* officer.

The Ruling of the Court

Preliminary Issues

Intervention is an ancillary remedy restricted in purpose and in time

Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings.

Nevertheless, the remedy of intervention is not a matter of right but rests on the sound discretion of the court upon compliance with the first requirement on legal interest and the second requirement that no delay and prejudice should result as spelled out under Section 1, Rule 19 of the Rules of Court, as follows:

> Sec. 1. *Who may intervene.* - A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Each of the movant-intervenors in this case seek to intervene as citizens and taxpayers, whose claimed interest to justify their intervention is their "sense of patriotism and their common desire to protect and uphold the Philippine Constitution". The movant-intervenors further assert a "public right" to intervene in the instant case by virtue of its "transcendental importance for the Filipino people as a whole". Apart from such naked allegations, movant-intervenors failed to establish to the Court's satisfaction the required legal interest. Our jurisprudence is well-settled on the matter:

> Intervention is not a matter of absolute right but may be permitted by the court **when the applicant shows facts which satisfy the requirements of the statute authorizing intervention.** Under our Rules of Court, what qualifies a person to intervene is his **possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both;** or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. As regards the legal interest as qualifying factor, this Court has ruled that such **interest must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral.** xxx (Emphasis ours)

Clearly, herein movant-intervenors' sentiments, no matter how noble, do not, in any way, come within the purview of the concept of "legal interest" contemplated under the Rules to justify the allowance of intervention. Movant-intervenors failed to show any legal interest of such nature that they will "either gain or lose by the direct legal operation of the judgment". Even the IBP's assertion of their "fundamental duty to uphold the Constitution, advocate for the rule of law, and safeguard the administration of justice", being the official organization of all Philippine lawyers, will not suffice. Admittedly, their interest is merely out of "sentimental desire" to uphold the rule of law. Meanwhile, Senators De Lima and Trillanes' claimed legal interest is mainly grounded upon their would-be participation in the impeachment trial as Senators-judges if the articles of impeachment will be filed before the Senate as the impeachment court. Nevertheless, the fact remains that as of the moment, such interest is still contingent on the filing of the articles of impeachment before the Senate. It bears stressing that the interest contemplated by law must be actual, substantial, material, direct and immediate, and *not simply contingent or expectant.*

Indeed, if every person, not parties to the action but assert their desire to uphold the rule of law and the Constitution, were allowed to intervene, proceedings would become unnecessarily complicated, expensive, and interminable.

Emphatically, a *quo warranto* proceeding is an action by the government against individuals unlawfully holding an office. Section 1, Rule 66 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.

The remedy of *quo warranto* is vested in the people, and not in any private individual or group, because disputes over title to public office are viewed as a public question of governmental legitimacy and not merely a private quarrel among rival claimants.

Newman v. United States ex Rel. Frizzell, historically traced the nature of *quo warranto* proceedings as a crime which could only be prosecuted in the name of the King by his duly authorized law officers. In time, the criminal features of *quo warranto* proceedings were modified and as such, the writ came to be used as a means to determine which of two claimants was entitled to an office and to order the ouster and the payment of a fine against the usurper. This quasi-criminal nature of *quo warranto* proceedings was adopted in some American states. Nonetheless, *Newman* explains that the Code of the District of Colombia, which was the venue of the case, continues to treat usurpation of office as a public wrong which can be corrected only by proceeding in the name of the government itself. Thus:

> In a sense - in a very important sense - every citizen and every taxpayer is interested in the enforcement of law, in the administration of law, and in having only qualified officers execute the law. But that general interest is not a private, but a public interest. Being such, it is to be represented by the Attorney General or the District Attorney, who are expected by themselves or those they authorize to institute quo warranto proceedings against usurpers in the same way that they are expected to institute proceedings against any other violator of the law. That general public interest is not sufficient to authorize a private citizen to institute such proceedings, for, if it was, then every citizen and every taxpayer would have the same interest and the same right to institute such proceedings, and a public officer might, from the beginning to the end of his term, be harassed with proceedings to try his title.

The only time that an individual, in his own name, may bring an action for *quo warranto* is when such individual has a claim over the position in question. Section 5 of Rule 66 of the Rules of Court provides:

> 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.

In this case, the movants-intervenors are neither individuals claiming to be entitled to the questioned position nor are they the ones charged with the usurpation thereof.

Furthermore, it should be emphasized that the movants-intervenors, in their respective Motions, presented nothing more than a mere reiteration of respondent's allegations and arguments in her Comment.

For these reasons, the Court, in its Resolution dated April 3, 2018, resolved to deny the motions for intervention respectively filed by Capistrano *et al.,* and Zarate *et al.,* and to note the IBP's intervention. For similar reasons, the Court resolves to deny the motion for intervention of Senators De Lima and Trillanes.

No basis for the Associate Justices of the Supreme Court to inhibit in the case

The instant petition comes at the heels of the recently-concluded hearings on the determination of probable cause in the impeachment complaint against respondent before the House Committee on Justice. Several Members of the Court, both incumbent and retired, were invited, under pain of contempt, to serve as resource persons. Those Members who were present at the Committee hearings were armed with the requisite imprimatur of the Court *En Banc,* given that the Members are to testify only on matters within their personal knowledge and insofar as material and relevant to the issues being heard. For lack of particularity, the Court supposes that the attendance of some of its Members in the House Committee hearings is the basis of movant-intervenor Saguisag's motion to recuse.

On the other hand, respondent was more emphatic when she sought affirmative relief, in the form of the inhibition of six (6) Justices, of the Court, whose jurisdiction she questions and assails. Specifically, respondent prays for the inhibition of Associate Justices Lucas P. Bersamin, Diosdado M. Peralta, Francis H. Jardeleza, Noel Gimenez Tijam, Teresita J. Leonardo-De Castro and Samuel R. Martires fundamentally on the ground of actual bias for having commonly testified before the House Committee on Justice on the impeachment case.

As for Justice Samuel R. Martires, respondent concludes Justice Martires' manifested actual bias based on his statements during the Oral Arguments which purportedly tended to question respondent's mental and psychological fitness.

In particular, respondent seeks the inhibition of Justice Tijam based on the latter's statement as quoted in a Manila Times article to the effect that if respondent continues to ignore and to refuse to participate in the impeachment process, she is clearly liable for culpable violation of the Constitution.

Respondent cites the article entitled, *"Appear in Congress or vi1Jlate Constitution,"* dated December 4, 2017, where Justice Tijam was purportedly quoted to have said:

> Impeachment is a constitutional process and a mandate enshrined in the Constitution. Justices took an oath to defend, preserve, protect the Constitution. If **Chief Justice Sereno continues to ignore and continues to refuse to participate in the impeachment process, ergo, she is clearly liable for culpable violation of the Constitution. (emphasis supplied)**

Respondent claims that the aforesaid statements of Justice Tijam are indicative of his stance that there may be a ground to impeach and remove respondent from office, which is also the objective of the *quo warranto* petition against her.

Ultimately, the cause for inhibition simmers to the question of whether, in so appearing and testifying before the House Committee on Justice, the Members of the Court are precluded from hearing and deciding the instant petition for *quo warranto.* To this, the Court answers in the negative.

Jurisprudence recognizes the right of litigants to seek disqualification of judges. Indeed, elementary due process requires a hearing before an impartial and disinterested tribunal. "A judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to its fairness and as to his integrity."

However, the right of a party to seek the inhibition or disqualification of a judge who does not appear to be wholly free, disinterested, impartial and independent in handling the case must be balanced with the latter's sacred duty to decide cases without fear of repression. The movant must therefore prove the ground of bias and prejudice by clear and convincing evidence to disqualify a judge from participating in a particular trial. "[W]hile it is settled principle that opinions formed in the course of judicial proceedings, based on the evidence presented and conduct observed by the judge, do not prove personal bias or prejudice on the part of the judge."

A circumspect reading of Justice Tijam's statements in the Manila Times article reveals that the manifest intent of the statements was only to prod respondent to observe and respect the constitutional process of impeachment, and to exemplify the ideals of public accountability, thus:

> He added that he wanted **to encourage Sereno to show up at the Congress hearings "to respect and participate in the impeachment (process), and to defend herself and protect the institution."**
>
> Sereno, he said, should be a **role model when it comes to respecting the Constitution.**
>
> "Impeachment is not an invention of politicians. It was drafted by the framers of the Constitution. Media, which propagates the myth that impeachment is a numbers game, hence, is political and arbitrary, fails to emphasize the fact that the rule of the majority is the essence of democracy," the magistrate stressed.
>
> Tijam believes that the impeachment process against Sereno is not an attack on the high court or the Judiciary because the Supreme Court does not consist of the chief justice alone.
>
> "Impeachment is [neither] an assault on the Judiciary nor an infringement on the independence of the Judiciary, because it is enshrined in the Constitution. Parenthetically, when the SC strikes down acts of Congress and acts of the President and the Executive Department for being unlawful and unconstitutional, the SC is not assaulting the independence of Congress and the Executive Department because the expanded power of judicial review is enshrined in the Constitution," Tijam pointed out.
>
> Sereno, he said, **should be a role model when it comes to respecting the Constitution.** (Emphasis ours)

Notably, respondent conveniently and casually invoked only a portion of the article which suited her objective of imputing bias against Justice Tijam.

As to the act of wearing a red tie which purportedly establishes Justices Tijam and Bersamin's prejudice against her, the argument is baseless and unfair. There is no basis, whether in logic or in law, to establish a connection between a piece of clothing and a magistrate's performance of adjudicatory functions. Absent compelling proof to the contrary, the red piece of clothing was merely coincidental and should not be deemed a sufficient ground to disqualify them.

In Philippine Commercial International Bank v. Sps. Dy Hong Pi, et al., this Court explained that:

> [T]he second paragraph of Rule 137, Section 1, unfettered discretion to decide whether to desist from hearing a case. The inhibition must be for just and valid causes, and in this regard, We have noted that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. This Court has to be shown acts or conduct clearly indicative of arbitrariness or prejudice before it can brand them with the stigma of bias or partiality. Moreover, extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice. (Citations omitted)

In this case, it does not appear that there are grounds for compulsory inhibition. As to voluntary inhibition, the mere fact that some of the Associate Justices participated in the hearings of the Committee on Justice determining probable cause for the impeachment of respondent does not make them disqualified to hear the instant petition. Their appearance thereat was in deference to the House of Representatives whose constitutional duty to investigate the impeachment complaint filed against respondent could not be doubted. Their appearance was with the prior consent of the Supreme Court *En Banc* and they faithfully observed the parameters that the Court set for the purpose. Their statements in the hearing, should be carefully viewed within this context, and should not be hastily interpreted as an adverse attack against respondent.

In fact, Justice Tijam, in his Sworn Statement submitted to the House Committee on Justice, clearly identified the purpose of his attendance thereat:

> 2. In reply, I sent a letter to Representative Umali on November 24, 2017, informing him that inasmuch as the issue involved actions of the Supreme Court *En Banc,* **I deemed it proper to first secure its approval before participating in the House Committee hearing.**
>
> 3. On November 28, 2017, the Supreme Court *En Banc* gave clearance for Justices who have been invited by the House Committee on Justice to testify in connection with the impeachment complaint, to give testimony on administrative matters if they so wish. **The Court's Resolution in this regard states that the authority was granted "only because the proceedings before the Committee on Justice of the House of Representatives constitute part of the impeachment process under Section 3, Article XI of the 1987 Constitution."**
>
> A copy of the Court's Resolution is hereto attached as Annex "A."
>
> 4. I am submitting this Sworn Statement to the House Committee on Justice as my testimony in relation to A.M. No. 17-06-02- SC, based on my best recollection of events relating to said matter and available records. I shall, however, be willing to give further testimony should the House Committee find it appropriate to propound questions thereon at the December 11, 2017 Committee hearing, subject to applicable limitations under law and relevant rules.
>
> 5. **I will appear and give testimony before the House Committee on Justice not as a witness for the complainant, but to honor the Committee's invitation** to shed light on A.M. No. 17-06-02- SC **and to accord due respect to the Constitutionally established process of impeachment.** (Emphasis ours)

Likewise, the Justices, including Justice Tijam, who appeared during the House Committee on Justice hearings, refused to form any conclusion or to answer the uniform query as to whether respondent's acts constitute impeachable offenses, as it was not theirs to decide but a function properly belonging to the Senate, sitting as an impeachment court. Evidently, no bias and prejudice on the part of the Justices could be inferred therein.

A judge may decide, *"in the exercise of his sound discretion,"* to recuse himself from a case for *just or valid reasons.* The phrase *just or valid reasons,* as the second requisite for voluntary inhibition, must be taken to mean-

> x x x causes which, though not strictly falling within those enumerated in the first paragraph, are akin or analogous thereto. In determining what causes are just, judges must keep in mind that next to importance to the duty of rendering a righteous judgment is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge. For it is an accepted axiom that every litigant, including the state, in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge, and the law intends that no judge shall preside in any case in which he is not wholly free, disinterested, impartial, and independent.

Respondent's call for inhibition has been based on speculations, or on distortions of the language, context and meaning of the answers the Justices may have given as sworn witnesses in the proceedings of the House Committee on Justice.

Justice Bersamin's statement that *"Ang Supreme Court ay hindi po maaring mag function kung isa ay diktador,* " is clearly a hypothetical statement, an observation on what would the Court be if any of its Members were to act dictatorially.

Likewise, the Court cannot ascribe bias in Justice Bersamin's remark that he was offended by respondent's attitude in ignoring the collegiality of the Supreme Court when she withdrew the Justices' "privilege" to recommend nominees to fill vacancies in the Supreme Court. It would be presumptuous to equate this statement to a personal resentment as respondent regards it. There has always been a high degree of professionalism among the Members of the Court in both their personal and official dealings with each other. It cannot also be denied that the statement reflected a natural sentiment towards a decision reached and imposed by a member of a collegial body without consultation or consensus.

Meanwhile, respondent's allegation of actual bias and partiality against Justice Peralta is negated by his testimony during the January 15, 2018 hearing of the House Committee on Justice, where he stated that he has been very supportive of the Judiciary reforms introduced by respondent as the Chief Justice, even if she suspects that he is one of those behind her impeachment.

Justice Peralta's testimony before the House Committee on Justice also contradicts respondent's allegation that Justice Peralta's apparent bias arose from his belief that respondent caused the exclusion of his wife, Court of Appeals (CA) Associate Justice Fernanda Lampas Peralta, from the list of applications for the position of CA Presiding Justice. Justice Peralta has made it clear during the February 12, 2018 Congressional hearing that he has already moved on from said issue and that the purpose of his testimony was merely to protect prospective applicants to the Judiciary.

Justice Peralta's testimony during the Congressional hearing that *"had (he) been informed of (the) letter dated July 23, 2012 and a certificate of clearance, (he) could have immediately objected to the selection of the Chief Justice for voting because this is a very clear deviation from existing rules that if a member of the Judiciary would like...or...a candidate would like to apply for Chief Justice, then she or he is mandated to submit the SALNs,"* is clearly a' hypothetical statement, which will not necessarily result in the disqualification of respondent from nomination. It was also expressed in line with his functions as then Acting Chairperson of the JBC, tasked with determining the constitutional and statutory eligibility of applicants for the position of Chief Justice. It bears stressing, too, that at the time said statement was made, the petition for *quo warranto* has not been filed; thus, such statement cannot amount to a prejudgment ofthe case.

Furthermore, according to Justice Peralta, while he was then the Acting *Ex Officio* Chairperson of the JBC at the time of respondent's application for the position of Chief Justice, he had no personal knowledge of the disputed facts concerning the proceedings, specifically the matters considered by the members of the JBC in preparing the shortlist of nominees. He explained that it was the ORSN of the JBC which was tasked to determine completeness of the applicants' documentary requirements, including the SALNs.

As for Justice Martires' statements during the Oral Arguments, this Court does not view them as indication of actual bias or prejudice against respondent. Our review of the record reveals that Justice Martires' did not refer to respondent as the object of his statements, as follows:

> 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.
>
> JUSTICE MARTIRES:
> Now would you consider it a mental illness (sic) 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?

Neither are We prepared to conclude that Justice Martires' statements were based on an extraneous source, other than what he has learned or encountered over the course of the instant proceedings. There is nothing in the interpellation, nor in Justice Martires' statements that he has read the psychiatric report, nor has read newspaper accounts tackling the same. He merely asked the OSG if he has read the same, and his opinion regarding it.

Contrary to respondent's contentions, Justice Martires has not suggested that she suffers from some mental or psychological illness. At most, his questions and statements were merely hypothetical in nature, which do not even constitute as an opinion against respondent. Certainly, to impute actual bias based on such a brief discourse with respect to hypothetical matters is conjectural and highly speculative. "Allegations and perceptions of bias from the mere tenor and language of a judge is insufficient to show prejudgment."

In the same vein, insinuations that the Justices of the Supreme Court are towing the line of President Rodrigo Roa Duterte in entertaining the *quo warranto* petition must be struck for being unfounded and for sowing seeds of mistrust and discordance between the Court and the public. The Members of the Court are beholden to no one, except to the sovereign Filipino people who ordained and promulgated the Constitution. It is thus inappropriate to misrepresent that the Solicitor General who has supposedly met consistent litigation success before the Supreme Court shall likewise automatically and positively be received in the present *quo warranto* action. That the Court spares the Solicitor General the rod is easily dispelled by the Court's firm orders in G.R. Nos. 234359 and 234484 concerning alleged extra legal killings - a case directly concerning the actuations of the executive department - to provide the Court with documents relative to the Oplan Tokhang operations and by a unanimous vote, rebuked the Solicitor General's plea for reconsideration. Suffice to say that the Court decides based on the merits of a case and not on the actors or the supposed benefactors involved.

Absent strong and compelling evidence establishing actual bias and partiality on the part of the Justices whose recusal was sought, respondent's motions for inhibition must perforce fail. Mere conjectures and speculations cannot justify the inhibition of a Judge or Justice from a judicial matter. The presumption that the judge will undertake his noble role of dispensing justice in accordance with law and evidence, and without fear or favor, should not be abandoned without clear and convincing evidence to the contrary.

In *Dimo Realty & Development, Inc. v. Dimaculangan,* We held:

> "[B]ias and prejudice, to be considered valid reasons for the voluntary inhibition of judges, must be proved with clear and convincing evidence. Bare allegations of partiality and prejudgment will not suffice. These cannot be presumed, especially if weighed against the sacred obligation of judges whose oaths of office require them to administer justice without respect to person and to do equal right to the poor and the rich." (Citation omitted)

The Court has pointedly observed in *Pimentel v. Hon. Salanga:"*

> Efforts to attain fair, just and impartial trial and decision have a natural and alluring appeal. But, we are not licensed to indulge in unjustified assumptions, or make a speculative approach to this ideal. **It ill behooves this Court to tar and feather a judge as biased or prejudiced, simply because counsel for a party litigant happens to complain against him. As applied here, respondent judge has not as yet crossed the line that divides partiality and impartiality. He has not thus far stepped to one side of the fulcrum. No act or conduct of his would show arbitrariness or prejudice. Therefore, we are not to assume what respondent judge, not otherwise legally disqualified, will do in a case before him. We have had occasion to rule in a criminal case that a charge made before trial that a party "will not be given a fair, impartial and just hearing" is "premature." Prejudice is not to be presumed. Especially if weighed against a judge's legal obligation under his oath to administer justice "without respect to person and do equal right to the poor and the rich."** To disqualify or not to disqualify himself then, as far as respondent judge is concerned, *is a matter of conscience.* (Citations omitted and emphasis ours)

The Court has consequently counseled that no Judge or Justice who is not legally disqualified should evade the duty and responsibility to sit in the adjudication of any controversy without committing a dereliction of duty for which he or she may be held accountable. Towards that end, the Court has aptly reminded:

> To take or not to take cognizance of a case, does not depend upon the discretion of a judge not legally disqualified to sit in a given case. It is his duty not to sit in its trial and decision if legally disqualified; but if the judge is not disqualified, it is a matter of official duty for him to proceed with the trial and decision of the case. He cannot shirk the responsibility without the risk of being called upon to account for his dereliction.

It is timely to be reminded, too, that the Supreme Court is a collegial judicial body whose every Member has solemnly and individually sworn to dispense and administer justice to every litigant. As a collegial body, the Supreme Court adjudicates without fear or favor. The only things that the Supreme Court collectively focuses its attention to in every case are the merits thereof, and the arguments of the parties on the issues submitted for consideration and deliberation. Only thereby may the solemn individual oath of the Members to do justice be obeyed.

In line with the foregoing, We deem it baseless, not to mention problematic, the respondent's prayer that the matter of inhibition of the six Associate Justices be decided by the remaining members of the Court *En Banc.* The respondent herself was cognizant that the prevailing rule allows challenged Justices to participate in the deliberations on the matter of their disqualification. Moreover, exclusion from the deliberations due to *delicadeza* or sense of decency, partakes of a ground apt for a voluntary inhibition. It bears to be reminded that voluntary inhibition, leaves to the sound discretion of the judges concerned whether to sit in a case for other just and valid reasons, with only their conscience as guide. Indeed, the best person to determine the propriety of sitting in a case rests with the magistrate sought to be disqualified. Moreover, to compel the remaining members to decide on the challenged member's fitness to resolve the case is to give them authority to review the propriety of acts of their colleagues, a scenario which can undermine the independence of each of the members of the High Court.

In the *En Banc* case of *Jurado & Co. v. Hongkong Bank,* the Court elucidated that a challenge to the competency of a judge may admit two constructions: *first,* the magistrate decides for himself the question of his competency and when he does so, his decision therein is conclusive and the other Members of the Court have no voice in it; and *second,* the challenged magistrate sits with the Court and decides the challenge as a collegial body. It was in *Jurado* that the Court adopted the second view as the proper approach when a challenge is poised on the competency of a sitting magistrate, that is, the Court, *together with* the challenged magistrate, decides. Jurado further expressly excluded a possible third construction wherein the Court decides the challenge but without the participation of the challenged member on the ground that such construction would place power on a party to halt the proceedings by the simple expedient of challenging a majority of the Justices. The Court sees no reason to deviate from its standing practice of resolving competency challenges as a collegial body without excluding the challenged Member from participating therein.

Accordingly, the Court resolves to DENY respondent's motion to exclude Associate Justices Peralta, Leonardo-De Castro, Jardeleza, Tijam, Bersamin, and Martires in the resolution of the separate motions· for inhibition against the said Associate Justices. Likewise, the Court resolves to DENY the said separate motions for inhibition.

Substantive Issues

I.

The Court has Jurisdiction over the instant Petition for *Quo Warranto*

The petition challenges respondent's right and title to the position of Chief Justice. The Republic avers that respondent unlawfully holds her office because in failing to regularly declare her assets, liabilities and net worth as a member of the career service prior to her appointment as an Associate Justice, and later as Chief Justice, of the Court, she cannot be said to possess the requirement of proven integrity demanded of every aspiring member of the Judiciary. The Republic thus prays that respondent's appointment as Chief Justice be declared void. Respondent counters that, as an impeachable officer, she may only be removed through impeachment by the Senate sitting as an impeachment court.

Supreme Court has original jurisdiction over an action for quo warranto

Section 5, Article VIII of the Constitution, in part, provides that the Supreme Court shall exercise original jurisdiction over petitions for *certiorari, prohibition, mandamus, quo warranto,* and *habeas corpus.* This Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue the extraordinary writs, including *quo warranto.*

Relatedly, Section 7, Rule 66 of the Rules of Court provides that the venue of an action for *quo warranto,* when commenced by the Solicitor General, is either the Regional Trial Court in the City of Manila, in the Court of Appeals, or in the Supreme Court.

While the hierarchy of courts serves as a general determinant of the appropriate forum for petitions for the extraordinary writs, a direct invocation of the Supreme Court's original jurisdiction to issue such writs is allowed when there are special and important reasons therefor, clearly and specifically set out in the petition. In the instant case, direct resort to the Court is justified considering that the action for *quo warranto* questions the qualification of no less than a Member of the Court. The issue of whether a person usurps, intrudes into, or unlawfully holds or exercises a public office is a matter of public concern over which the government takes special interest as it obviously cannot allow an intruder or impostor to occupy a public position.

The instant petition is a case of transcendental importance

While traditionally, the principle of transcendental importance applies as an exception to the rule requiring *locus standi* before the Courts can exercise its judicial power of review, the same principle nevertheless, finds application in this case as it is without doubt that the State maintains an interest on the issue of the legality of the Chief Justice's appointment.

Further, it is apparent that the instant petition is one of first impression and of paramount importance to the public in the sense that the qualification, eligibility and appointment of an incumbent Chief Justice, the highest official of the Judiciary, are being scrutinized through an action for *quo warranto.* The Court's action on the present petition has far-reaching implications, and it is paramount that the Court make definitive pronouncements on the issues herein presented for the guidance of the bench, bar, and the public in future analogous cases. Thus, the questions herein presented merit serious consideration from the Court and should not be trifled on.

Policy and ethical considerations likewise behoove this Court to rule on the issues put forth by the parties. This Court has always been a vigilant advocate in ensuring that its members and employees continuously possess the highest ideals of integrity, honesty, and uprightness. More than professional competence, this Court is cognizant of the reality that the strength of Our institution depends on the confidence reposed on Us by the public. As can be gleaned from Our recent decisions, this Court has not hesitated from disciplining its members whether they be judges, Justices or regular court employees. This case should not therefore be treated merely with kid gloves because it involves the highest official of the judicial branch of the government. On the contrary, this is an opportune time for this Court to exact accountability by examining whether there has been strict compliance with the legal and procedural requirements in the appointment of its Members.

Respondent, however, pounds on the fact that as a member of the Supreme Court, she is an impeachable officer. As such, respondent argues that a *quo warranto* proceeding, which may result in her ouster, cannot be lodged against her, especially when there is an impending impeachment case against her.

This argument is misplaced.

The origin, nature and purpose of impeachment and quo warranto are materially different

While both impeachment and *quo warranto* may result in the ouster of the public official, the two proceedings materially differ. At its most basic, impeachment proceedings are political in nature, while an action for *quo warranto* is judicial or a proceeding traditionally lodged in the courts.

To lend proper context, We briefly recount the origin and nature of impeachment proceedings and a *quo warranto* petition:

Impeachment

Historians trace the origin of impeachment as far as the 5th century in ancient Greece in a process called *eisangelia.* The grounds for impeachment include treason, conspiracy against the democracy, betrayal of strategic posts or expeditionary forces and corruption and deception.

Its, modern form, however, appears to be inspired by the British parliamentary system of impeachment. Though both public and private officials can be the subject of the process, the British system of impeachment is largely similar to the current procedure in that it is undertaken in both Houses of the Parliament. The House of Commons determines when an impeachment should be instituted. If the grounds, normally for treason and other high crimes and misdemeanor, are deemed sufficient, the House of Commons prosecutes the individual before the House of Lords.

While impeachment was availed for "high crimes and misdemeanors", it would appear that the phrase was applied to a variety of acts which can arguably amount to a breach of the public's confidence, such as advising the King to grant liberties and privileges to certain persons to the hindrance of the due execution of the laws, procuring offices for persons who were unfit, and unworthy of them and squandering away the public treasure, browbeating witnesses and commenting on their credibility, cursing and drinking to excess, thereby bringing the highest scandal on the public justice of the kingdom, and failure to conduct himself on the most distinguished principles of good faith, equity, moderation, and mildness.

While heavily influenced by the British concept of impeachment, the United States of America made significant modifications from its British counterpart. Fundamentally, the framers of the United States visualized the process as a means to hold accountable its public officials, as can be gleaned from their basic law:

> The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, treason, Bribery, or other High Crimes and Misdemeanors.

Other noted differences from the British process of impeachment include limiting and specifying the grounds to "treason, Bribery, or other High Crimes and Misdemeanors", and punishing the offender with removal and disqualification to hold public office instead of death, forfeiture of property and corruption of blood.

In the Philippines, the earliest record of impeachment in our laws is from the 1935 Constitution. Compared to the US Constitution, it would appear that the drafters of the 1935 Constitution further modified the process by making impeachment applicable only to the highest officials of the country; providing "culpable violation of the Constitution" as an additional ground, and requiring a two-thirds vote of the House of Representatives to impeach and three-fourths vote of the Senate to convict.

As currently worded, our 1987 Constitution, in addition to those stated in the 1935 basic law, provided another additional ground to impeach high-ranking public officials: "betrayal of public trust". Commissioner Rustico De los Reyes of the 1986 Constitutional Commission explained this ground as a "catch-all 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."

From the foregoing, it is apparent that although the concept of impeachment has undergone various modifications to suit different jurisdictions and government forms, the consensus seems to be that it is essentially a political process meant to vindicate the violation of the public's trust. Buckner Melton, in his book *The First Impeachment: The Constitutions Framers and the Case of Senator William Blount,* succinctly opined:

> Practically all who have written on the subject agree that impeachment involves a protection of a public interest, incorporating a public law element, much like a criminal proceeding....[I]mpeachment is a process instigated by the government, or some branch thereof, against a person who has somehow harmed the government or the community. The process, moreover, *is* adversarial in nature and resembles, to that extent, a judicial trial.

Quo warranto

The oft-cited origin of *quo warranto* was the reign of King Edward I of England who questioned the local barons and lords who held lands or title under questionable authority. After his return from his crusade in Palestine, he discovered that England had fallen because of ineffective central administration by his predecessor, King Henry III. The inevitable result was that the barons, whose relations with the King were governed on paper by Magna Carta, assumed to themselves whatever power the King's officers had neglected. Thus, King Edward I deemed it wise to inquire as to what right the barons exercised any power that deviated in the slightest from a normal type of feudalism that the King had in mind. The theory is that certain rights are *regalia* and can be exercised only upon showing of actual grants from the King or his predecessor. Verily, King Edward's purpose was to catalogue the rights, properties and possessions of the kingdom in his efforts to restore the same.

In the Philippines, the remedies against usurpers of public office appeared in the 1900s, through Act No. 190. Section 197 of the Act provides for a provision comparable to Section 1, Rule 66 of the Rules of Court:

Sec. 197. *Usurpation of an Office or Franchise*- A civil action may be brought in the name of the Government of the Philippine Islands:

1. Against a person who usurps, intrudes into, or unlawfully holds or exercises a public civil office or a franchise within the Philippine Islands, or an office in a corporation created by the authority of the Government of the Philippine Islands;
2. Against a public civil officer who does or suffers an act which, by the provisions of law, works a forfeiture of his office;
3. Against an association of persons who act as a corporation within the Philippine Islands, without being legally incorporated or without lawful authority so to act.

Based from the foregoing, it appears that impeachment is a proceeding exercised by the legislative, as representatives of the sovereign, to vindicate the breach of the trust reposed by the people in the hands of the public officer by determining the public officer's fitness to stay in the office. Meanwhile, an action for *quo warranto,* involves a judicial determination of the eligibility or validity of the election or appointment of a public official based on predetermined rules.

Quo warranto and impeachment can proceed independently and simultaneously

Aside from the difference in their origin and nature, *quo warranto* and impeachment may proceed independently of each other as these remedies are distinct as to (1) jurisdiction (2) grounds, (3) applicable rules pertaining to initiation, filing and dismissal, and (4) limitations.

The term *"quo warranto"* is Latin for "by what authority." Therefore, as the name suggests, *quo warranto* is a writ of inquiry. It determines whether an individual has the legal right to hold the public office he or she occupies.

In review, Section 1, Rule 66 of the Rules of Court provides:

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.

Thus, a *quo warranto* proceeding is the proper legal remedy to determine the right or title to the contested public office or to oust the holder from its enjoyment. In *quo warranto* proceedings referring to offices filled by election, what is to be determined is the eligibility of the candidates elected, while in *quo warranto* proceedings referring to offices filled by appointment, what is determined is the legality of the appointment.

The title to a public office may not be contested collaterally but only directly, by *quo warranto* proceedings. In the past, the Court held that title to public office cannot be assailed even through *mandamus* or a motion to annul or set aside order. That *quo warranto* is the proper legal vehicle to directly attack title to public office likewise precludes the filing of a petition for prohibition for purposes of inquiring into the validity of the appointment of a public officer. Thus, in *Nacionalista Party v. De Vera,* the Court held:

> "[T]he writ of prohibition, even when directed against persons acting as judges or other judicial officers, cannot be treated as a substitute for *quo warranto* or be rightfully called upon to perform any of the functions of the writ. If there is a court, judge or officer *de facto,* the title to the office and the right to act cannot be questioned by prohibition. If an intruder takes possession of a judicial office, the person dispossessed cannot obtain relief through a writ of prohibition commanding the alleged intruder to cease from performing judicial acts, since in its very nature prohibition is an improper remedy by which to determine the title to an office."

As earlier discussed, an action for *quo warranto* may be commenced by the Solicitor General or a public prosecutor, or by any person claiming to be entitled to the public office or position usurped or unlawfully held or exercised by another.

That usurpation of a public office is treated as a public wrong and carries with it public interest in our jurisdiction is clear when Section 1, Rule 66 provides that where the action is for the usurpation of a public office, position or franchise, it shall be commenced by a verified petition brought in the name of the Republic of the Philippines through the Solicitor General or a public prosecutor.

Nonetheless, the Solicitor General, in the exercise of sound discretion, may suspend or tum down the institution of an action for *quo warranto* where there are just and valid reasons. Upon receipt of a case certified to him, the Solicitor General may start the prosecution of the case by filing the appropriate action in court or he may choose not to file the case at all. The Solicitor General is given permissible latitude within his legal authority in actions for *quo warranto,* circumscribed only by the national interest and the government policy on the matter at hand.

The instance when an individual is allowed to commence an, action for *quo warranto* in his own name is when such person is claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another. *Feliciano v. Villasin* reiterates the basic principle enunciated in *Acosta v. Flor* that for a *quo warranto* petition to be successful, the private person suing must show no less than a clear right to the contested office.

In case of usurpation of a public office, when the respondent is found guilty of usurping, intruding into, or unlawfully holding or exercising a public office, position or franchise, the judgment shall include the following:

(a) the respondent shall be ousted and excluded from the office;
(b) the petitioner or relator, as the case may be, shall recover his costs; and
(c) such further judgment determining the respective rights in and to the public office, position or franchise of all the parties to the action as justice requires.

The remedies available in a *quo warranto* judgment do not include correction or reversal of acts taken under the ostensible authority of an office or franchise. Judgment is limited to ouster or forfeiture and may not be imposed retroactively upon prior exercise of official or corporate duties.

Quo warranto and impeachment are, thus, not mutually exclusive remedies and may even proceed simultaneously. The existence of other remedies against the usurper does not prevent the State from commencing a *quo warranto* proceeding.

Respondent's Reply/Supplement to the Memorandum *Ad Cautelam* specifically tackled the objection to the petition on the ground of forum shopping. Essentially, respondent points out that the inclusion of the matter on tax fraud, which will further be discussed below, is already covered by Article I of the Articles of Impeachment. Hence, respondent argues, among others, that the petition should be dismissed on the ground of forum shopping.

Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another. Forum shopping originated as a concept in private international law, where non-resident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. At present, our jurisdiction has recognized several ways to commit forum shopping, to wit: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia);* (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata);* and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata).*

We have already settled that the test for determining existence of forum shopping is as follows:

> To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis*

peridentia are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is **whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.** (Emphasis ours)

Litis pendentia is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant.* As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.

On the other hand, *res judicata* or prior judgment bars a subsequent case when the following requisites are satisfied: (1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is - between the first and the second actions - identity of parties, of subject matter, and of causes of action.

Ultimately, what is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues.

Guided by the foregoing, there can be no forum shopping in this case despite the pendency of the impeachment proceedings before the House of Representatives, contrary to respondent's position.

The causes of action in the two proceedings are unequivocally different. In *quo warranto,* the cause of action lies on the usurping, intruding, or unlawfully holding or exercising of a public office, while in impeachment, it is the commission of an impeachable offense. Stated in a different manner, the crux of the controversy in this *quo warranto* proceedings is the determination of whether or not respondent legally holds the Chief Justice position to be considered as an impeachable officer in the first place. On the other hand, impeachment is for respondent's prosecution for certain impeachable offenses. To be sure, respondent is not being prosecuted herein for such impeachable offenses enumerated in the Articles of Impeachment. Instead, the resolution of this case shall be based on established facts and related laws. Simply put, while respondent's title to hold a public office is the issue in *quo warranto* proceedings, impeachment necessarily presupposes that respondent legally holds the public office and thus, is an impeachable officer, the only issue being whether or not she committed impeachable offenses to warrant her removal from office.

Likewise, the reliefs sought in the two proceedings are different. Under the Rules on *quo warranto, "when the respondent is found guilty of usurping, intruding into, or unlawfully holding or exercising a public office, xxx, judgment shall be rendered that such respondent be ousted and altogether excluded therefrom, x x x."* In short, respondent in a *quo warranto* proceeding shall be adjudged to cease from holding a public office, which he/she is ineligible to hold. On the other hand, in impeachment, a conviction for the charges of impeachable offenses shall result to the *removal* of the respondent from the public office that he/she is legally holding. It is not legally possible to impeach or remove a person from an office that he/she, in the first place, does not and cannot legally hold or occupy.

In the said Reply/Supplement to the Memorandum *Ad Cautelam,* respondent advanced the argument that the "impeachment proceeding" is different from the "impeachment case", the former refers to the filing of the complaint before the Committee on Justice while the latter refers to the proceedings before the Senate. Citing *Francisco v. House of Representatives,* respondent posits that the "impeachment proceeding" against her is already pending upon the filing of the verified complaint before the House Committee on Justice albeit the "impeachment case" has not yet started as the Articles of Impeachment has not yet been filed with the Senate. Hence, in view of such proceeding before the Committee on Justice, the filing of the instant petition constitutes forum shopping.

The difference between the "impeachment proceeding" and the "impeachment case" correctly cited by the respondent, bolsters the conclusion that there can be no forum shopping. Indeed, the "impeachment proceeding" before the House Committee on Justice is not the "impeachment case" proper. The impeachment case is yet to be initiated by the filing of the Articles of Impeachment before the Senate. Thus, at the moment, there is no pending impeachment case against the respondent.

The House Committee on Justice's determination of probable cause on whether the impeachment against the respondent should go on trial before the Senate is akin to the prosecutor's determination of probable cause during the preliminary investigation in a criminal case. In a preliminary investigation, the prosecutor does not determine the guilt or innocence of the accused; he does not exercise adjudication nor rule-making functions. The process is merely inquisitorial and is merely a means of discovering if a person may be reasonably charged with a crime. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. As such, during the preliminary investigation before the prosecutor, there is no pending case to speak of yet. In fact, jurisprudence states that the preliminary investigation stage is not part of the trial.

Thus, at the time of the filing of this petition, there is no pending impeachment case that would bar the *quo warrranto* petition on the ground of forum shopping.

In fine, forum shopping and *litis pendentia* are not present and a final decision in one will not strictly constitute as *res judicata* to the other. A judgment in a *quo warranto* case determines the respondent's constitutional or legal authority to perform any act in, or exercise any function of the office to which he lays claim; meanwhile a judgment in an impeachment proceeding pertain to a respondent's "fitness for public office."

Considering the legal basis and nature of an action for *quo waranto,* this Court cannot shirk from resolving the instant controversy in view of the fact that· respondent is an impeachable officer and/or in view of the possibility of an impeachment trial against respondent.

Impeachment is not an exclusive remedy by which an invalidly appointed or invalidly elected impeachable official may be removed from office

Respondent anchors her position that she can be removed from office only by impeachment on the Court's ruling in *Lecaroz v. Sandiganbayan, Cuenca* v. *Fernan, In Re Gonzales, Jarque v. Desierto* and *Marcoleta* v. *Borra.* It should be stressed, however, that none of these cases concerned the validity of an impeachable officer's appointment. *Lecaroz* involved a criminal charge against a mayor before the Sandiganbayan, while the rest were disbarment cases filed against impeachable officers principally for acts done during their tenure in public office. Whether the impeachable officer unlawfully held his office or whether his appointment was void was not an issue raised before the Court. The principle laid down in said cases is to the effect that during their incumbency, impeachable officers cannot be criminally prosecuted for an offense that carries with it the penalty of removal, and if they are required to be members of the Philippine Bar to qualify for their positions, they cannot be charged with disbarment. The proscription does not extend to actions assailing the public officer's title or right to the office he or she occupies. The ruling therefore cannot serve as authority to hold that a *quo warranto* action can never be filed against an impeachable officer. In issuing such pronouncement, the Court is presumed to have been aware of its power to issue writs of *quo warranto* under Rule 66 of the Rules of Court.

Even the PET Rules expressly provide for the remedy of either an election protest or a petition for *quo warranto* to question the eligibility of the President and the Vice-President, both of whom are impeachable officers. Following respondent's theory that an impeachable officer can be removed only through impeachment means that a President or Vice- President against whom an election protest has been filed can demand for the dismissal of the protest on the ground that it can potentially cause his/her removal from office through a mode other than by impeachment. To sustain respondent's position is to render election protests under the PET Rules nugatory. The Constitution could not have intended such absurdity since fraud and irregularities in elections cannot be countenanced, and the will of the people as reflected in their votes must be determined and respected. The Court could not, therefore, have unwittingly curtailed its own judicial power by prohibiting *quo warranto* proceedings against impeachable officers.

Further, the PET Rules provide that a 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 (10) days after the proclamation of the winner. Despite disloyalty to the Republic being a crime against public order defined and penalized under the penal code, and thus may likewise be treated as "other high crimes," constituting an impeachable offense, *quo warranto* as a remedy to remove the erring President or Vice

President is nevertheless made expressly available.

In fact, this would not be the first time the Court shall take cognizance of a *quo warranto* petition against an impeachable officer. In the consolidated cases of *Estrada v. Desierto, et al.* and *Estrada v. Macapagal- Arroyo,* the Court took cognizance and assumed jurisdiction over the *quo warranto* petition filed against respondent therein who, at the time of the filing of the petition, had taken an oath and assumed the Office of the President. Petitioner therein prayed for judgment confirming him to be the lawful and incumbent President of the Republic temporarily unable to discharge the duties of his office, and declaring respondent to have taken her oath and to be holding the Office of the President, only in an acting capacity. In fact, in the said cases, there was not even a claim that respondent therein was disqualified from holding office and accordingly challenged respondent's status as *dejure* 14th President of the Republic. By entertaining the *quo warranto* petition, the Court in fact determined whether then President Estrada has put an end to his official status by his alleged act of resignation.

Furthermore, the language of Section 2, Article XI of the Constitution does not foreclose a *quo warranto* action against impeachable officers. The provision reads:

> **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. (Emphasis ours)

It is a settled rule of legal hermeneutics that if the language under consideration is plain, it is neither necessary nor permissible to resort to extrinsic aids, like the records of the constitutional convention, for its interpretation.

The provision uses the permissive term "may" which, in statutory construction, denotes discretion and cannot be construed as having a mandatory effect. We have consistently held that the term *"may"* is indicative of a mere possibility, an opportunity or an option. The grantee of that opportunity is vested with a right or faculty which he has the option to exercise. An option to remove by impeachment admits of an alternative mode of effecting the removal.

On this score, Burke Shartel in his work *Federal Judges: Appointment, Supervision, and Removal: Some Possibilities under the Constitution,* makes an interesting and valid observation on a parallel provision on impeachment under the U.S. Constitution from which ours was heavily patterned:

> x x x it is not reasonable to spell out of the express prov1s1on for impeachment, an intention or purpose of the framers to create an exclusive remedy. The common canon for interpreting legislation, - *expresio unius excusio est alterius* - has no proper application to an express provision for one of several common-law remedies. The express provision for removal by impeachment ought not to be taken as a tacit prohibition of removal by other methods when there are other adequate reasons to account for this express provision. The main purpose of the framers of the Constitution in providing for impeachment was to supply a legislative check on the other departments of our government, and particularly on the chief executive. Without an express provision, impeachment would have been impliedly prohibited by the doctrine of separation of powers. If this legislative check was desired, a reservation in express words was essential. Another reason for the express provisions on this subject was that the framers of the Constitution did not wish to make the executive and judicial officers of our government completely dependent on Congress. They wanted to confer only a limited power of removal, and the desired limitations on the power to impeach had to be explicitly stated. These two reasons explain the presence in the Constitution of the express provisions for impeachment; it is not necessary to resort to any supposed intent to establish an exclusive method of removal in order to account for them. On the contrary, logic and sound policy demand that the Congressional power be construed to be a concurrent, not an exclusive, power of removal.

We hold, therefore, that by its tenor, Section 2, Article XI of the Constitution allows the institution of a *quo warranto* action against an impeachable officer. After all, a *quo warranto* petition is predicated on grounds distinct from those of impeachment. The former questions the validity of a public officer's appointment while the latter indicts him for the so-called impeachable offenses without questioning his title to the office he holds.

Further, that the enumeration of "impeachable offenses" is made absolute, that is, only those enumerated offenses are treated as grounds for impeachment, is not equivalent to saying that the enumeration likewise purport to be a complete statement of the causes of removal from office. *Shartel,* above cited, eloquently incites as follows:

> x x x. There is no indication in the debates of the Convention that the framers of the Constitution intended at this point to make a complete statement of causes of removal from office. The emphasis was on the causes for which Congress might remove executive and judicial officers, not on causes of removal as such. x x x How then can the causes of removal by impeachment be construed as a recital of the causes for which judges may be removed? It is especially hard to see why the express provision for impeachment - a limited legislative method of removing all civil officers ·for serious misconduct - should be construed to forbid removal of judges by judicial action on account of disability or any reasonable cause not a proper ground for action by the Houses of Congress.

Neither can the Court accept respondent's argument that the term "may" in Section 2, Article XI qualifies only the penalty imposable at the conclusion of the impeachment trial, such that conviction may result in lesser penalties like censure or reprimand. Section 3(7), Article XI of the Constitution specifies the penalty of "removal from office" and "disqualification to hold any office under the Republic of the Philippines" in impeachment cases. There is nothing in the said provision that deliberately vests authority on the impeachment court to impose penalties lower than those expressly mentioned. Also, respondent has not shown that such was authority was intended by the framers of the 1987 Constitution. The ultimate penalty of removal is imposed owing to the serious nature of the impeachable offenses. This Court had occasion to rule:

> The task of the Court is rendered lighter by the existence of relatively clear provisions in the Constitution. In cases like this, we follow what the Court, speaking through Mr. Justice (later, Chief Justice) Jose Abad Santos stated in *Gold Creek Mining Corp. v. Rodriguez,* that:
>
> > The fundamental principle of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it. **The intention to which force is to be given is that which is embodied and expressed in the constitutional provisions themselves**. (Emphasis supplied)

To subscribe to the view that appointments or election of impeachable officers are outside judicial review is to cleanse their appointments or election of any possible defect pertaining to the Constitutionally-prescribed qualifications which cannot otherwise be raised in an impeachment proceeding.

The courts should be able to inquire into the validity of appointments even of impeachable officers. To hold otherwise is to allow an absurd situation where the appointment of an impeachable officer cannot be questioned even when, for instance, he or she has been determined to be of foreign nationality or, in offices where Bar membership is a qualification, when he or she fraudulently represented to be a member of the Bar. Unless such an officer commits any of the grounds for impeachment and is actually impeached, he can continue discharging the functions of his office even when he is clearly disqualified from holding it. Such would result in permitting unqualified and ineligible public officials to continue occupying key positions, exercising sensitive sovereign functions until they are successfully removed from office through impeachment. This could not have been the intent of the framers of the Constitution.

We must always put in mind that public office is a public trust. Thus, the people have the right to have only qualified individuals appointed to public· office. To construe Section 2, Article XI of the Constitution as proscribing a *quo warranto* petition is to deprive the State of a remedy to correct a "public wrong" arising from defective or void appointments. Equity will not suffer a wrong to be without remedy. *Ubi jus ibi remedium.* Where there is a right, there must be a remedy.

As respondent herself previously opined in one case: "Reason is the foundation of all legal interpretation, including that of constitutional interpretation. And the most powerful tool of reason is reflecting on the essence of things."

The essence of *quo warranto* is to protect the body politic from the usurpation of public office and to ensure that government authority is entrusted only to qualified individuals. Reason therefore dictates that *quo warranto* should be an available remedy to question the legality of appointments especially of impeachable officers considering that they occupy some of the highest-ranking offices in the land and are capable of wielding vast power and influence on matters of law and policy.

At this juncture, it would be apt to dissuade and allay the fear that a ruling on the availability of *quo warranto* would allow the Solicitor General to "wield a sword over our collective heads, over all our individual heads, and on that basis, impair the integrity of the Court as a court."

Such view, while not improbable, betrays a fallacious and cynical view of the competence and professionalism of the Solicitor General and the members of this Court. It presupposes that members of this Court are law offenders. It also proceeds from the premise that the Solicitor General is the Executive's pawn in its perceived quest for a "more friendly" Court. Verily, fear, particularly if unfounded, should not override settled presumptions of good faith and regularity in the performance of official duties. This Court, absent a compelling proof to the contrary, has no basis to doubt the independence and autonomy of the Solicitor General. It is worthwhile to note that while the Solicitor General has a prerogative in the institution of an action for *quo warranto,* its exercise of such discretion is nevertheless subject to the Court's review. In *Topacio v. Ong,* this Court explained:

> In the exercise of sound discretion, the Solicitor General may suspend or turn down the institution of an action for quo warranto where there are just and valid reasons. Thus, in Gonzales v. Chavez, the Court ruled:
>
> Like the Attorney-General of the United States who has absolute discretion in choosing whether to prosecute or not to prosecute or to abandon a prosecution already started, our own Solicitor General may even dismiss, abandon, discontinue or compromise suits either with or without stipulation with the other party. **Abandonment of a case, however, does not mean that the Solicitor General may just drop it without any legal and valid reasons, for the discretion given him is not unlimited.** Its exercise must be, not only **within the parameters set by law** but with the best interest of the State as the ultimate goal.
>
> Upon receipt of a case certified to him, the Solicitor General exercises his discretion in the management of the case. He may start the prosecution of the case by filing the appropriate action in court or he may opt not to file the case at all. He may do everything within his legal authority but **always conformably with the national interest and the policy of the government on the matter at hand.** (Emphasis ours)

Neither should it be forgotten that the Solicitor General is an officer of the Court, tasked "to share in the task and responsibility of dispensing justice and resolving disputes;" therefore, he may be enjoined in the same manner that a special prosecutor was sought enjoined by this Court from committing any act which may tend to "obstruct, pervert or impede and degrade the administration of justice." Either way, in the event that *quo warranto* cases against members of the Judiciary inundate the courts' dockets, it does not follow that the courts are powerless to shield its members against suits which are obviously lacking in merit, or those merely intended to harass the respondent.

The Supreme Court's exercise of its jurisdiction over a quo warranto petition is not violative of the doctrine of separation of powers

Section 3(1) and 3(6), Article XI, of the Constitution respectively provides that the House of Representatives shall have the exclusive power to initiate all cases of impeachment while the Senate shall have the sole power to try and decide all cases of impeachment. Thus, there is no argument that the constitutionally-defined instrumentality which is given the power to try impeachment cases is the Senate.

Nevertheless, the Court's assumption of jurisdiction over an action for *quo warranto* involving a person who would otherwise be an impeachable official had it not been for a disqualification, is not violative of the core constitutional provision that impeachment cases shall be exclusively tried and decided by the Senate.

Again, an action for *quo warranto* tests the right of a person to occupy a public position. It is a direct proceeding assailing the title to a public office. The issue to be resolved by the Court is whether or not the defendant is legally occupying a public position which goes into the questions of whether defendant was legally appointed, was legally qualified and has complete legal title to the office. If defendant is found to be not qualified and without any authority, the relief that the Court grants is the ouster and exclusion of the defendant from office. In other words, while impeachment concerns actions that make the officer unfit to continue exercising his or her office, *quo warranto* involves matters that render him or her ineligible to hold the position to begin with.

Given the nature and effect of an action for *quo warranto,* such remedy is unavailing to determine whether or not an official has committed misconduct in office nor is it the proper legal vehicle to evaluate the person's performance in the office. *Apropos,* an action for *quo warranto* does not try a person's culpability of an impeachment offense, neither does a writ of *quo warranto* conclusively pronounce such culpability.

In *Divinagracia v. Consolidated Broadcasting System, Inc.,* the Court further explained the court's authority to issue a writ of *quo warranto,* as complementary to, and not violative of, the doctrine of separation of powers, as follows:

> **And the role of the courts, through quo warranto proceedings, neatly complements the traditional separation of powers that come to bear in our analysis. The courts are entrusted with the adjudication of the legal status of persons, the final arbiter of their rights and obligations under law. The question of whether a franchisee is in breach of the franchise specially enacted for it by Congress is one inherently suited to a court of law, and not for an administrative agency, much less one to which no such function has been delegated by Congress.** In the same way that availability of judicial review over laws does not preclude Congress from undertaking its own remedial measures by appropriately amending laws, **the viability of quo warranto in the instant cases does not preclude Congress from enforcing its own prerogative by abrogating the legislative franchises of respondents should it be distressed enough by the franchisees' violation of the franchises extended to them.** (Emphasis ours)

Applying the ratio in *Divinagracia,* the Court's exercise of its jurisdiction over *quo warranto* proceedings does not preclude Congress from enforcing its own prerogative of determining probable cause for impeachment, to craft and transmit the Articles of Impeachment, nor will it preclude Senate from exercising its constitutionally committed power of impeachment.

Indeed, respondent's case is peculiar in that her omission to file her SALN also formed part of the allegations against her in the Verified Complaint for Impeachment. Verily, the filing of the SALN is a Constitutional requirement, and the transgression of which may, in the wisdom of the impeachment court, be interpreted as constituting culpable violation of the Constitution. But then, respondent, unlike the President, the Vice-President, Members of the Constitutional Commissions, and the Ombudsman, apart from having to comply with the Constitutional SALN requirement, also answers to the unique Constitutional qualification of having to be a person of proven competence, integrity, probity, and independence - qualifications not expressly required by the fundamental law for the other impeachable officers. And as will be extensively demonstrated hereunder, respondent's failure to file her SALNs and to submit the same to the JBC go into the very qualification of integrity. In other words, when a Member of the Supreme Court transgresses the SALN requirement prior to his or her appointment as such, he or she commits a violation of the Constitution and belies his or her qualification to hold the office. It is not therefore accurate to place Members of the Supreme Court, such as ·respondent, on absolutely equal plane as that of the other impeachable officers, when more stringent and burdensome requirements for qualification and holding of office are expressly placed upon them.

In the same vein, the fact that the violation of the SALN requirement formed part of the impeachment complaint does not justify shifting responsibility to the Congress, no matter how noble the respondent and the intervenors portray such act to be. The fact remains that the Republic raised an issue as to respondent's eligibility to occupy the position of Chief Justice, an obviously legal question, which can be resolved through review of jurisprudence and pertinent laws. Logic, common sense, reason, practicality and even principles of plain arithmetic bear out the conclusion that an unqualified public official should be removed from the position immediately if indeed Constitutional and legal requirements were not met or breached. To abdicate from resolving a legal controversy simply because of perceived availability of another remedy, in this case impeachment, would be to sanction the initiation of a process specifically intended to be long and arduous and compel the entire membership of the Legislative branch to momentarily abandon their legislative duties to focus on impeachment proceedings for the possible removal of a public official, who at the outset, may clearly be unqualified under existing laws and case law. Evidently, this scenario would involve waste of time, not to mention unnecessary disbursement of public funds.

Further, as an impeachment court, the Senate is a tribunal composed of politicians who are indubitably versed in pragmatic decision making and cognizant of political repercussions of acts purported to have been committed by impeachable officials. As representatives of the Filipino people, they determine whether the purported acts of highest ranking officials of the country constitute as an offense to the citizenry. Following this premise, the impeachment tribunal cannot be expected to rule on the validity or constitutionality of the Chief Justice's appointment, nor can their ruling be of jurisprudential binding effect to this Court. To authorize Congress. to rule on public officials' eligibility would disturb the system of checks and balances as it would dilute the judicial power of courts, upon which jurisdiction is exclusively vested to rule on actions for *quo warranto.*

Nevertheless, for the guidance of the bench and the bar, and to obliviate confusion in the· future as to when *quo warranto* as a remedy to oust an ineligible public official may be availed of, and in keeping with the Court's function of harmonizing the laws and the rules with the Constitution, the

Court herein demarcates that an act or omission committed prior to or at the time of appointment or election relating to an official's qualifications to hold office as to render such appointment or election invalid is properly the subject of a *quo warranto* petition, provided that the requisites for the commencement thereof are present. Contrariwise, acts or omissions, even if it relates to the qualification of integrity, being a continuing requirement but nonetheless committed during the incumbency of a validly appointed and/or validly elected official, cannot be the subject of a *quo warranto* proceeding, but of something else, which may either be impeachment if the public official concerned is impeachable and the act or omission constitutes an impeachable offense, or disciplinary, administrative or criminal action, if otherwise.

Judicial power versus Judicial restraint and fear of a constitutional crisis

Judicial power is vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

In the presence of all the requisites for the Court's exercise of judicial review, there can be no doubt that the exercise thereof is not discretionary upon the Court, nor dependent upon the whims and caprices of any of its Members nor any of the parties. Even in cases rendered moot and academic by supervening events, the Court nevertheless exercised its power of review on the basis of certain recognized exceptions. Neither is its exercise circumscribed by fear of displeasing a co-equal branch of the government. Instead, the Constitution makes it crystal clear that the exercise of judicial power is a duty of the Court.

As such, the exercise of judicial power could never be made dependent upon the action or inaction of another branch of the government. The exercise of judicial restraint on the ground that the Senate, sitting as an impeachment court, has the sole power to try and decide all cases of impeachment, is thus misplaced.

For one, at the time of the filing of, and even during the pendency of the resolution of the instant petition, no impeachment trial has been commenced by the Senate. In fact, it will be purely skeptical, *nay* lackadaisical, on the part of the Court to assume, at the time the petition was filed, that the House of Representatives will affirm a favorable resolution with the Articles of Impeachment and that trial will eventually carry on.

For another, and as extensively discussed, the question of whether or not respondent usurped a public office is undoubtedly justiciable. Recall *Francisco, Jr., v. House of Representatives:*

> The exercise of judicial restraint over justiciable issues is not an option before this Court. Adjudication may not be declined, because this Court is not legally disqualified. Nor can jurisdiction be renounced as there is no other tribunal to which the controversy may be referred. Otherwise, this Court would be shirking from its duty vested under Art. VIII, Sec. 1(2) of the Constitution. More than being clothed with authority thus, this Court is duty-bound to take cognizance of the instant petitions. In the august words of *amicus curiae* Father Bernas, jurisdiction is not just a power; it is a solemn duty which may not be renounced. To renounce it, even if it is vexatious, would be a dereliction of duty.

Thus, to exercise restraint in reviewing an impeachable officer's appointment is a clear renunciation of a judicial duty. We have held that:

> While an appointment is an essentially discretionary executive power, it is subject to the limitation that the appointee should possess none of the disqualifications but all the qualifications required by law. **Where the law prescribes certain qualifications for a given office or position, courts may determine whether the appointee has the requisite qualifications, absent which, his right or title thereto may be declared void.** (Emphasis ours)

Clearly, an outright dismissal of the petition based on speculation that respondent will eventually be tried on impeachment is a clear abdication of the Court's duty to settle actual controversy squarely presented before it. Indeed, the easiest way to lose power is to abdicate it.

Neither does the possibility of the occurrence of a constitutional crisis a reason for the Court to abandon its positive constitutional duty to take cognizance of a case over which it enjoys jurisdiction and is not otherwise legally disqualified. A constitutional crisis may arise from a conflict over the determination by the independent branches of government of the nature, scope and extent of their respective constitutional powers. Thus, there can be no constitutional crisis where the Constitution itself provides the means and bases for the resolution of the "conflict." To reiterate, the Court's exercise of jurisdiction over an action for *quo warranto* falls within the ambit of its judicial power to settle justiciable issues or actual controversies involving rights which are legally demandable and enforceable. In so doing, the Court is not arrogating upon itself the Congress' power to determine whether an impeachable officer may be removed by impeachment or not, which is a political, rather than a judicial, exercise.

In fine, it is settled that jurisdiction is conferred by law. It cannot be waived by stipulation, by abdication or by estoppel. *Quo warranto* proceedings are essentially judicial in character - it calls for the exercise of the Supreme Court's constitutional duty and power to decide cases and settle actual controversies. This constitutional duty cannot be abdicated or transferred in favor of, or in deference to, any other branch of the government including the Congress, even as it acts as an impeachment court through the Senate. As an impeachment court, the Senate's jurisdiction and the effect of its pronouncement is as limited under the Constitution - it cannot rule on the constitutionality of an appointment of a Member of the Supreme Court with jurisprudential binding effect because rulings of the impeachment court, being a political rather than a judicial body, do not form part of the laws of the land. Any attempt to derogate or usurp judicial power in the determination of whether the respondent's appointment is constitutional or not will, in point of fact, amount to culpable violation of the Constitution.

In the same breath, the Supreme Court cannot renege on its avowed constitutional duty and abdicate its judicial power. To do so would similarly amount to culpable violation of the Constitution. Instead, this Court asserts its judicial independence and equanimity to decide cases without fear or favor; without regard as to a party's power or weakness; without regard to personalities; all to the ultimate end that Our sacrosanct oaths as magistrates of this Court, which We voluntarily imposed upon ourselves without any mental reservation or purpose of evasion, to support and defend the Constitution and to obey the laws of the land, are strongly and faithfully realized.

Seeking affirmative relief from the Court is tantamount to voluntary appearance

In repudiating the Court's jurisdiction over her person and over the subject matter, respondent harps on the fact that as Chief Justice, she is an impeachable officer who may be removed only by impeachment by the Senate constituted as an impeachment court. As extensively discussed, the Court maintains jurisdiction over the present *quo warranto* proceedings despite respondent's occupation of an impeachable office, as it is the legality or illegality of such occupation that is the subject matter of the instant petition. Further, respondent cannot now be heard to deny the Court's jurisdiction over her person even as she claims to be an impeachable official because respondent in fact invoked and sought affirmative relief from the Court by praying for the inhibition of several Members of this Court and by moving that the case be heard on Oral Arguments, albeit *ad cautelam.*

While mindful of Our ruling in *La Naval Drug Corporation v. Court of Appeals,* which pronounced that a party may file a Motion to Dismiss on the ground of lack of jurisdiction over its person, and at the same time raise affirmative defenses and pray for affirmative relief without waiving its objection to the acquisition of jurisdiction over its person, as well as Section 20, Rule 15, this Court, in several cases, ruled that seeking affirmative relief in a court is tantamount to voluntary appearance therein.

Thus, in *Philippine Commercial International Bank v. Dy Hong Pi,* cited in *NM Rotchschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company,* wherein defendants filed a Motion for Inhibition without submitting themselves to the jurisdiction of this Court, We held:

> Besides, any lingering doubts on the issue of voluntary appearance dissipate when the respondents' motion for inhibition is considered. This motion seeks a sole relief: inhibition of Judge Napoleon Inoturan from further hearing the case. **Evidently, by seeking affirmative relief other than dismissal of the case, respondents manifested their voluntary submission to the court's jurisdiction.** It is well-settled that the active participation of a party in the proceedings is tantamount to an invocation of the court's jurisdiction and a willingness to abide by the resolution of the case, and will bar said party from later on impugning the court's jurisdiction. (Emphasis in the original)

Accordingly, We rule that respondent, by seeking affirmative relief, is deemed to have voluntarily submitted to the jurisdiction of the Court. Following

settled principles, respondent cannot invoke the Court's jurisdiction on one hand to secure affirmative relief, and then repudiate that same jurisdiction after obtaining or failing to obtain such relief.

II.

The Petition is Not Dismissible on the Ground of Prescription

Prescription does not lie against the State

The rules on *quo warranto,* specifically Section 11, Rule 66, provides:

> *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. (Emphasis supplied)

Since the l960's the Court had explained in ample jurisprudence the application of the one-year prescriptive period for filing an action for *quo warranto.*

In *Bumanlag v. Fernandez and Sec. of Justice,* the Court held that the one-year period fixed in then Section 16, Rule 68 of the Rules of Court is a condition precedent to the existence of the cause of action for *quo warranto* and that the inaction of an officer for one year could be validly considered a waiver of his right to file the same.

In *Madrid v. Auditor General and Republic,* We held that a person claiming to a position in the civil service must institute the proper proceedings to assert his right within the one-year period, otherwise, not only will he be considered to have waived his right to bring action therefor but worse, he will be considered to have acquiesced or consented to the very matter that he is questioning.

The Court explained in *Madrid* that the reason for setting a prescriptive period is the urgency of the matter to be resolved. The government must be immediately informed or advised if any person claims to be entitled to an office or position in the civil service, as against another actually holding it, so that the government may not be faced with the predicament of having to pay two salaries, one for the person actually holding the office although illegally, and another for one not actually rendering service although entitled to do so.

In *Torres v. Quintas,* the Court further explained that public interest requires that the rights of public office should be determined as speedily as practicable. We have also explained in *Cristobal v. Melchor and Arcala* that there are weighty reasons of public policy and convenience that demand the adoption of such limitation as there must be stability in the service so that public business may not be unduly retarded.

Distinctively, the petitioners in these cited cases were private individuals asserting their right of office, unlike the instant case where no private individual claims title to the Office of the Chief Justice. Instead, it is the government itself which commenced the present petition for *quo warranto* and puts in issue the qualification of the person holding the highest position in the Judiciary.

Thus, the question is whether the one-year limitation is equally applicable when the petitioner is not a mere private individual pursuing a private interest, but the government itself seeking relief for a public wrong and suing for public interest? *The answer is no.*

Reference must necessarily be had to Section 2, Rule 66 which makes it *compulsory* for the Solicitor General to commence a *quo warranto* action:

> SEC. 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. (Emphasis supplied)

In other words, when the Solicitor General himself commences the *quo warranto* action either (1) upon the President's directive, (2) upon complaint or (3) when the Solicitor General has good reason to believe that there is proof that (a) a person usurps, intrudes into, or unlawfully holds or exercises· a public office, position or franchise; (b) a public officer does or suffers an act which is a ground for the forfeiture of his office; or (c) an association acts as a corporation without being legally incorporated or without lawful authority so to act, he does so in the discharge of his task and mandate to see to it that the best interest of the public and the government are upheld. In these three instances, the Solicitor General is mandated under the Rules to commence the necessary *quo warranto* petition.

That the present Rule 66 on *quo warranto* takes root from Act No. 160, which is a legislative act, does not give the one-year rule on prescription absolute application. *Agcaoili v. Suguitan,* squarely addressed this non-absolute character of the one-year prescriptive period as follows:

> x x x *in re* prescription or limitation of the action, it may be said that originally there was no limitation or prescription of action in an action for quo warranto, neither could there be, for the reason that it was an action by the Government and prescription could not be plead as a defense to an action by the Government. The ancient writ of quo warranto was a high prerogative writ in the nature of a writ of right by the King against any one who usurped or claimed any office, franchise or liberty of the crown, to inquire by what authority the usurper supported his claim, in order to determine the right. Even at the present time in many of the civilized countries of the world the action is still regarded as a prerogative writ and no limitation or prescription is permitted to bar the action. A**s a general principle it may be stated that ordinary statutes of limitation, civil or penal, have no application to quo warranto proceeding brought to enforce a public right.**
>
> x x x x
>
> In our opinion, even granting that section 216 is applicable to the appellant, the period of prescription had not begun to run at the time of the commencement of the present action. He was justified in delaying the commencement of his action until an answer to his protest had been made. He had a right to await the answer to his protest, in the confident belief that it would be resolved in his favor and that action would be unnecessary. (Citations omitted and emphasis ours)

Continuing, *Agcaoili* cites *People ex rel. Moloney v. Pullmans Palace Car Co.,* to emphasize that the State is not bound by statute of limitations nor by the laches, acquiescence or unreasonable delay on the part of its officers:

> It is conceded, the state, acting in its character as a sovereign, is not bound by any statute of limitations or technical estoppel. It is urged, however, that in quo warranto, under the common-law rule, the courts, in the exercise of their discretion to grant the writ or not, or upon final hearing, refused aid when the conditions complained of had existed for a number of years with knowledge on the part of the sovereign, and that the provisions of § 1 of chapter 112 of the Revised Statutes, entitled Quo Warranto, that leave to file the information shall be given if the court or judge to whom the petition is presented shall be satisfied there is probable cause for the proceeding, leave the court still possessed of power to consider upon the hearing, and then apply the same doctrine of waiver and acquiescence. It is **the general rule that laches, acquiescence, or unreasonable delay in the performance of duty on the part of the officers of the state, is not imputable to the state when acting in its character as a sovereign.** There are exceptions to this general rule, but we are unable to see that the allegations of the plea bring the case within the principles of any such exceptions.

Jurisprudence across the United States likewise richly reflect that when the Solicitor General files a *quo warranto* petition in behalf of the people and where the interests of the public is involved, the lapse of time presents no effective bar:

> An information in the nature of a quo warranto cannot be filed by a private individual without leave, which the court may, at its discretion, either grant or refuse. To regulate their discretion as affected by the lapse of time, the English courts adopted the rule which we have stated. **But the Attorney General,** representing the Crown in England and the State in this country, **may file an information in the nature of a quo warranto, without leave, according to his own discretion;** and we find no English law which holds that an information, so filed, can be barred by the lapse of six years independently of any statute to that effect. xxx

> The Attorney General being a public officer, may be presumed to be capable of a salutary and reasonable discretion, as well as the court, and when, acting in behalf of the State, he deems it his duty to prosecute for a forfeiture, it is not for the court, in the absence of any statutory limitation, to say he is too late. Indeed this court has itself decided that, after the information has once been filed, its discretion ceases, and it has then nothing to do but administer the law the same as in any other case. (Citations omitted)

In *People v. Bailey:*

> Appellant claims that the action is barred by the provisions of the statute of limitations, xxxx We are of the opinion that the established rule of law, as to the statute of limitations and its bearing upon cases of this character, is correctly stated in the quotations above made and "**that the attorney general may file the information on behalf of the people at any time, and that lapse of time constitutes no bar to the proceeding."** The law, in thus permitting the attorney-general, either upon his own information or upon the information of a private party, to file an information at any time against one who has unlawfully intruded into and is holding a public office, does not place the courts or private parties in much danger of having to deal with stale claims. **The action can only be brought with the consent and permission of the attorney-general of the state, and, it is to be assumed, he will not permit the institution of such a suit, if by reason of a great lapse of time the claim has become stale, or for any other reason the state has ceased to have a present interest in it.** (Citations omitted)

People v. Bailey quotes *McPhail v. People ex rel. Lambert,* as follows:

> We do not consider this quo warranto proceeding, prosecuted by the state's attorney, for the purpose of ousting one charged with wrongfully and without authority of law exercising the office, jurisdiction and powers of a police magistrate, as simply a civil remedy, for the protection of private rights only. Police magistrates are public officers, that are provided for in the constitution of the state; and by that instrument the judicial powers of the state are, in part, vested in them. The office of police magistrate is one in which the state and the general public have a deep interest, and the jurisdiction attached to it is uniform with that belonging to the office of justice of the peace. It is a matter of public concern to the people of the state, and against their peace and dignity, that any one should unlawfully, and without authority of right, exercise the jurisdiction, powers and functions of such office, and also a matter of interest to the state and to the general public that more persons than the law authorizes are acting as police magistrates. In this country the rule is that **the attorney general or state's attorney may file the information in behalf of the people, where the interests of the general public are involved, at any time, and that, in conformity with the maxim, 'Nullum tempus occurrit regi,' lapse of time constitutes no bar to the proceeding.** (Citations omitted)

Aptly, in *State ex rel Stovall v. Meneley,* it was held that a *quo warranto* action is a governmental function and not a propriety function, and therefore the doctrine of laches does not apply:

> Governmental functions are those performed for the general public with respect to the common welfare for which no compensation or particular benefit is received. xxx **Quo warranto proceedings seeking ouster of a public official are a governmental function.** (Citations and annotations omitted) **No statute of limitations is, therefore, applicable.** The district court did not err in denying Meneley's motion to dismiss based on the statute of limitations. xxxx
>
> The doctrine of laches, furthermore, does not apply when a cause of action is brought by the State seeking to protect the public. (Citations and annotations omitted) xxx Having already noted that the quo warranto action is a governmental function and not a propriety function, we hold the district court did not err in denying Meneley's motion to dismiss on the basis of laches.

In fact, liberal interpretation to *quo warranto* provisions is sanctioned given that its primary purpose is to ascertain whether one is constitutionally authorized to hold office. *State ex rel Anaya v. McBride* elucidates:

> Since the Constitution provides for separate and equal branches of government in New Mexico, any legislative measure which affects pleading, practice or procedure in relation to a power expressly vested by the Constitution in the judiciary, such as quo warranto, cannot be deemed binding. We cannot render inoperative a clause in the Constitution on so slender a reed. **One of the primary purposes of quo warranto is to ascertain whether one is constitutionally authorized to hold the office he claims, whether by election or appointment, and we must liberally interpret the quo warranto statutes to effectuate that purpose.**

Indeed, when the government is the real party in interest, and is proceeding mainly to assert its rights, there can be no defense on the ground of laches or prescription. Indubitably, the basic principle that "prescription does not lie against the State" which finds textual basis under Article 1108 (4) of the Civil Code, applies in this case.

Circumstances obtaining in this case preclude the application of the prescriptive period

That prescription does not lie in this case can also be deduced from the very purpose of an action for *quo warranto. People v. City Whittier,* explains that the remedy of *quo warranto* is intended to prevent a continuing exercise of an authority unlawfully asserted. Indeed, on point is *People v. Bailey,* when it ruled that because *quo warranto* serves to end a continuous usurpation, no statute of limitations applies to the action. Needless to say, no prudent and just court would allow an unqualified person to hold public office, much more the highest position in the Judiciary.

In fact, in *Cristobal,* the Court considered certain exceptional circumstances which took the case out of the statute of limitations, to wit: (1) there was no acquiescence to or inaction on the part of the petitioner, amounting to the abandonment of his right to the position; (2) it was an act of the government through its responsible officials which contributed to the delay in the filing of the action; and (3) the petition was grounded upon the assertion that petitioner's removal from the questioned position was contrary to law.

In this case, the Republic cannot be faulted for questioning respondent's qualification for office only upon discovery of the cause of ouster.

As will be demonstrated hereunder, respondent was never forthright as to whether or not she filed her SALNs covering the period of her employment in U.P. Recall that during her application for the Chief Justice position, the JBC required the submission of her previous SALNs. In response to the JBC, respondent never categorically stated that she filed the required SALNs. Instead, she cleverly hid the fact of non-filing by stating that she should not be required to submit the said documents as she was considered to be coming from private practice; that it was not feasible to retrieve most of her records in the academe considering that the same are more than fifteen years old; and that U.P. already cleared her of "all academic/administrative responsibilities, money and property accountabilities and from administrative charges as of June 1, 2006" in a Clearance dated September 19, 2011.

Even up to the present, respondent has not been candid on whether she filed the required SALNs or not. While respondent stated in her Comment that she filed the required SALNs when she was still connected with the U.P. College of Law, she again offered as support the U.P. Clearance above-cited; that she was considered as coming from private practice when she was nominated as Associate Justice of the Supreme Court, hence, should not be required to submit those SALNs; and that it was not feasible for her to retrieve said SALNs from U.P. as her records therein are more than 15 years old. Notably, these are mere reiterations of her representations before the JBC.

Hence, until recently when respondent's qualification for office was questioned during the hearings conducted by the House Committee on Justice on the impeachment complaint against the respondent, there was no indication that would have prompted the Republic to assail respondent's appointment, much less question the wisdom or reason behind the said recommending and appointing authorities' actions. The defect on respondent's appointment was therefore not discernible, but was, on the contrary, deliberately rendered obscure.

Given the foregoing, there can be no acquiescence or inaction, in this case, on the part of the Republic as would amount to an abandonment of its right to seek redress against a public wrong and vindicate public interest. Neither can delay be attributed to the Republic in commencing the action since respondent deliberately concealed the fact of her disqualification to the position. Prescription, therefore, cannot be pleaded against the Republic.

Neither can respondent successfully invoke Act No. 3326 as mentioned in her Table of Authorities. Respondent refers to Section I thereof which provides for the prescriptive periods for violations penalized by special acts and municipal ordinances. Plainly, Act No. 3326 is inapplicable to the instant petition as respondent is not being sought to be penalized for violation of the laws relating to the non-filing or incomplete, irregular or untruthful filing of SALNs. At any rate, even the theorized applicability of Act No. 3326 will not work to respondent's advantage given that Section 2 thereof provides that the prescriptive period shall be reckoned either from the day of the commission of the violation of the law, or if such be not known at the time, from the *discovery*

thereof and the *institution of the judicial proceeding for its investigation* and *punishment.*

Finally, it bears to stress that this Court finds it more important to rule on the merits of the novel issues imbued with public interest presented before Us than to dismiss the case outright merely on technicality. The Court cannot compromise on the importance of settling the controversy surrounding the highest position in the Judiciary only to yield to the unacceptable plea of technicality. It is but more prudent to afford the Republic, as well as the respondent, ample opportunities to present their cases for a proper and just disposition of the case instead of dismissing the petition outright on the ground of prescription. Inasmuch as the ultimate consideration in providing for a one-year prescriptive period was public interest, so is it the same consideration which prompts this Court not to act nonchalantly and idly watch title to the public office in question be continuously subjected to uncertainty. Indeed, dismissal of cases on technicality is frowned upon especially where public interest is at the other end of the spectrum.

III.
Respondent is Ineligible as a Candidate and Nominee for the Position of Chief Justice

To arrive at a judicious appreciation of the parties' respective contentions as to respondent's qualification for the position of Chief Justice, the Court first reviews the supervisory authority exercised by it over the JBC, and visits the JBC's rules and procedure relating to the acceptance and nomination of respondent as Chief Justice.

A.
The Court Exercises Supervisory Authority Over the JBC

The Court's supervisory authority over the JBC includes ensuring that the JBC complies with its own rules

Section 8(1), Article VIII of the Constitution provides:

> **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. (Emphasis ours)

Ambil, Jr. v. Sandiganbayan, et al., elucidates on the power of supervision in general:

> On the other hand, the power of supervision means "overseeing or the authority of an officer to see to it that the subordinate officers perform their duties." If the subordinate officers fail or neglect to fulfill their duties, the official may take such action or step as prescribed by law to make them perform their duties. Essentially, the power of supervision means no more than the power of ensuring that laws are faithfully executed, or that subordinate officers act within the law. The supervisor or superintendent merely sees to it that the rules are followed, but he does not lay down the rules, nor does he have discretion to modify or replace them.

Reflective of the above and similar pronouncements, the seminal case of *Jardeleza v. Chief Justice Ma. Lourdes P A. Sereno, et al.,* explains that the power of supervision being a power of oversight does not authorize the holder of the supervisory power to lay down the rules nor to modify or replace the rules of its subordinate. If the rules are, however, not or improperly observed, then the supervising authority may order the work be done or redone, but only for the purpose of conforming to such rules.

Thus, in interpreting the power of the Court *vis-a-vis* the power of the JBC, it is consistently held that the Court's supervisory power consists of seeing to it that the JBC complies with its own rules and procedures. As when the policies of the JBC are being attacked, the Court, through its supervisory authority over the JBC, has the duty to inquire about the matter and ensure that the JBC is compliant with its own rules.

The JBC occupies a unique position in the body of government. While the JBC is created by the Constitution, the Constitution itself prescribes that it exists as an office subordinate to the Supreme Court. Thus, under the Constitution, the JBC is chaired by the Chief Justice of the Supreme Court and it is the Supreme Court that determines the emoluments of the regular JBC members and provides for the appropriations of the JBC in its annual budget.

The Constitution also vests upon the JBC the principal function of recommending appointees to the Judiciary and *such other functions and duties as the Supreme Court may assign to it.* On this, Justice Arturo Brion, in his Concurring and Dissenting Opinion in *De Castro v. Judicial and Bar Council, et al.,* offers a succinct point:

> Under this definition, the Court cannot dictate on the JBC the results of its assigned task, i.e., who to recommend or what standards to use to determine who to recommend. **It cannot even direct the JBC on how and when to do its duty, but it can, under its power of supervision, direct the JBC to "take such action or step as prescribed by law to make them perform their duties," if the duties are not being performed because of JBC's fault or inaction, or because of extraneous factors affecting performance. Note in this regard that, constitutionally, the Court can also assign the JBC other functions and duties - a power that suggests authority beyond what is purely supervisory.** (Emphasis ours)

JBC's absolute autonomy from the Court as to place its non-action or improper· actions beyond the latter's reach is therefore not what the Constitution contemplates.

What is more, the JBC's duty to recommend or nominate, although calling for the exercise of discretion, is neither absolute nor unlimited.

In *Villanueva* v. *Judicial and Bar Council,* this Court explained that while a certain leeway must be given to the JBC in screening aspiring magistrates, the same does not give it an unbridled discretion to ignore Constitutional and legal requirements:

> 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 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. (Emphasis ours)

So too, the JBC's exercise of discretion is not automatically equivalent to an exercise of policy decision as to place, in wholesale, the JBC process beyond the scope of the Court's supervisory and corrective powers. The primary limitation to the JBC's exercise of discretion is that the nominee must possess the minimum qualifications required by the Constitution and the laws relative to the position. While the resolution of who to nominate as between two candidates of equal qualification cannot be dictated by this Court upon the JBC, such surrender of choice presupposes that whosoever is nominated is not otherwise disqualified. The question of whether or not a nominee possesses the requisite qualifications is determined based on facts and therefore does not depend on, nor call for, the exercise of discretion on the part of the nominating body.

Thus, along this line, the nomination by the JBC is not accurately an exercise of policy or wisdom as to place the JBC's actions in the same category as political questions that the Court is barred from resolving. Questions of policy or wisdom refer "to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which *full* discretionary authority has been delegated to the *legislative* or *executive* branch of government."

Baker v. Carr gives the classic definition of a political question:

> x x x [p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment

of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on the one question.

Obviously, the exercise of the JBC's discretion in the nomination process is not full as it is limited by the requirements prescribed by the Constitution and the laws for every position. It does not involve a question of policy but simply a determination, based on facts, of whether a candidate possesses the requisite qualifications or not. The JBC neither assumes an existence separate from the Judiciary as it is not intended to be an independent Constitutional body but merely a Constitutional office created and expressly subjected to the Court's supervision. Judicial encroachment upon the exercise of wisdom of a co-equal branch of the government, which is the very basis of the political question doctrine, is therefore not attendant when the Court supervises and reviews the action of the JBC which is neither an executive nor a legislative branch enjoying independent political prerogatives.

In fine, the Court has authority, as an incident of its power of supervision over the JBC, to insure that the JBC faithfully executes its duties as the Constitution requires of it. Wearing its hat of supervision, the Court is thus empowered to inquire into the processes leading to respondent's nomination for the position of Chief Justice on the face of the Republic's contention that respondent was ineligible to be a candidate to the position to begin with.

Qualifications under the Constitution cannot be waived or bargained away by the JBC

As emphasized, the JBC's exercise of discretion is limited by the Constitution itself when it prescribed the qualifications absolutely required of a person to be eligible for appointment as a Member of the Court.

The qualifications of an aspiring Member of the Supreme Court are enshrined in Section 7, Article VIII of the Constitution:

> SECTION 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-horn 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. (Emphasis ours)

Evidently, more than age, citizenship and professional qualifications, Our fundamental law is clear that a member of the Judiciary must be a person of proven competence, integrity, probity and independence. The inclusion of subsection 3 is explained in this wise:

x x x x

> MR. NOLLEDO. Thank you, Mr. Presiding Officer.
>
> My amendment is to add a new subsection (3) on Section 4 which reads: A MEMBER OF THE Judiciary MUST BE A PERSON OF PROVEN COMPETENCE, INTEGRITY, PROBITY, AND INDEPENDENCE.
>
> Before the Committee decides on whether or not to accept the amendment, I would like to explain it first.
>
> Mr. Presiding Officer, this is a moral provision lifted with modifications from the "Canons of Judicial Ethics." The reputation of our justices and judges has been unsavory. I hate to say this, but it seems that it has become the general rule that the members of the Judiciary are corrupt and the few honest ones are the exceptions. We hear of justices and judges who would issue injunctive relief to the highest bidder and would decide cases based on hundreds of thousands, and even millions, mercenary reasons.
>
> The members of the deposed Supreme Court, with a few exceptions, catered to the political likings and personal convenience of Mr. Marcos by despicably surrendering their judicial independence. Why should we resist incorporating worthy moral principles in our fundamental law? Why should we canalize our conservative thoughts within the narrow confines of pure legalism?
>
> I plead to the members of the Committee and to my colleagues in this Constitutional Commission to support my amendment in order to strengthen the moral fiber of our Judiciary. Let not our Constitution be merely a legal or political document. Let it be a moral document as well.
>
> x x x x

Requirement of these traits stems from the need to ensure the strength and sustainability of the third branch of the government. *Caperton v. A.T. Massey Coal Co., Inc.,* sufficiently explains the state interest involved in safeguarding judicial integrity:

> Courts, in our system, elaborate principles of law in the course of resolving disputes. The power and the prerogative of a court to perform this function rest, in the end, upon the respect accorded to its judgments. The citizen's respect for judgments depends in turn upon the issuing court's absolute probity. Judicial integrity is, in consequence, a state interest of the highest order.

An approximation of what defines the term "integrity" was made by the Court in *Jardeleza,* as follows:

> In the performance of this sacred duty, the JBC itself admits, as stated in the "whereas clauses" of JBC-009, that qualifications such as "competence, integrity, probity and independence are not easily determinable as they are developed and nurtured through the years." Additionally, "it is not possible or advisable to lay down iron-clad rules to determine the fitness of those who aspire to become a Justice, Judge, Ombudsman or Deputy Ombudsman." Given this realistic situation, there is need "to promote stability and uniformity in JBC's guiding precepts and principles." A set of uniform criteria had to be established in the ascertainment of "whether one meets the minimum constitutional qualifications 'and possesses qualities of mind and heart expected of him" and his office. Likewise for the sake of transparency of its proceedings, the JBC had put these criteria in writing, now in the form of JBC-009. True enough, guidelines have been set in the determination of competence," "probity and independence," "soundness of physical and mental condition, and "integrity."
>
> As disclosed by the guidelines and lists of recognized evidence of qualification laid down in JBC-009, "integrity" is **closely related to, or if not, approximately equated to an applicant's good reputation for honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards.** That is why proof of an applicant's reputation may be shown in certifications or testimonials from reputable government officials and non-governmental organizations and clearances from the courts, National Bureau of Investigation, and the police, among others. In fact, the JBC may even conduct a discreet background check and receive feedback from the public on the integrity, reputation and character of the applicant, the merits of which shall be verified and checked. As a qualification, the term is taken to refer to a **virtue, such that, "integrity is the quality of person's character."** (Emphasis ours)

The case of *Jardeleza,* however, is not the first time this Court interpreted the requirement of integrity. In *Samson v. Judge Caballero,* this Court dismissed a judge for "obvious lack of integrity" in making a false statement in his Personal Data Sheet (PDS). Meanwhile, in *Re: Judge Jaime V Quitain,* this Court declared Judge Quitain to be dishonest and lacking in integrity when he failed to disclose in his PDS that he was imposed a penalty of dismissal from service in an administrative case filed against him.

Emphatically, integrity is not only a prerequisite for an aspiring Member of the Court but is likewise a continuing requirement common to judges and lawyers alike. Canon 2 of the New Code of Judicial Conduct provides:

CANON2
INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the Judiciary. Justice must not merely be done but must also be seen to be done.

SEC. 3. Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

The Code of Professional Responsibility, equally applicable to respondent being first and foremost a lawyer, mince no words in requiring that a lawyer shall perform his profession in a manner compatible with the integrity of the profession, thus:

CANON 2 - A LAWYER SHALL MAKE HIS LEGAL SERVICES AVAILABLE IN AN EFFICIENT AND CONVENIENT MANNER COMP A TIBLE WITH THE INDEPENDENCE, INTEGRITY AND EFFECTIVENESS OF THE PROFESSION.

Rule 2.01 - A lawyer shall not reject, except for valid reasons, the cause of the defenseless or the oppressed.

Rule 2.02 - In such cases, even if the lawyer does not accept a case, he shall not refuse to render legal advice to the person concerned if only to the extent necessary to safeguard the latter's rights.

Rule 2.03 - A lawyer shall not do or permit to be done any act designed primarily to solicit legal business.

Rule 2.04 - A lawyer shall not charge rates lower than those customarily prescribed unless the circumstances so warrant.

x x x x

CANON 7 - A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

Rule 7.01 - A lawyer shall be answerable for knowingly making a false statement or suppressing a material fact in connection with his application for admission to the bar.

Rule 7.02 - A lawyer shall not support the application for admission to the bar of any person known by him to be unqualified in respect to character, education, or other relevant attribute.

Rule 7.03 - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

It is also important to note that the Court has always viewed integrity with a goal of preserving the confidence of the litigants in the Judiciary. In *Edano v. Judge Asdala,* this Court stated that:

> The New Code of Judicial Conduct for the Philippine Judiciary mandates that judges must not only maintain their independence, integrity and impartiality; but they must also avoid any appearance of impropriety or partiality, which may erode the peoples faith in the Judiciary. **Integrity and impartiality, as well as the appearance thereof,** are deemed essential not just in the proper discharge of judicial office, but also to the personal demeanor of judges. This standard applies not only to the decision itself, but also to the process by which the decision is made. Section 1, Canon 2, specifically mandates judges to ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of reasonable observers. **Clearly, it is of vital importance not only that independence, integrity and impartiality have been observed by judges and reflected in their decisions, but that these must also appear to have been so observed in the eyes of the people, so as to avoid any erosion of faith in the justice system.** Thus, judges must be circumspect in their actions in order to avoid doubt and suspicion in the dispensation of justice. (Emphasis ours)

To make sure that applicants to judicial positions possess these constitutionally-prescribed character requirement, the JBC was created. *Jardeleza* captures the purpose of the JBC which it finds to be rooted in the categorical constitutional declaration that: "[a] member of the Judiciary must be a person 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. *Jardeleza* continues that, in this manner, 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.

Thus, in compliance with their mandate, the JBC provided for Rule 4 on Integrity in JBC-009 Rules, as follows:

RULE 4
INTEGRITY

Section 1. *Evidence of Integrity* - The council shall take every possible step to verify the applicants records and of 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 court National Bureau of Investigation, police, and from such other agencies as the council may require.

Section 2. *Background Check* - The Council may order a discrete [sic] background check on the integrity, reputation and character of the applicant, and receive feedback thereon from the public, which it shall check or verify to validate the means thereof.

Section 3. *Testimonies of Parties* - The Council may receive written opposition to an applicant on ground of his moral fitness and 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 be [sic] cross-examine the opposite 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 probable cause sufficient to engender belief that the allegations may be true. In the latter case the Council may either direct a discrete [sic] 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;[1]

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 or more than P10,000, unless 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 of 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 purpose of this Section and of the preceding Section 5 in so far as pending regular administrative cases are concerned, the Secretary

of the Council shall, from time to time, furnish the Office of the Court of Administrator the name of an applicant upon receipt of the application/recommendation and completion of the required papers; and within ten days from the 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.

B.

Compliance with the Constitutional and statutory requirement of filing of SALN intimately relates to a person's integrity.

Respondent postulates that the filing of SALNs bear no relation to the Constitutional qualification of integrity. In so arguing, respondent loses sight of the fact that the SALN requirement is imposed no less than by the Constitution and made more emphatic by its accompanying laws and its implementing rules and regulations. In other words, one who fails to file his or her SALN violates the Constitution and the laws; and one who violates the Constitution and the laws cannot rightfully claim to be a person of integrity as such equation is theoretically and practically antithetical.

We elaborate:

The filing of SALN is a Constitutional and statutory requirement

The filing a SALN is an essential requirement to one's assumption of a public post. It has Constitutional, legal and jurisprudential bases.

Of paramount significance, Section 17, Article XI of the Constitution on the Accountability of Public Officers states:

> **Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his** assets, **liabilities, and net worth.** In the case of the President, the Vice President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law. (Emphasis ours)

However, even prior to the 1987 Constitution, and as early as 1960, our laws through R.A. No. 3019, required from every public officer a detailed and sworn statement of their assets and liabilities, thus:

> SECTION 7. Statement of assets and liabilities. - Every public officer, within thirty days after assuming office, thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of department or Chief of an independent office, with the Office of the President, a true, detailed sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: *Provided,* That public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of the said calendar year.
>
> SECTION 8. *Prima facie* evidence of and dismissal due to unexplained wealth. If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including but not limited to activities in any club or association or any ostentatious display of wealth including frequent travel abroad of a non-official character by any public official when such activities entail expenses evidently out of proportion to legitimate income, shall likewise be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary. The circumstances hereinabove mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation of the unexplained wealth is completed.

Respondent herself, in her Dissenting Opinion in *Phil. Savings Bank* v. *Senate Impeachment Court* interprets that "failure to comply" with the law is *"prima facie* evidence of unexplained wealth, which may result in the dismissal from service of the public officer."

In 1961, R.A. No. 3019 was amended by R.A. No. 3047 by specifying the period within which a public official should make the disclosure and enumerating certain public officials who are exempt from the requirement.

Even during the martial law years, under then President Marcos, the obligation imposed upon public officers and employees to declare their assets and liabilities was maintained under Presidential Decree (P.D.) No. 379 but with the curious addition that the filing and submission of SALN are now to be required from all citizens, subject to few exceptions. P.D. No. 379 was later on amended by P.D. No. 417 which amended the contents of the statement and the manner of providing the acquisition cost of the properties. Yet still, P.D. No. 379 was further amended by P.D. No. 555, which prescribed_stiffer penalties for violation thereof.

Two years after the birth of the 1987 Constitution, R.A. No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees was enacted and thereby expanded the obligation to disclose by enumerating the information required to be disclosed as regards the assets, liabilities, business interests and financial connections; requiring the identification and disclosure of relatives in government; making the statements and disclosures available and accessible to the public; and prohibiting certain acts.

In particular, Sections 8 and 11 of R.A. No. 6713 provide:

> **Section** 8. *Statements and Disclosure.* - Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.
>
> (A) Statements of Assets and Liabilities and Financial Disclosure. - All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.
>
> The two documents shall contain information on the following:
>
> (a) real property, its improvements, acquisition costs, assessed value and current fair market value;
> (b) personal property and acquisition cost;
> (c) all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;
> (d) liabilities, and;
> (e) all business interests and financial connections.
>
> The documents must be filed:
> (a) within thirty (30) days after assumption of office;
> (b) on or before April 30, of every year thereafter; and
> (c) within thirty (30) days after separation from the service.
>
> All public officials and employees required under this section to file the aforestated documents shall also execute, within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their assets, liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible, the year

when they first assumed any office in the Government.

Husband and wife who are both public officials or employees may file the required statements jointly or separately.

The Statements of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections shall be filed by:

(1) Constitutional and national elective officials, with the national office of the Ombudsman;
(2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively; Justices, with the Clerk of Court of the Supreme Court; Judges, with the Court Administrator; and all national executive officials with the Office of the President.
(3) Regional and local officials and employees, with the Deputy Ombudsman in their respective regions;
(4) Officers of the armed forces from the rank of colonel or naval captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and
(5) All other public officials and employees, defined in Republic Act No. 3019, as amended, with the Civil Service Commission.

(B) Identification and disclosure of relatives. - It shall be the duty of every public official or employee to identify and disclose, to the best of his knowledge and information, his relatives in the Government in the form, manner and frequency prescribed by the Civil Service Commission.

(C) Accessibility of documents. - (1) Any and all statements filed under this Act, shall be made available for inspection at reasonable hours.

(2) Such statements shall be made available for copying or reproduction after ten (10) working days from the time they are filed as required by law.
(3) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of reproduction and mailing of such statement, as well as the cost of certification.
(4) Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.

(D) Prohibited acts. - It shall be unlawful for any person to obtain or use any statement filed under this Act for:
(a) any purpose contrary to morals or public policy; or
(b) any commercial purpose other than by news and communications media for dissemination to the general public.

x x x x

Section 11. Penalties. - (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.

x x x x

The filing of the SALN is so important for purposes of transparency and accountability that failure to comply with such requirement may result not only in dismissal from the public service but also in criminal liability. Section 9 of R.A. No. 3019, as amended provides:

Section 9. Penalties for violations. - x x x x

(b) Any public officer violating any of the provisions of Section 7 of this Act shall be punished by a fine of not less than one thousand pesos nor more than five thousand pesos, or by imprisonment not exceeding one year and six months, or by both such fine and imprisonment, at the discretion of the Court.

The violation of said section proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution is instituted against him.

Both Section 8 of R.A. No. 6713 and Section 7 of R.A. No. 3019 require the accomplishment and submission of a true, detailed and sworn statement of assets and liabilities. Further, under Section 11 of R.A. No. 6713, non-compliance with this requirement is not only punishable by imprisonment and/or a fine, it may also result in *disqualification* to hold public office. As the Court explained in *Hon. Casimiro, et al. v. Rigor:*

x x x The requirement of filing a SALN is enshrined in the Constitution to promote transparency in the civil service and serves as a deterrent against government officials bent on enriching themselves through unlawful means. By mandate of law, every government official or employee must make a complete disclosure of his assets, liabilities and net worth in order to avoid any issue regarding questionable accumulation of wealth. The importance of requiring the submission of a complete, truthful, and sworn SALN as a measure to defeat corruption in the bureaucracy cannot be gainsaid. Full disclosure of wealth in the SALN is necessary to particularly minimize, if not altogether eradicate, the opportunities for official corruption, and maintain a standard of honesty in the public service. Through the SALN, the public can monitor movement in the fortune of a public official; it serves as a valid check and balance mechanism to verify undisclosed properties and wealth. The failure to file a truthful SALN reasonably puts in doubts the integrity of the officer and normally amounts to dishonesty.

As respondent acutely relates m her dissent in *Philippine Savings Bank:*

In the present case, because of the fact that the Chief Justice is a public officer, he is constitutionally and statutorily mandated to perform a positive duty to disclose **all** of his assets and liabilities. This already operates as the consent required by law.

The Offices of the Chief Justice and of the 14 Associate Justices of the Supreme Court are an express creation of the Constitution, which vests them with explicit powers necessary for the proper functioning of a democratic government.

Foremost is the principle that public office is by virtue of the peoples mandate to exercise a sovereign function of the government. Hence, a public office is a public trust or agency. Appended to the constitutional principle that public office is a public trust is the tenet that public officers occupy very delicate positions that exact certain standards generally not demanded from or required of ordinary citizens.

Those who accept a public office do so *cum onere,* or with a burden, and are considered as accepting its burdens and obligations, together with its benefits. They thereby subject themselves to all constitutional and legislative provisions relating thereto, and undertake to perform all the duties of their office. The public has the right to demand the performance of those duties.

One of these burdens or duties is explicitly articulated in Sec. 17 of Art. XI of the 1987 Constitution, *viz:*

x x x x

This provision requires all public officers and employees, regardless of rank, to declare their assets and liabilities upon their assumption of office, as may be required by law. However, it likewise imposes a positive duty **and a heavier onus** on the President; the Vice- President; and members of the Cabinet, Congress, the Supreme Court, Constitutional Commissions and other Constitutional offices and officers of the Armed

Forces with general or flag ranks to publicly disclose their assets and liabilities. (Citations omitted and emphasis in the original)

Faithful compliance with the requirement of the filing of SALN is rendered even more exacting when the public official concerned is a member of the Judiciary. In *Office of the Court Administrator v. Judge Usman* the Court emphasized:

> From the foregoing, it is imperative that every public official or government employee must make and submit a complete disclosure of his assets, liabilities and net worth in order to suppress any questionable accumulation of wealth. This serves as the basis of the government and the people in monitoring the income and lifestyle of public officials and employees in compliance with the constitutional policy to eradicate corruption, to promote transparency in government, and to ensure that all government employees and officials lead just and modest lives, with the end in view of curtailing and minimizing the opportunities for official corruption and maintaining a standard of honesty in the public service.
>
> **In the present case, respondent clearly violated the above-quoted laws when he failed to file his SALN for the years 2004-2008. He gave no explanation either why he failed to file his SALN for five (5) consecutive years. While every office in the government service is a public trust, no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the Judiciary. Hence, judges are strictly mandated to abide with the law, the Code of Judicial Conduct and with existing administrative policies in order to maintain the faith of our people in the administration of justice.** (Emphasis ours)

The above holds necessarily true considering that the obligation of members of the Judiciary to file their respective SALNs is not only a statutory requirement but forms part of the mandatory conduct expected of a judge so that an "honorable competent and independent Judiciary exists to administer justice and thus promote the unity of the country, the stability of government, and the well-being of the people."

The Code of Judicial Conduct, in no uncertain terms, provide:

> FINANCIAL ACTIVITIES
>
> RULE 5.02 - A judge shall refrain from financial and business dealing that tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities or increase involvement with lawyers or persons likely to come before the court. A judge should so manage investments and other financial interests as to minimize the number of cases giving grounds for disqualifications.
>
> x x x x
>
> FINANCIAL DISCLOSURE
>
> **RULE 5.08 - A judge shall make full financial disclosure as required by law.** (Emphasis ours)
>
> x x x x

Compliance with the SALN requirement indubitably reflects on a person 's integrity

To recapitulate, Section 7, Article VIII of the Constitution requires that a member of the Judiciary must be of proven integrity. To be of proven integrity means that the applicant must have established a steadfast adherence to moral and ethical principles.

The necessity of having integrity among the members of the judiciary is clearly discussed in the *Commentary on the Bangalore Principles of Judicial Conduct:*

> Integrity is the attribute of rectitude and righteousness. The components of integrity are honesty and judicial morality. A judge should always, not only in the discharge of official duties, act honorably and in a manner befitting the judicial office; be free from fraud, deceit and falsehood; and be good and virtuous in behavior and in character. There are no degrees of integrity as so defined. Integrity is absolute. In the judiciary, integrity is more than a virtue; it is a necessity.

Failure to file the SALN is clearly a violation of the law. The offense is penal in character and is a clear breach of the ethical standards set for public officials and employees. It disregards the requirement of transparency as a deterrent to graft and corruption. For these reasons, a public official who has failed to comply with the requirement of filing the SALN cannot be said to be of proven integrity and the Court may consider him/her disqualified from holding public office. In *De Castro v. Field Investigation Office, Office of the Ombudsman,* We held:

Public service demands the highest level of honesty and transparency from its officers and employees. The Constitution requires that all public officers and employees be, at all times, accountable to the people; serve with utmost responsibility, integrity, loyalty and efficiency; act with patriotism and justice; and lead modest lives. Public office *is* a public trust; it must be treated as a privilege rather than a right, and rest firmly upon one's sense of service rather than entitlement. In this light, the Court deems it necessary to reiterate, as a final note, its pronouncement in *Casimiro v. Rigor:*

> The constitutionalization of public accountability shows the kind of standards of public officers that are woven into the fabric of our legal system. To reiterate, public office is a public trust, which embodies a set of standards such as responsibility, integrity and efficiency. Unfortunately, reality may sometimes depart from these standards, but our society has consciously embedded them in our laws so that they may be demanded and enforced as legal principles, and the Court is mandated to apply these principles to bridge actual reality to the norms envisioned for our public service.

The requirement to file a SALN is not a trivial or a formal requirement. Neither is it something over which public officials can exercise discretion. It is mandated by Our Constitution and laws. It is meant to forge transparency and accountability in the government and as a measure meant to curb corruption. This is clear from the policy of R.A. No. 6713:

> Section 2. *Declaration of Policies.* - It is the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest.

Respondent nevertheless argues that the filing of SALN has no relation to an applicant's integrity, moral fitness or character. She cites the cases of *Office of the Ombudsman v. Racho, Daplas v. Department of Finance and the Office of the Ombudsman, Atty. Navarro v. Office of the Ombudsman and Department of Finance-Revenue Integrity Protection Services,* to support her argument that in order to establish lack of integrity, there is an additional requirement that there must be a showing that there is an intent to commit a wrong.

It is inaccurate to use the aforesaid cases to support respondent's conclusion that her integrity is not affected by her failure to file SALNs.

In *Office of the Ombudsman v. Racho,* the Court upheld the Ombudsman's finding that Racho is guilty of dishonesty for unexplained wealth. The Court, in that case, noted that Racho's SALN did not reflect the aggregate amount of his bank deposits.

In *Daplas v. Department of Finance and the Office of the Ombudsman,* this Court merely held therein petitioner Daplas guilty of simple negligence instead of dishonesty and grave misconduct for her failure to declare several real and personal properties in her SALN. The Court found that "petitioner's failure to declare the Galant sedan in her SALNs from 1997 to 2003 stemmed from the fact that the same was registered in her husband's name, and purportedly purchased out of his personal money".

Meanwhile, in *Navarro v. Office of the Ombudsman and Department of Finance-Revenue Integrity Protection Service,* this Court exonerated Atty. Navarro of dishonesty, grave misconduct and violation of R.A. No. 6713. The Court ruled, in that case, that the properties not reflected in therein petitioner's SALN were rightfully excluded, as they do not actually belong to him. This Court even noted therein that the SALN before 2011 merely required a general statement of one's assets and liabilities.

It is apparent from the foregoing that the above-mentioned cases are factually different from the instant petition. The aforesaid jurisprudence, aside from determining the administrative liability of therein-public employees, dealt with *misdeclaration* of assets or properties. Meanwhile, the instant petition

questions respondent's qualifications and as an incident thereto, the validity of the process leading to her appointment. Further, the fundamental issue in the case at bar is *not merely inaccurate entries, but the glaring absence* of respondent's SALN for various years prior to her resignation from the U.P. College of Law.

Respondent posits that a person's failure to file SALN, without more, would not automatically negate "integrity." It is respondent's theory that the failure to file SALN without any allegation or evidence that one committed graft and corruption by acquiring unexplained wealth has no bearing on integrity. Respondent's argument, however, does not persuade.

The SALN laws contemplate both the (1) physical act of filing her and her family's statement of assets, liabilities and net worth and (2) filing of a true, genuine and accurate SALN. RA 6713 and RA 3019, being special laws that punish offenses, are *malum prohibitum* and not *malum in se.* Thus, it is the omission or commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated. An act which is declared *malum prohibitum* renders malice or criminal intent completely immaterial. Thus, whether or not respondent accumulated unexplained wealth is not in issue at this point in time, but whether she, in the first place, complied with the mandatory requirement of filing of SALNs. Worse, to subscribe to respondent's view means that the Court would altogether be deprived of the opportunity to ascertain whether or not she accumulated unexplained wealth as the tools for doing so, that is, the filed SALNs and the representations contained therein, are lacking.

Respondent chronically failed to file her SALNs and thus violated the Constitution, the law and the Code of Judicial Conduct. A member of the Judiciary who commits such violations cannot be deemed to be a person of proven integrity

To recall, the record of the U.P. HRDO only contains respondent's SALNs for the years 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002. Later, respondent produced a photocopy of her SALN for 1989 and attached the same to her *Ad Cautelam* Manifestation/Submission. On the other hand, the records of the Central Records Division of the Office of the Ombudsman yields "no SALN filed by respondent except for the SALN ending December 1998" which was subscribed only in August 2003 and transmitted by the U.P. HRDO to the Ombudsman only on December 16, 2003. Further, despite having worked as legal counsel for the Republic from 2003 to 2006 (up until 2009), there is no record that respondent filed her SALNs for that period.

Respondent could have easily dispelled doubts as to the filing or non-filing of the unaccounted SALNs by presenting them before the Court. Yet, respondent opted to withhold such information or such evidence, if at all, for no clear-reason. Respondent likewise manifests having been successful in retrieving most of the "missing" SALNs and yet withheld presentation of such before the Court, except for a photocopy of her 1989 SALN submitted only in the morning of the Oral Argument and allegedly sourced from the "drawers of U.P." Only in respondent's Memorandum *Ad Cautelam* did she attach the SALNs she supposedly recovered. But the SALNs so attached, except for the 1989 SALN, were the same SALNs priorly offered by the Republic. Other than offering legal or technical justifications, respondent has not endeavored to convince this Court of the *existence* of the still unaccounted SALNs. As she herself stated in her July 23, 2012 letter to the JBC, only some, but not all, of her SALNs are infeasible to retrieve. Thus, this Court is puzzled as to why there has been no account of respondent's more recent SALNs, particularly those from 2000, 2001, 2003, 2004, 2005 and 2006.

Instead, respondent layers her defenses as follows:

1. Invoking the so-called "*Doblada* doctrine", respondent maintains having filed all her SALNs.

Respondent firmly latches on to her allegation that she filed her SALN s, only that she has no records of the same. It is, however, too shallow and impetuous for this Court to accept such excuse and disregard the overwhelming evidence to the contrary.

Respondent urges the Court to apply in her favor the case of *Concerned Taxpayer v. Doblada, Jr.,* 267 and deem as sufficient and acceptable her statement that she "maintains that she consistently filed her SALNs." Respondent argues that in *Doblada,* the Court gave no evidentiary value to the Office of the Court Administrator's (OCA) report stating that a branch Sheriff had failed to file his SALN for eighteen (18) years, based only on contrary evidence presented by the respondent Sheriff that proves the existence of only one (1) of his missing SALNs. According to respondent, the Court's rationale in *Doblada* that one cannot readily conclude that respondent failed to file his sworn SALN simply because these documents are missing in the OCA's files should likewise be made applicable to her case. Respondent thus concludes that the Republic must categorically prove its allegation that respondent did not file her SALNs for all relevant years, and not just show that the same are no longer on file with the relevant offices.

A more cerebral reading of *Doblada,* however, poses checkered differences to the case at bar.

To begin with, the Court imposed the ultimate penalty of dismissal, with forfeiture of all benefits and with prejudice to re-employment in any branch or service of the government including government-owned and controlled corporation against Doblada for his failure to declare a true and detailed statement of his assets and liabilities for the years 1974, 1976, 1989, 1991, 1993, 1995 and 1998. The pronouncement of the Court with regard to the non-filing of his SALNs for several years was therefore not the basis for the imposition of the appropriate penalty against Doblada.

The progenesis of Doblada's troubles was a letter-complaint filed by a concerned taxpayer with the Ombudsman. The Ombudsman, in turn, referred the complaint to the OCA. Upon report and recommendation of the OCA, the Court directed the National Bureau of Investigation (NBI) to conduct a discreet investigation of the case and thereafter, to submit a report thereon. The NBI reported discrepancies in Doblada's SALNs and his yearly salaries constituting *prima facie* evidence of unexplained wealth and further stated that "[Doblada] also failed to submit his sworn statement of assets and liabilities for the years 1975 to 1988, 1990, 1992, 1994 and 1997 as said documents were not submitted to the NBI by the Records Control Division of the Supreme Court." Thereafter, the case was referred to the OCA for evaluation, report and recommendation.

Initially, the OCA reported that Doblada's records disclose that he had not been submitting his SALNs for the years 1975, 1977 to 1988, 1990, 1992, 1999 and 2000. When asked to explain, Doblada maintains having filed all his SALNs and admits that he does not have copies of said SALNs as he might have accidentally disposed of the same during the various times that he transferred office. As proof, Doblada submitted a copy of a letter dated May 7, 2001 sent by the Acting Branch Clerk of Court, stating therein that attached to said letter are the sworn SAL[N] of the staff of RTC, Pasig City, Branch 155, including that of respondent's, for the year 2000. Said letter was established to have been sent to and duly received by the OCA, and yet Doblada's SALN for 2000 was one of those missing in the OCA's files.

It was factually established then that Doblada submitted his SALNs to the branch clerk of court, presumably as the chief or head of the office. The head of the office then transmitted the original copy of the SALNs received to the repository agency which, in Doblada's case, is the OCA. Thus, the OCA's report that Doblada did not file his SALNs was rendered inaccurate by proof that Doblada, through the head of the office, actually transmitted the required original copy of the 2000 SALN to the OCA.

Considering the *contrary proof* presented by Doblada in the form of the letter of the head of the personnel of Branch 155 that the SALN for 2000 *exists* and was *duly transmitted* and *received* by the OCA as the repository agency, the Court therein *inferred* that Doblada filed his SALNs.

In respondent's case, while the U.P. HRDO, as the concerned personnel division, produced respondent's SALNs for 1985, 1989, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002, these very same SALNs are *neither proven to be in the records of nor was proven to have been sent to and duly received by the Ombudsman as the repository agency.* Even then, the Court presently receives the certified copies of said SALNs as evidence of the existence and the filing thereof.

Nevertheless, for the SALNs which the U.P. HRDO itself *cannot produce, i.e.,* 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005 and 2006, *and* not proven to be in the records of, nor proven to have been sent to and duly received by the Ombudsman, are altogether a different matter. The *existence* of these SALNs and the *fact of filing* thereof were neither established by direct proof constituting substantial evidence nor by mere inference.

The Court in *Doblada* also gave the latter the benefit of the doubt considering the lack of the categorical statement from the OCA, as the repository agency, that Doblada failed to file his SALN for the relevant years. The Court observed that the report of the OCA simply stated that "it does not have on its file the subject SAL[N] of [Doblada]." Hence, the Court therein concluded that there was no substantial evidence to show that Doblada failed to file his

SALNs for the relevant years.

In stark contrast, the Certification of the Omdusman, as the repository agency in respondent's case, made the categorical statement that "based on records on file, *there is no SALN filed* by [respondent] for calendar years 1999 to 2009 except SALN ending December 1998 which was submitted to this Office on December 16, 2003."

Respondent, through counsel, attempts to mislead the Court as to the value of the Ombudsman's Certification by re-directing Our attention to a "handwritten certification" affixed by the SALN custodian of the Ombudsman. Upon closer examination, the "handwritten certification" aside from having been "issued" only on April 6, 2018 appears to have been made at the behest of respondent's counsel where the handwritten words may have been tailor-fitted to suit respondent's theory. The signatory of the "handwritten certification" is the same signatory as that of the Certification earlier issued by the Ombudsman, and thus the former could not have possibly negated or altered the tenor of the latter. In any case, such "handwritten certification" cannot eclipse a Certification duly and officially issued by the Ombudsman in response to a subpoena issued by the Congress.

Thus, taking the undisputed pieces of evidence consisting of (1) the U.P. HRDO certifications proving that respondent's SALNs for 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005 and 2006 are not in its possession; and (2) the Ombudsman certification that based on its records, there is no SALN filed by respondent except that for 1998; coupled with respondent's inability to show proof that these SALNs actually exist and that these were actually transmitted to and duly received by the Ombudsman as the repository agency, conclusively establish that for the years 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005 and 2006, respondent did not file her SALNs.

Otherwise stated, on the basis of the evidence on record and respondent's unexplained failure to support her allegation of filing with substantial proof, the Court reaches the inevitable conclusion that the only SALNs filed by respondent were those for the calendar years 1985, 1989, 1990, 1991, 1993, 1994, 1995, 1996, 1997, 1998, and 2002, or only eleven (11) SALNs out of her 20 years in U.P., or for even more if her engagement as legal counsel by the Republic and as Deputy Commissioner of the Commission on Human Rights as lauded in respondent's PDS, are treated as government service.

It is for this reason that We hold that the Republic was able to discharge its burden of proof, and thus it becomes incumbent upon respondent to discharge her burden of evidence. *Sps. De Leon, et al., v. Bank of the Philippine Is lands* offers a distinction between burden of proof and burden of evidence:

> Section 1, Rule 131 of the Rules of Court defines "burden of proof' as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." **In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence. Once the plaintiff has established his case, the burden of evidence shifts to the defendant, who, in turn, has the burden to establish his defense.** (Emphasis ours)

Further, the burden of proof in a *quo warranto* proceeding is different when it is filed by the State. Floyd Mechem in his book, entitled *A Treatise on the Law of Public Offices and Officers,* explains that when the respondent is called upon at the suit of the State to show by what warrant he assumes to exercise the functions of a public office, the burden of proving his title rests upon the respondent. When, however, the respondent has made out a *prima facie* right to the office, it is only at that time that the burden of evidence shifts to the State.

Montgomery H. Throop adopted the same view as Mechem. Throop, in his book, entitled *A Treatise on the Law relating to Public Officers and Sureties in Official Bonds,* states that upon the trial of an information in the nature of a *quo warranto,* the prosecutor is not required, in the first instance, to show want of title in the person, against whom the information is exhibited. The burden is upon the respondent to establish a good title; he must establish the continued existence of every qualification, necessary to the continued holding of the office, if any such qualifications exist. But where the respondent has shown a good *prima facie* title, the burden of proof is shifted to the prosecutor.

In this jurisdiction, Vicente J. Francisco wrote in his book the *Revised Rules of Court in the Philippines,* that in a *quo warranto* proceeding, the burden rests on the defendant or respondent, as against the State at least, to show his right to the office from which it is sought to oust him. Moreover, since the object of such proceedings is to test the actual right to the office, and not merely a use color of right, it is incumbent upon the respondent to show a good legal title, and not merely a colorable one, for he must rely wholly on the strength of his own title.

With the submission of its evidence, including the Certifications from the U.P. College of Law and the Ombudsman showing that respondent did not file all her SALNs, the Republic has made out a *prima facie* case that respondent failed to comply with the SALN law. The duty or burden of evidence thus shifted to respondent to controvert the Republic's *prima facie* case, otherwise, a verdict must be returned in favor of the Republic. However, what respondent merely offered in response to the Republic's evidence is an unsubstantiated claim that she had filed all her SALNs. Without admissible documentary and testimonial support, this bare and uncorroborated assertion scarcely overcomes the Republic's case.

2. Being on leave without pay exempts respondent from filing her SALNs.

Aside from maintaining that she filed all her SALNs, respondent layers her defenses by saying that her non-filing of SALN is nevertheless excused because she was on leave from the U.P. College of Law during June 1, 1998 to October 16, 1998, June 1, 2000 to May 31, 2001, June 1, 2001 to May 31, 2002, November 1, 2003 to May 31, 2004, June 1, 2004 to October 31, 2004, February 11, 2005 to October 31, 2005 and November 15, 2005 to May 31, 2006. However, per the Certification issued by the U.P. HRDO dated December 8, 2017, it appears that respondent filed her SALN for the year ending December 31, 2002, a year she was purportedly on leave. To this Court, respondent's own act of filing a SALN in 2002 negates her argument that being on leave excuses her from filing her SALN. As likewise pointed out during the Oral Arguments, respondent, as a regular faculty member, receives monthly compensation and from at least January 2000 to May 2000 (when she was not on leave), she earned income and thus should have filed her SALN covering said period.

Further, being on leave from government service is not synonymous with separation from government service. Suffice to say that one does not cease to become a government employee only because one takes an official leave.

On the contrary, relevant laws provide that all public officials and employees are required to file a SALN.

To review, Section 17, Article XI of the Constitution categorically requires that "[a] public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law."

Section 8 of R.A. No. 6713 states that "[p]ublic officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households." Further, "[t]he [SALN] and the [d]isclosure of [b]usiness [i]nterests and [f]inancial [c]onnections shall be filed by: (1) Constitutional and national elective officials, with the national office of the Ombudsman; (2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively; Justices, with the Clerk of Court of the Supreme Court; Judges, with the Court Administrator; and all national executive officials with the Office of the President; (3) Regional and local officials and employees, with the Deputy Ombudsman in their respective regions; (4) Officers of the armed forces from the rank of colonel or naval captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and (5) All other public officials and employees, defined in RA 3019, as amended, with the Civil Service Commission."

Relatedly, Section 34, Chapter 9, Book 1 of the Administrative Code of 1987 also states that "[a] public officer or employee shall upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth."

Section 8 of R.A. No. 6713, however, provides for certain **exceptions** to the requirement: (1) those serving in honorary capacity - these are persons who are working in the government without service credit and without pay; (2) laborers - these are persons who perform ordinary manual labor; and (3) casual or temporary workers. Respondent claims exception on the argument that for the periods she was on official leave from U.P., she did not receive any pay.

This statement, however, is inaccurate. The fact that respondent did not receive any pay for the periods she was on leave does not make her a government worker "serving in an honorary capacity" to be exempted from the SALN laws. She did not receive pay not because she was serving in an honorary capacity, but for the simple reason that she did not render any service for said period. Fundamental is the rule that workers who were not required

to work are not, by law, entitled to any compensation.

3. Respondent is not required by law to keep a record of her SALNs.

Respondent invokes Section 8, paragraph C(4) of R.A. No. 6713 which provides:

> Section 8. Statements and Disclosure. x x x
>
> x x x x
>
> (C) Accessibility of documents. - (1) Any and all statements filed under this Act, shall be made available for inspection at reasonable hours.
>
> (2) Such statements shall be made available for copying or reproduction after ten (10) working days from the time they are filed as required by law.
>
> (3) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of reproduction and mailing of such statement, as well as the cost of certification.
>
> (4) Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.

There is no argument that the filed SALNs need not be retained by the receiving officer or the custodian after more than ten years from the filing or receipt thereof as such documents may be destroyed unless needed in an ongoing investigation. In this context, the filer is likewise under no obligation to keep records of such SALNs after the ten-year period.

The fact, however, remains that even respondent's more recent SALNs falling within the ten-year period for her application to the Chief Justice position are not on record. Logically, a public officer under question should obtain a certification from the repository agency to attest to the fact of filing. In the event that the SALNs were actually filed but missing, such certification should likewise attest to the fact that the SALNs filed could no longer be located due to a valid reason (such as destruction by a natural calamity, gutted by fire or destruction pursuant to the ten-year period above-cited).

4. Respondent was never asked to comply with the SALN laws.

Respondent likewise banks on the supposed presumption that she filed the SALNs considering that the U.P. HRDO never called her attention to the non-filing thereof and instead, released a clearance and certification in her favor. However, said circumstance, if true, does not detract from the fact that the duty to properly accomplish the SALN belongs to the public official and the corrective action that the concerned authority is expected to undertake is limited only to typographical or mathematical rectifications.

For the years that respondent rendered government service in U.P., the relevant rules would be that provided under the Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees dated April 21, 1989. Rule VIII thereof provides:

Rule VIII
Review and Compliance Procedure

> Section 1. The following shall have the authority to establish compliance procedures for the review of statements to determine whether said statements have been properly accomplished:
>
> (a) In the case of Congress, the designated committees of both Houses of Congress subject to approval by the affirmative vote of the majority of the particular House concerned;
>
> (b) In the case of the Executive Department, the heads of the departments, offices and agencies insofar as their respective departments, offices and agencies are concerned subject to approval of the Secretary of Justice
>
> (c) In the case of the Judicial Department, the Chief Justice of the Supreme Court; and
>
> (d) In the case of the Constitutional Commissions and other Constitutional Offices, the respective Chairman and members thereof; in the case of the Office of the Ombudsman, the Ombudsman.
>
> The above official shall likewise have the authority to render any opinion interpreting the provisions on the review and compliance procedures in the filing of statements of assets, liabilities, net worth and disclosure of information.
>
> In the event said authorities determine that a statement is not properly filed, they shall inform the reporting individual and direct him to take the necessary corrective action.
>
> The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in the Code.

The Rules implementing R.A. No. 6713 thus authorize only certain officials of the Legislative, Executive and Judicial Departments, and the Constitutional Commissions and Constitutional offices to establish compliance procedures for the review of statements in the SALN to determine whether said statements have been properly accomplished. The said, officials are also authorized to render opinions interpreting the provisions on the review and compliance procedures and to determine whether or not a SALN is properly filed. If the SALN was not properly filed, the authorized officials are required to inform the reporting individual and direct him/her to take the necessary corrective action. The records do not show that at the time respondent assumed her post as a professor in U.P., or at any time thereafter until her resignation, that concerned authorized official/s of the Office of the President or the Ombudsman had established compliance procedures for the review of SALNs filed by officials and employees of State Colleges and Universities, like U.P.

The ministerial duty of the head of office to issue compliance order came about only on April 16, 2006 when the Civil Service Commission (CSC) issued Memorandum Circular No. 10, s. 2006 amending Rule VIII. This was pursuant to CSC Resolution No. 06-0231 dated February 1, 2006 wherein the CSC adopted the revised rules on review and compliance procedure. As such, the U.P. HRDO could not have been expected to perform its ministerial duty of issuing compliance orders to respondent when such rule was not yet in existence at that time.

At any rate, *Navarro v. Office of the Ombudsman* clarifies on the limited corrective action which the head of office can perform as regards the review of SALNs:

> x x x x
>
> **Lest it be misunderstood, the corrective action to be allowed should only refer to typographical or mathematical rectifications and explanation of disclosed entries. It does not pertain to hidden, undisclosed or undeclared acquired assets which the official concerned intentionally concealed by one way or another like, for instance, the use of dummies.** There is actually no hard and fast rule. If income has been actually reported to the BIR in one's ITR, such fact can be considered a sign of good faith.
>
> x x x x
>
> The Court is mindful of the duty of public officials and employees to disclose their assets, liabilities and net worth accurately and truthfully. In keeping up with the constantly changing and fervent society and for the purpose of eliminating corruption in the government, the new SALN is stricter, especially with regard to the details of real properties, to address the pressing issue of transparency among those in the government service. Although due regard is given to those charged with the duty of filtering malicious elements in the government service, it must still be stressed that such duty must be exercised with great caution as grave consequences result therefrom. Thus, some leeway should be accorded the public officials. They must be given the opportunity to explain any *prima facie* appearance of discrepancy. To repeat, where his explanation

is adequate, convincing and *verifiable,* his assets cannot be considered unexplained wealth or illegally obtained. (Emphasis ours)

5. Respondent's inclusion in the matrix of candidates with complete requirements and in the shortlist nominated by the JBC confirms or ratifies her compliance with the SALN requirement.

Respondent, both in her pleadings and in the Oral Arguments, harps on the purported failure of the JBC to exclude her from the list of shortlisted applicants. She points to at least eleven times that the JBC could have disqualified her due to her lack of SALNs but failed to do so. Hence, she argues that she is deemed to have substantially complied with the legal requirements at the time of her application.

Respondent's argument is specious. The invalidity of respondent's appointment springs from her lack of qualifications. Her inclusion in the shortlist of candidates for the position of Chief Justice does not negate, nor supply her with the requisite proof of integrity. She should have been disqualified at the outset. It must be underscored that the JBC En Banc included respondent in the shortlist for the position of Chief Justice without deliberating her July 23, 2012 Letter. Without prejudice to this Court's ruling in A.M No. 17-11-12-SC and A.M. No. 17-11-17-SC, the JBC En Banc cannot be deemed to have considered respondent eligible because it does not appear that respondent's failure to submit her SALNs was squarely addressed by the body. Her inclusion in the shortlist of nominees and subsequent appointment to the position do not estop the Republic or this Court from looking into her qualifications. Verily, no estoppel arises where the representation or conduct of the party sought to be estopped is due to ignorance founded upon an innocent mistake. Again, without prejudice to the outcome of the pending administrative matter, it appears that respondent's inclusion was made under the erroneous belief that she complied with all the legal requirements concomitant to the position.

Respondent failed to properly and promptly file her SALNs, again in violation of the Constitutional and statutory requirements

Further, the failure to file a truthful SALN not only puts in doubt the integrity of the officer, but such failure to file a truthful, complete and accurate SALN would likewise amount to dishonesty if the same is attended by malicious intent to conceal the truth or to make false statements.

On its face, the SALNs filed by respondent covering her years of government service in U.P., appear to have been executed and filed under suspicious circumstances:

(a) Respondent's SALN as of December 31, 1996 was accomplished and notarized only on June 29, 1998, or two years late;

(b) Her SALN as of December 31, 1998 was filed only in 2003, or five years late;

(c) Her SALNs for the years 1997, 1998, 1999 and 2002 were notarized only on August 21, 2003 ;

(d) Both the 1996 and 1997 SALNs were subscribed and sworn to by respondent before Zenaida P. Cruz (Administrative Officer IV, Human Resource Development and Records Section, U.P. Law Center) on June 29, 1998. However, under the Notarial Registry of Eugenia A. Borras, four SALNs of respondent were acknowledged before her on August 21, 2003 as cited in the next preceding paragraph. It appears thus that there were two SALNs for 1997 executed by respondent;

(d) She failed to file her SALNs for 2004, 2005, and 2006 which were the years when she received the bulk of her fees from the PIATCO cases. As respondent divulged, she received from the Republic, through the OSG, the following fees in relation to the PIATCO cases:

Year	Income
2004	**P7,055,513.56**
2005	**P11,532,226.00**
2006	**P2,636,006.64**
2007	P4,673,866.36
2008	4,070,810.93
2009	P301,552.00
TOTAL	P30,269,975.49

(e) Her SALN for 2006 was accomplished only on July 27, 2010 and unsubscribed, only to be later on claimed by respondent to have been really intended as SALN as of July 27, 2010;

The SALNs that she submitted in support of her application for Chief Justice likewise bear badges of irregularities:

(f) Her SALN for 2009 was not accomplished under oath, was likewise belatedly filed only on June 22, 2012 and indicates therein that she was an Associate Justice of the Court when her appointment came only on August 16, 2010;

(g) Her SALNs for 2006 and 2009 did not reflect the fees she received as counsel for the Republic in the PIATCO cases.

The Bureau of Internal Revenue's (BIR) Report shows that respondent received from the OSG the total gross amount of P32,494,805.27 as fees from 2004 to 2009 for the PIATCO cases. The BIR Report also shows that she paid the withholding taxes on said fees in the total amount of P4,599,504.71. By mathematical computation, respondent would have had P27,895,300.56 as her net disposable income. This net disposable income was not reflected in respondent's SALN for 2006 (which she claims to really be her SALN as of July 27, 2010) nor in her SALN as of 2009. Her SALN for 2009 revealed a net worth of only P17,936,353.00;

(h) The unaccounted income from the PIATCO cases could not have been due to losses or liabilities considering that respondent have had an increase in her net worth from 2002 to 2009. Her SALN for 2002 shows a net worth of only P3,804,000.00 while her SALN for 2009 shows a net worth of P17,936,353.00, her net worth thus increased by P14,132,353.00. While the BIR Report shows that respondent received approximately P27M in disposable net income, her SALN only shows an increase of approximately P14M in net worth. The difference between the two, in the amount of estimatedly P13M, was conspicuously missing in the SALNs filed by respondent;

(i) There is a glaring difference between the two 2010 SALNs filed. The total value of respondent's personal properties in the "SALN as of July 27, 2010" is P9,000,000.00, while the value of her personal properties as declared in her "SALN as of December 31, 2010" increased to P11,723,010. Respondent, therefore, enjoyed an increase of approximately P2,700,000.00 in personal properties in just a span of five (5) months after having been appointed as Associate Justice.

(j) It is contrary to human experience that the SALNs purportedly recovered by respondent's husband were not stamped received by the UP HRDO. It is unusual that respondent did not bother to demand that her personal copy be duly stamped received with particulars as to the date and initial, at least of the party who received the same as proof that she timely filed her SALN.

(k) There is no indication from the stamped "Certified Photocopy" and initialed by Rosemarie Pabiona on the SALNs that she is the official custodian of the same, and whether the photocopies of the original are on file, contrary to Section 24, Rule 1322 of the Rules of Court.

The above circumstances betray respondent's intention to falsely state a material fact and to practice deception in order to secure for herself the appointment as Chief Justice. It is therefore clear as day that respondent failed not only in complying with the physical act of filing, but also committed dishonesty betraying her lack of integrity, honesty and probity.

Consistently, the Court does not hesitate to impose the supreme penalty of dismissal against public officials whose SALNs were found to have contained discrepancies, inconsistencies and non-disclosures. For instance, in *Rabe* v. *Flores,* the Court unanimously imposed the ultimate penalty of dismissal from service upon a regional trial court interpreter with forfeiture of all retirement benefits and accrued leaves and with prejudice to re-employment for dishonesty and for failure to disclose her business interest, which was a "stall in the market" for a continued period of four years. The Court stressed that it is the obligation of an employee to submit a sworn statement as the "public has a right to know" the employee's assets, liabilities and net worth and financial and business interests.

The dockets of the Sandiganbayan itself show that several charges for violations of R.A. No. 6713 for failure to file and for untruthful declarations in the SALNs resulted to a plea of guilt from the accused, lest the latter run the risk of being imprisoned. Interestingly, the Sandiganbayan concluded a criminal case against a certain Rogelio Pureza, then a Senior Superintendent of the Philippine National Police, who was charged with 4 counts of violation of Section 8 in relation to Section 11 of R.A. No. 6713 for failure to file his annual SALN for the years 1990, 1991, 1992 and 1993. In the course of the investigation by the Office of the Deputy Ombudsman for the Military relative to an anonymous letter of a concerned resident of Kalookan City on the alleged illegal activities and unexplained wealth of several policemen, Pureza was found to have no record of his SALN from 1989 to 1993 on file with the PNP Records Center. In handing a guilty verdict, the Sandiganbayan reasoned that the non-existence of the SALs with the Records Center of the PNP proved that the accused did not file his SAL for 1990 to 1993. The Sandiganbayan observed that even assuming that the accused had indeed filed his SAL with the PNP and his records were lost during the transfer of records, he could have easily and conveniently obtained a copy of his SAL from either the CSC or the Office of the Military Ombudsman.

It is thus plainly obvious that the courts do not take violations of the SALN laws slightly even as against lowly public officials.

With more reason should such test of dishonesty and lack of integrity be applied in the instant case when respondent failed to file her SALNs for several years and for those years that she filed, the SALNs so filed prove to be untruthful.

C.
Respondent failed to submit the required SALNs as to qualify for nomination pursuant to the JBC rules

The JBC required the submission of at least ten SALNs from those applicants who are incumbent Associate Justices, absent which, the applicant ought not to have been interviewed, much less been considered for nomination

Further compounding respondent's woes is the established and undisputed fact that she failed to submit the required number of SALNs in violation of the rules set by the JBC itself during the process of nomination.

To recall, the announcement for the opening of the application and recommendation of the position of Chief Justice in 2012 was preceded by a JBC En Banc meeting where the members thereof agreed that applicants who were previously in the government service must submit all previous SALNs. This agreement was reflected in the JBC's announcement published on June 5, 2012, where it was made clear that applicants from the government shall submit, in addition to the usual documentary requirements, *all previous SALNs,* with a warning that those with incomplete or out-of-date documentary requirements will not be interviewed or considered for nomination.

As extensively quoted, the minutes of the JBC deliberation held on July 20, 2012 show that the JBC deliberated on the candidates who submitted incomplete SALNs and then determined who among them are to be considered as having "substantially complied." Senator Francis G. Escudero, as then *ex officio* member, suggested that "at least an attempt to comply with a particular requirement" can be used as a parameter for determining substantial compliance.

With this, the JBC proceeded to go over, one by one, the compliance of the candidates with the lacking documentary requirements. For instance, Justice Abad was considered as having substantially complied because he submitted 4 SALNs in his 6 year-stint with the OSG and because the filing of the SALN at the time Justice Abad joined the government was not yet required. Dean Raul C. Pangalangan lacked 5 SALNs but that he was trying to get them from the Civil Service Commission and so, regular member Justice Aurora Santiago-Lagman moved that the SALNs he submitted be considered as substantial compliance. Congressman Rufus B. Rodriguez did not submit even one SALN which prompted Justice Peralta to remark that Congressman Rodriguez may no longer be interested. Commissioner Rene V. Sarmiento also submitted incomplete SALNs, but there was no mention whether the SALNs he submitted were considered as substantial compliance. Similarly, for respondent, the JBC determined that she did not submit her SALNs from 1986 to 2006 and that, as remarked by Senator Escudero, the filing thereof during those years was already required. There was no indication that the JBC deemed the three SALN s (for the years 2009, 2010 and 2011) submitted by respondent for her 20 years as a professor in the U.P. College of Law and two years as Associate Justice, as substantial compliance.

We revisit the pertinent portions of the aforesaid Minutes as follows:

> III. Deliberation on Candidates with Incomplete Documentary Requirements:
>
> x x x x
>
> Justice Peralta suggested that the Council examine the matrix per candidate as follows:
>
> Justice Roberto A. Abad
>
> The Executive Officer reported that Justice Abad lacks the Statement of Assets, Liabilities and Networth (SALN) for the years 1982-1983.
>
> Justice Peralta mentioned that **Justice Abad joined the government in the late 70's and during that time there was no R.A. 6713 yet. He added that Justice Abad might no longer locate them.**
>
> Senator Escudero said **that SALNs were not yet required at that time.**
>
> The Executive Officer said that Justice Abad had been with the OSG from 1982 to 1986; **but he submitted only his SALNs for the period 1981, 1984, 1985 and 1986.** He was already asked to submit the lacking SALNs.
>
> Justice Peralta asked whether there is a need for them to explain the reason for failing to comply with the requirements considering the time constraint.
>
> Senator Escudero said that it would be more proper for the JBC to ask the candidate for the reason; however, in the case of Justice Abad, he opined that he substantially complied with the requirements of the JBC.
>
> Justice Lagman agreed with the Senator.
>
> There being no objection, **the Council agreed that Justice Abad had SUBSTANTIALLY COMPLIED with the requirements of the JBC**
>
> x x x x
>
> The Executive Officer asked for clarification, particularly with respect to SALNs, whether five (5) SALNs would constitute a substantial compliance if the candidate has been in the government service for twenty (20) years.
>
> 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;

x x x

5. Solicitor General Francis H. Jardeleza-has complied;

6. Justice Teresita J. Leonardo-De Castro-has substantially complied;

x x xx

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,** *(sic)* **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.

x x x x

16. Atty. Ronaldo B. Zamora- has lacking SALNs and MCLE cert.

x x x x

From the foregoing discourse, it appears that respondent was specifically singled out from the rest of the applicants for having failed to submit a single piece of SALN for her years of service in the U.P. College of Law. This is in obvious contrast with the other shortlisted applicants who submitted SALNs, or whose years in government service correspond to the period prior to the effectivity ofR.A. No. 6713.

The minutes of the JBC *En Banc* meeting also show that Senator Escudero moved that the determination of whether a candidate has substantially complied with the requirements be delegated to the Executive Committee. In the end, it appears that the JBC *En Banc* decided to require only the submission of the past ten (10) SALNs, or from 2001-2011, for applicants to the Chief Justice position. This, as much, was confirmed by Atty. Pascual during the Congressional hearings.

From the foregoing, it is clear that the JBC *En Banc* did not do away with the requirement of submission of SALNs, only that substantial compliance therewith, *i.e.,* the submission of the SALNs for the immediately preceding 10 years instead of all SALNs, was deemed sufficient.

Conformably thereto, the following candidates submitted their respective letters as regards the submission of the SALNs:

(a) Justice De Castro submitted a letter dated July 17, 2012 with the attached SALNs for 16 years covering the period 1997 to 2011, from the time she became an Associate Justice of the Sandiganbayan on September 23, 1997 until December 2011 as Associate Justice of the Supreme Court. She also disclosed that her SALN from February 19, 1973 until November 30, 1978 which she filed during her employment in the Supreme Court, could no longer be located. She also disclosed that her personal files, including her SALNs that she filed while employed at the Department of Justice from December 1, 1978 to September 22, 1997, were among those burned when the third floor of the DOJ was gutted by fire in late 1996 or early 1997. In any case, upon inquiry from the CSC, she was told that her SALNs filed as DOJ employee were already disposed of, as it was way beyond the statutory ten (10) – year period.

(b) Jose Manuel Diokno submitted a sworn and verified statement dated July 17, 2012, stating therein that while he served as General Counsel of the Senate Blue Ribbon Committee and as Special Counsel to the Board of Directors of the Development [Bank] of the Philippines, his engagement was only as a consultant on a contractual basis and as such, was not required to file a SALN.

(c) Justice Carpio submitted a letter299 dated July 23, 2012 stating that he resigned as Chief Presidential Legal Counsel effective January 31, 1996 and as such, he did not submit a SALN for the year 1995 because the submission for that year was on April 30, 1996 when he was no longer employed with the government. Nevertheless, the clearance issued by the Office of the President certifies that Justice Carpio has submitted his SALN and that he has no pending criminal or administrative case.

(d) Justice Abad submitted an attestation dated July 23, 2012 that he does not have a copy of his SALNs for the years 1968 to 1974, 1976 to 1980 and 1982 to 1983.

(e) Dean Amado Valdez wrote a letter dated July 23, 2012 saying that he could no longer find the SALNs covering the years 1985 to 1987, 2002 to 2003 and 2004 representing the years of his intermittent government service. He said that in, any case, the assets reflected in the SALN which he already filed were acquired after he left government service as shown by his income tax returns for the periods from 2005 to 2011.

Notably, Jose Manuel Diokno and Dean Amado Valdez were not included in the short list.

That such was the standing requirement of the JBC from at least the incumbent Associate Justices applying for the position of Chief Justice is evident from the fact that five (5) out of six (6) applicants who were incumbent Associate Justices, namely: (1) Justice Carpio; (2) Justice Brion; (3) Justice Velasco; and (4) Justice De Castro were determined to have completely complied with the SALN requirement; and (5) Justice Abad was determined to have substantially complied. These Justices submitted the following numbers of SALNs:

Justice Carpio	14 SALNs
Justice Brion	12 SALNs
Justice Velasco	19 SALNs
Justice Leonardo-De Castro	15 SALNs
Justice Abad	7 SALNs

This belies respondent's representation that the JBC maintained its requirement that the candidates submit all previous SALNs. If such were the case, only those candidates determined to have complied should have been shortlisted, and the others, including respondent, should not have qualified. In any case, the requirement of submitting SALNs within the ten-year period instead of all previous SALNs is more in keeping with the law. Recall that Section 8, paragraph C(4) of R.A. No. 6713 provides that the filed SALNs need not be retained by the receiving officer or the custodian after more than ten years from the filing or receipt thereof, and actually allows such documents to be destroyed unless needed in an ongoing investigation.

Be that as it may, records clearly show that the only remaining applicant-incumbent Justice who was not determined by the JBC *En Banc* to have substantially complied was respondent, who submitted only 3 SALNs, *i.e.,* 2009, 2010 and 2011, even after extensions of the deadline for the submission to do so.

Instead of complying, respondent offered, by way of her letter dated July 23, 2012, *justifications* why she should no longer be required to file the SALNs: that she resigned from U.P. in 2006 and then resumed government service only in 2009, thus her government service is not continuous; that her government records are more than 15 years old and thus infeasible to retrieve; and that U.P. cleared her of all academic and administrative responsibilities and charges.

These justifications, however, did not obliterate the simple fact that respondent submitted only 3 SALNs in her 20-year service in U.P., and that there was nary an attempt on respondent's part to comply.

Respondent sought to be excused from complying with the SALN requirement because, allegedly, the SALNs requested from her (1995-1999 as respondent alleged) fro1m U.P., are old and thus "infeasible to retrieve." But the Republic, through the OSG, was able to present before the Court copies of respondent's SALNs for 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002 from the U.P. HRDO. These files, therefore, are not "infeasible to retrieve." Also, in comparison with the other nominees, the SALN s which the latter could no longer produce are much older in age than the SALN s which respondent regarded as "infeasible to retrieve". For instance, Justice Abad had no copy of his SALN from 1968-1974, 1976-1980 and 1981-1983 while Justice Leonardo-De Castro had no copy of her SALNs from 1973-1978.

Respondent likewise sought special treatment as having complied with the submission of the SALN by submitting a Certificate of Clearance issued by the U.P. HRDO. This clearance, however, hardly suffice as a substitute for SALNs. The import of said clearance is limited only to clearing respondent of her academic and administrative responsibilities, money and property accountabilities and from administrative charges as of the date of her resignation on June 1, 2006. But such could not, by any stretch of imagination, be considered as compliance with the SALN requirement. Obviously, an administrative officer, performing ministerial and administrative duties, could not have certified respondent's compliance with the filing of SALNs which is a statutory, and not merely an administrative, requirement.

In all these, respondent curiously failed to mention that she, in fact, did not file several SALNs during the course of her employment in U.P. Such failure to disclose a material fact and the concealment thereof from the JBC betrays any claim of integrity especially from a Member of the Supreme Court. On this score, the observations of the Court in the case of *OCA v. Judge Estacion, Jr.* ring special significance:

> He concealed from the appointing authority, at the time he applied for the judicial post until his appointment, information regarding the criminal charges for homicide and attempted homicide filed against him. Such fact would have totally eluded the Court had it not been complained of by one Mrs. Ruth L. V da. de Sison who, incidentally, is the mother of one of the victims. x x x
>
> x x x x
>
> x x x Respondent did not honestly divulge all that the appointing authority ought to know to correctly discern whether he is indeed fit for the judicial post. He continuously suppressed vital information on his personal circumstances under the false belief that he can mislead the Court and get away with it for good. What respondent did, or omitted to do, was a calculated deception committed not only against the Court but against the public as well, clearly indicative of his lack of moral rectitude to sit as magistrate, and sufficiently repulsive that it detracts from public confidence in the integrity of the judiciary. Dismissal indeed is the appropriate retribution for such kind of transgression.
>
> Be it stressed that judges are held to higher standards of integrity and ethical conduct than attorneys or other persons not invested with the public trust. They should inspire trust and confidence, and should bring honor to the judiciary. And because of their critical position in the judicial bureaucracy, this Court as overseer is duty-bound to insure that the integrity of the judicial system is preserved and maintained, by pursuing that ever-vigilant search for the virtues of competence, integrity, probity and independence mandated by no less than the Constitution itself. (Citations omitted)

Indubitably, respondent not only failed to substantially comply with the submission of the SALNs but there was no compliance at all. The contents of respondent's Letter dated July 23, 2012 itself betray an exercise of dishonesty and disposition to deceive in an attempt to secure for herself the appointment as Chief Justice. In *Ombudsman v. Pelino,* We held:

> Under the laws governing civil service, dishonesty is classified as a grave offense the penalty of which is dismissal from the service at the first infraction. A person aspiring to public office must observe honesty, candor and faithful compliance with the law. Nothing less is expected. This ideal standard ensures that only those of known probity, competence and integrity are called to the challenge of public service. It is understood to imply a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. Dishonesty is a malevolent act that puts serious doubt upon one's ability to perform his duties with the integrity and uprightness demanded of a public officer or employee.

For these reasons, the JBC should no longer have considered respondent for interview as it already required the submission of, at least, the SALNs corresponding to the immediately preceding 10 years up to December 31, 2011.

Parenthetically, the Court observes that the circumstances surrounding the receipt of, and the action or non-action of the JBC, on respondent's Letter dated July 23, 2012 likewise leave much to be desired. The Letter, while ostensibly sent to and received by the JBC on the same date, does not appear to have been brought to the attention of the JBC *En Banc.* Excerpts from the Report of the House Committe on Justice on this point is revealing:

> Justice Peralta, who was acting Chief Justice and *ex officio* Chairman of the JBC at the time, testified that he never learned about the non-submission of the SALNs by then-applicant [respondent], and that he also never saw the letter submitted by the [r]espondent explaining why she could not submit her SALNs. He stated that had he known about these matters, he could have raised these issues during the en bane meeting of the JBC. Atty. [Maria Milagros N. Fernan-]Cayosa likewise stated that she never saw the letter-explanation, and that she merely relied on the matrix prepared by the JBC Secretariat which stated that the Respondent Chief Justice Sereno had already submitted her complete requirements.

Even the JBC's Execom to which the duty of ascertaining whether or not the candidates have substantially complied with the documentary requirements had been expressly delegated by the JBC *En Banc,* could not produce any minutes of meeting or record to show that respondent was in fact determined to have complied.

At any rate, the issue of whether or not there is administrative culpability in the ranks of the JBC, the OEO or the ORSN relative to the nomination of respondent in 2012 is not a concern in the instant petition and is a matter best left to be decided in A.M. No. 17-11-12-SC and A.M. No. 1 7-11-17-SC, now pending before the Court.

Respondent's failure to submit to the JBC her SALNs for several years means that her integrity was not established at the time of her application

Respondent argues that failure to submit the SALNs to the JBC is not cause for disqualification because the SALN was not among the documents which the JBC considered as evidence of integrity.

This Court, again, disagrees.

The requirement to submit SALNs is made more emphatic when the applicant is eyeing the position of the Chief Justice. The minutes of the JBC *En Banc* meeting enlightens as to the rationale behind the requirement:

> Senator Escudero moved that additional requirements be imposed by the (JBC) for the position of Chief Justice, namely (1) all previous SALN s (up to December 31, [2011]) for those in the government or SALN as of December 31, (2011) for those from the private sector; and (2) waiver in favor of the JBC of the confidentiality of local and foreign currency bank accounts under the Bank Secrecy Law and Foreign Currency Deposits Act. The documents shall be treated with utmost confidentiality and only for the use of the JBC. He proposed that these additional requirements be included in the publication of the announcement opening the said position. **He explained that the basis of his motion was the fact that the reason why Chief Justice Corona was removed from office was due to inaccuracies in his SALN. The Members of the House of Representatives, in the exercise of their wisdom, determined that non-inclusion of assets in one's SALN is an impeachable offense. Likewise, majority of the Senate voted to convict because of the inaccuracies in the bank accounts and statements in his SALN. He said that the JBC would not want to recommend a person who is susceptible to such kind of attack. He said that the JBC should impose higher standards to aspirants for the position of Chief Justice.**
>
> Congressman Tupas concurred with Senator Escudero's motion and suggested that the waiver should not be limited to year-end balances only.
>
> There being no objection, the motion was APPROVED. The (JBC) agreed to PUBLISH the announcement opening the position of Chief Justice of the Supreme Court of the Philippines together with the additional requirements.
>
> x x x x. (Emphasis ours)

The requirement to submit the SALNs along hand with the waiver of bank deposits, is therefore not an empty requirement that may easily be dispensed

with, but was placed by the *JBC itself* for a reason - in order to allow the JBC to carry on its mandate of recommending only applicants of high standards and who would be unsusceptible to impeachment attacks due to inaccuracies in SALNs.

Further, the failure to submit the required SALNs means that the JBC and the public are divested of the opportunity to consider the applicant's fitness or propensity to commit corruption or dishonesty. In respondent's case, for example, the waiver of the confidentiality of bank deposits would be practically useless for the years that she failed to submit her SALN since the JBC cannot verify whether the same matches the entries indicated in the SALN. This is precisely the reason why the JBC required the submission of the SALNs together with the waiver of bank deposits, thus:

> Justice Lagman expressed that previously the Members had agreed that they would only use the waiver when there is a complaint, doubt, or suspicion on the SALN of any of the candidates.
>
> Senator Escudero said that if the argument that the JBC would not use the waiver unless there is a complaint, bank information could not be secured. The complaint could have no basis. He commented that by the time the JBC receives the information, the public interview is finished. In this case, the least that the JBC could do is to give the candidate an opportunity to explain his side. **He explained that the theory and logic behind the requirement of a waiver was precisely due to the fact that the former Chief Justice was impeached because of inaccuracies in his SALN. Thus, the JBC should ensure that all the nominees who would be nominated would not be accused of the same. The JBC would just want to avoid a situation where the next Chief Justice, nominated by the JBC and appointed by the President, would again be subjected to impeachment.**
>
> Justice Peralta asked the Senator for clarification whether it is his suggestion that if the JBC finds something wrong on the bank account of any candidate, he or she would be asked in public.
>
> Senator Escudero replied that it could be done; however, in the questions that would be propounded by a Member, or in the response of the candidates, the amounts need not be stated. **The questions should only tackle inconsistencies of bank deposits as against their SALNs.**
>
> Justice Lagman agreed with the Senator.
>
> x x x x
>
> Justice Hermosisima commented that the waiver is very easy to comply with. The problem is that banks may not be able to respond given the very short period of time. He said that the JBC requires a waiver so that in the event that there is any question as to the accuracy of a candidate's accounting in his or her SALN, then, the JBC would be able to look into the bank accounts without violating the bank secrecy law. He said that the JBC need not look into their accounts for now as no complaint has been filed yet on any of the candidates.
>
> **Senator Escudero and Congressman Tupas commented that everybody should comply.**
>
> x x x x. (Emphasis ours)

Respondent is presumed to know of the importance of the filing of the SALN together with the bank waiver. The waiver which respondent executed under oath clearly provides:

> This waiver is executed on the condition that the JBC or its duly authorized representatives shall make use of it, as well as any and all information or data obtained by virtue thereof, **for the exclusive and sole purpose of evaluating my qualifications for the position of Chief Justice of the Supreme Court.** (Emphasis ours)

Conclusively then, respondent's failure to submit her SALNs to the JBC means that she was not able to prove her integrity at the time of her application as Chief Justice.

D.
Respondent's disposition to commit deliberate acts and omissions demonstrating dishonesty and lack of forthrightness is discordant with any claim of integrity

The Court cannot play blind against the manifest inconsistencies, lack of forthrightness and dishonesty committed by respondent as a government official prior to and at the time of her application as Chief Justice. In addition to the suspicious and highly questionable circumstances surrounding the execution of her SALNs, the following untruthful statements and dishonest acts (as herein elsewhere discussed) ultimately negate respondent's claim that she is a person of proven integrity:

(1) Respondent had no permit from U.P. to engage in private practice while in government service but she did engage in private practice as shown in her PDS and admitted in her *Ad Cautelam* Comment;

(2) Respondent represented that after her resignation from U.P. in 2006, she was engaged, full time, in private practice. However, in her PDS, it was stated that she was engaged as counsel by the government in the PIATCO cases from 1994 up to 2009;

(3) Respondent claims that the clearance issued by U.P., clearing her of academic/administrative responsibilities, money and property accountabilities and from administrative charges as of June 1, 2006 can be taken as an assurance that U.P. considered the SALN requirements to have been met since it is the ministerial duty of the Head of the Office to ensure that the SALNs of its personnel are properly filed and accomplished. However, this ministerial duty of U.P. HRDO to call her attention as regards compliance with the SALN requirements was imposed only in April 2006 (CSC Resolution No. Memorandum Circular No. 10-2006 dated April 17, 2006) as stated in her Letter. Hence, the U.P. HRDO could not have been expected to perform its ministerial duty of issuing compliance orders to respondent when such rule was not yet in existence at that time;

(4) Her PDS shows that she was Deputy Commissioner of the Commission on Human Rights only later to be disclaimed by her during the Oral Argument stating that it was only a functional title;

(5) In her Letter dated July 23, 2012 to the JBC, respondent represented that her SALNs were infeasible to retrieve when the SALNs that she selectively filed were available all along in U.P. and in fact the OSG was able to get copies of the same. Even respondent herself was able to get a copy of her 1989 SALN from U.P.;

(6) There is a marked incompatibility between the excuse respondent proffered in her Letter dated July 23, 2012, and the explanation she gave in the Oral Argument. In the Letter, the respondent reasoned that it is "infeasible to retrieve" all her SALNs because of the age of said documents, *i.e.,* that they are more than fifteen years old. However, during her Oral Arguments, she explained that it was "infeasible" to retrieve them only because of time constraints;

(7) She claims that the other candidates for the Chief Justice position did not comply with the SALN requirement for the application, when it was only she who did not comply. Out of the six incumbent Justices who were candidates for the Chief Justice positions, it was only respondent who did not comply with SALN submission. There are competent proofs on record to show these other candidates' compliance, contrary to respondent's allegations.

(8) Respondent committed tax fraud when she failed to truthfully declare her income in her income tax returns for the years 2007-2009 and in her value-added tax (VAT) returns for the years 2005-2009;

Per the BIR Report, respondent underdeclared her income in her quarterly VAT Returns the following amounts in the taxable years 2005-2009:

Period	Quarterly Income from PIATCO Case (Php)	Declared Income per VAT Return (Php)	Over (Under) (PhP)
		2005	
Q3	1,398,807.50	-	**-1,398,807.50**
Q4	7,234,455.44	667,333.33	**-6,567,122.11**
		2006	
Q1	-	469,375.00	469,375.00
Q2	-	1,416,664.25	1,416,664.25
Q3	1,539,546.28	-	**-1,539,546.28**
Q4	1,387,292.12	1,246,992.00	**-140,300.12**
		2007	
Q1	-	2,620,340.17	2,620,340.17
Q2	-	-	
Q3	4,370,198.29	2,183,529.33	**-2,195,668.96**
Q4	633,670.58	-	**-633,670.58**
		2008	
Q1	-	2,650,440.00	2,650,440.00
Q2	-	-	
Q3	-	508,032.00	508,032.00
Q4	**5,184,435.85**	**1,045,262.67**	**-4,139,173.19**
		2009	
Q1	344,243.65	301,552.00	**-42,691.65**
Total Undeclared Income Subject to VAT			**-16,656,980.39**

On this matter, respondent avers in her Reply/Supplement to the Memorandum *Ad Cautelam* that she was not given the chance to be heard on this new matter in the Republic's Memorandum, which makes reference to new documents, totally alien to and outside of the matters raised in the Republic's Petition, Reply, and other previous submissions.

There is no truth to the allegation that respondent was not afforded the opportunity to address this matter or that this matter is "totally alien" to this proceedings. This matter was actually brought up during the Oral Argument. In its Memorandum, the Republic explained that during the Oral Argument, some Members of the Court raised questions regarding respondent's income as counsel in the PIATCO cases and the payment of the corresponding taxes thereto, hence, the inclusion of the same in its Memorandum. In the same way, respondent could have addressed the same in her Memorandum *Ad Cautelam,* instead she opted to do so in a belatedly filed Reply/Supplement to the Memorandum *Ad Cautelam.*

At any rate, respondent's argument in the said Reply/Supplement, implying that the allegations on the tax fraud are unfounded, and that in including this matter, which is a mere reiteration of the discussion in Article I of the Articles of Impeachment, the OSG usurped the sole power of the House of Representatives to initiate and prosecute the Articles of Impeachment in blatant disregard of the Constitution, deserve scam consideration.

It bears stressing that respondent is not being prosecuted for tax fraud in this case. The Court did not discuss the merits of the said tax fraud nor did the Court made any conviction against the respondent as regards the said offense. Neither is this Court's finding of respondent's lack of proven integrity during her application anchored upon this act. This matter is cited as a corroborative circumstance to respondent's non-filing of certain SALNs, already established in this case. Notably, the Congress had already determined that a probable cause exist that respondent committed the said offense.

Further, respondent's disposition and propensity to commit dishonesty and lack of candidness are manifested through her subsequent acts committed during her incumbency as Chief Justice, which are now matters of public record and also determined to be constituting probable cause for impeachment:

(9) Caused the procurement of a brand-new Toyota Land Cruiser worth at least P5,000,000.00;

(10) Caused the hiring of Ms. Helen Macasaet without the requisite public bidding and who received excessive compensation amounting to more than P11,000,000.00;

(11) Misused at least P3,000,000.00 of government funds for hotel accommodation at Shangri-La Boracay as the venue of the 3rd ASEAN Chief Justices meeting;

(12) Created the Judiciary Decentralized Office (JDO) in the guise of reopening the Regional Court Administration Office (RCAO) without being sanctioned by the Court En Banc;

(13) Issued a Temporary Restraining Order (TRO) in Coalition of Associations of Senior Citizens in the Philippines v. COMELEC contrary to the Supreme Court's internal rules and misrepresented that the TRO was issued upon the recommendation of the Member-in-charge;

(14) Manipulated the disposition of the DOJ request to transfer the venue of the Maute cases outside of Mindanao;

(15) Ignored rulings of the Supreme Court with respect to the grant of survivorship benefits which caused undue delay to the release of survivorship benefits to spouses of deceased judges and Justices;

(16) Appointed Geraldine Econg as Head of the JDO and Brenda Jay Angeles-Mendoza as Chief of the Philippine Mediation Center Office (PMCO) without the approval of the Court *En Banc;*

(17) Failed and refused to appoint qualified applicants to several high-ranking positions in the Supreme Court;

(18) Ordered the dissemination of erroneous information on what transpired during the Supreme Court *En Banc* deliberations in A.M. No. 16-08-04-SC on the alleged involvement of four (4) incumbent judges in illegal drugs and undermined the co-equal power of the Executive Department by ordering the Executive Secretary himself to file cases against the judges;

(19) Manipulated the processes of the JBC to exclude then Solicitor General, now Associate Justice Francis Jardeleza, by using highly confidential document involving national security against the latter;

(20) Clustered the nominees for the six (6) vacant positions of Associate Justice in the Sandiganbayan without legal basis and in so doing, impaired the power of the President to appoint members of the Judiciary;

(21) Misrepresented to the members of the Supreme Court *En Banc* that there were Justices who requested to do away with the voting of recommended applicants to the vacant positions in the Supreme Court;

(22) Manipulated the processes of the JBC to exclude Court of Appeals Associate Justice Fernanda Lampas-Peralta from the shortlist of nominees for the position of Presiding Justice of the Court of Appeals;

(23) Interfered with the investigation conducted by the House of Representatives on the alleged misuse of the tobacco funds in the Province ofIlocos Norte by unilaterally preparing a Joint Statement, asking the House of Representatives to reconsider its show cause order against the Justices of the Court of Appeals, and then pressuring then Presiding Justice of the Court of Appeals, now Associate Justice Andres B. Reyes, Jr. to likewise sign the same;

(24) Undermined and disrespected the impeachment proceedings conducted by the House of Representatives against her.

Again, while concedingly the foregoing acts as revealed during the Congressional hearings on the impeachment are not proper subjects of the instant

quo warranto petition, these acts are nevertheless reflective and confirmatory of respondent's lack of integrity at the time of her nomination and appointment as Chief Justice and her inability to possess such continuing requirement of integrity. Indeed, Rule 130, Section 34 of the Rules on Evidence provide:

> SEC. 34. Similar acts as evidence. -- 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 a similar thing at another time; **but it may be received to prove a specific inent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like.** (Emphasis ours)

E.
Respondent's ineligibility for lack of proven integrity cannot be cured by her nomination and subsequent appointment as Chief Justice

The Court is all too aware that the instant petition neither partakes of an administrative or criminal proceeding meant to determine culpability for failure to file SALNs. Respondent maintains that she filed all her SALNs, only that she refuses to present proof of such SALNs before the Court. The Court's pronouncement, however, should not be made dependent upon the pieces of evidence which a party may possibly present in a different forum. Rather, the Court is mandated to render judgment based on the evidence presented before it, in compliance with the dictates of due process. And the evidence, as it stands before Us, shows that respondent failed to file nine SALN s in her 20-year service in U .P. College of Law and submitted to the JBC only three out of the required ten SALNs at the time of her application as Chief Justice.

Respondent split hairs in stating that failure to file is different from failure to submit the SALNs to the JBC. That may be true. But it is likewise true that despite ample opportunity to do so, respondent chose not to present evidence as to preponderate the case in her favor. The Court cannot therefore be faulted, at least for purposes of the instant *quo warranto* proceedings, to conclude that respondent not only failed to submit the SALNs to the JBC, but altogether failed to file the same.

Such failure to file and to submit the SALNs to the JBC, is a clear violation not only of the JBC rules, but also of the law and the Constitution. The discordance between respondent's non-filing and non-submission of the SALNs and her claimed integrity as a person is too patent to ignore. For lack of proven integrity, respondent ought to have been disqualified by the JBC and ought to have been excluded from the list of nominees transmitted to the President. As the qualification of proven integrity goes into the barest standards set forth under the Constitution to qualify as a Member of the Court, the subsequent nomination and appointment to the position will not qualify an otherwise excluded candidate. In other words, the inclusion of respondent in the shortlist of nominees submitted to the President cannot override the minimum Constitutional qualifications.

Well-settled is the rule that qualifications for public office must be possessed at the time of appointment and assumption of office and also during the officer's entire tenure as a continuing requirement. When the law requires certain qualifications to be possessed or that certain disqualifications be not possessed by persons desiring to serve as public officials, those qualifications must be met before one even becomes a candidate.

The voidance of the JBC nomination as a necessary consequence of the Court's finding that respondent is ineligible, in the first place, to be a candidate for the position of Chief Justice and to be nominated for said position follows as a matter of course. The Court has ample jurisdiction to do so without the necessity of impleading the JBC as the Court can take judicial notice of the explanations from the JBC members and the OEO, as regards the circumstances relative to the selection and nomination of respondent submitted to this Court in A.M. No. 17-11-12 and A.M. No. 17-11-17-SC. Relatedly, the Court, in a *quo warranto* proceeding, maintains the power to issue *such further judgment* determining the respective rights in and to the public office, position or franchise of all the parties to the action *as justice requires.*

Neither will the President's act of appointment cause to qualify respondent. Although the JBC is an office constitutionally created, the participation of the President in the selection and nomination process is evident from the composition of the JBC itself. The regular members of the JBC are appointees of the President, including an *ex-officio* member, the Secretary of Justice, who serves as the President's alter ego. As observed during the deliberations of the 1986 Constitutiopal Commission:

> x x x x
>
> MR. CONCEPCION. The Judicial and Bar Council is no doubt an innovation. But it is an innovation made in response to the public clamor in favor of eliminating politics in the appointment of judges.
>
> At present, there will be about 2,200 positions of judges, excluding those of the Supreme Court, to be filled. We feel that neither the President alone nor the Commission on Appointments would have the time and the means necessary to study the background of every one of the candidates for appointment to the various courts in the Philippines, specially considering that we have accepted this morning the amendment to the effect that no person shall be qualified unless he has a proven high sense of morality and probity. These are matters that require time, which we are sure the President does not have except, probably, he would have to endorse the matter to the National Bureau of Investigation or to some intelligence agency of the government. And we do not think that these agencies are qualified to pass upon questions of morality, integrity and competence of lawyers.
>
> As regards the implication that we are, in effect, depriving the President of the power of appointment, all we do consider is the fact that the members of the Council are all appointees of the President. They are alter egos of the President so, in effect, they are exercising the power by virtue of the appointment by the President. So, the alleged negation or denial or emasculation of the appointing power of the President does not really exist since all members of the Council, except those who are ex-officio members who, by the way, are also appointees of the President, are all appointees of the President.

In effect, the action of the JBC, particularly that of the Secretary of Justice as *ex-officio* member, is reflective of the action of the President. Such as when the JBC mistakenly or wrongfully accepted and nominated respondent, the President, through his alter egos in the JBC, commits the same mistake and the President's subsequent act of appointing respondent cannot have any curative effect.

Besides in *Luego v. Civil Service Commission,* We said:

> Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, **the only condition being that the appointee should possess the qualifications required by law.** If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide. (Emphasis ours)

As emphasized in *Central Bank v. Civil Service Commission:*

> **It is well-settled that when the appointee is qualified, as in this case, and all the other legal requirements are satisfied,** the Commission has no alternative but to attest to the appointment in accordance with the Civil Service Law. The Commission has no authority to revoke an appointment on the ground that another person is more qualified for a particular position. It also has no authority to direct the appointment of a sub.stitute of its choice. To do so would be an encroachment on the discretion vested upon the appointing authority. **An appointment is essentially within the discretionary power of whomsoever it is vested, subject to the only condition that the appointee should possess the qualifications required by law.** (Emphasis ours)

Thus, while the Court surrenders discretionary appointing power to the President, the exercise of such discretion is subject to the non-negotiable requirements that the appointee is qualified and all other legal requirements are satisfied, in the absence of which, the appointment is susceptible to attack.

Even as respondent took her "oath of office," she remains disqualified. An oath of office is a qualifying requirement for a public office and a prerequisite to the full investiture of the office. The oath, couched in the following tenor, states:

> *Ako ay taimtim na nanunumpa na tutuparin ko nang buong husay at katapatan, sa abot ng aking kakayahan, ang mga tungkulin ng aking kasalukuyang katungkulan at ng mga iba pang pagkaraan nito'y gagampanan ko sa ilalim ng Republika ng Pilipinas, na aking itataguyod at ipagtatanggol artg Saligang Batas ng Pilipinas; na tunay na mananalig at tatalima ako rito; na susundin ko ang mga batas, mga kautusang legal, at mga dekretong pinaiiral ng mga sadyang itinakdang may kapangyarihan ng Republika ng Pilipinas; at kusa kong babalikatin ang*

pananagutang ito nang walang ano mang pasubali o hangaring umiwas.

Kasihan nawa ako ng Diyos.

As respondent herself expressed through her dissent in *Philippine Savings Bank, "[w]hen a public officer affixes his signature on his Oath of Office, he embraces all his constitutional and statutory duties as a public officer, one of which is the positive duty to disclose* ***all*** *of his assets and liabilities. Thus, for all public officers,* ***what is absolute is not the confidentiality privilege, but the obligation of disclosure.***"

While respondent putatively took an oath to defend and support the Constitution and to obey the laws of the land, she had not been forthright with the circumstances surrounding the lacking SALNs. This makes her oath untruthful and altogether false.

F.
Respondent is a *de facto* officer removable through quo warranto

The effect of a finding that a person appointed to an office is ineligible therefor is that his presumably valid appointment will give him color of title that confers on him the status of a *de facto* officer.

Tayko v. Capistrano, through Justice Ostrand, instructs:

> Briefly defined, a de facto judge is one who exercises the duties of a judicial office under color of an appointment or election thereto x x x. He differs, on the one hand, from a mere usurper who undertakes to act officially without any color of right, and on the others hand, from a judge de jure who is in all respects legally appointed and qualified and whose term of office has not expired xx x. (Citations omitted)

For lack of a Constitutional qualification, respondent is ineligible to hold the position of Chief Justice and is merely holding a colorable right or title thereto. As such, respondent has never attained the status of an impeachable official and her removal from the office, other than by impeachment, is justified. The remedy, therefore, of a *quo warranto* at the instance of the State is proper to oust respondent from the appointive position of Chief Justice. *Tayko* continues:

> The rightful authority of a judge, in the full exercise of his public judicial functions, cannot be questioned by any merely private suitor, nor by any other, excepting in the form especially provided by law. A judge de facto assumes the exercise of a part of the prerogative of sovereignty, and the legality of that assumption is open to the attack of the sovereign power alone. Accordingly, it is a well established principle, dating from the earliest period and repeatedly confirmed by an unbroken current of decisions, that the official acts of a de facto judge are just as valid for all purposes as those of a de jure judge, so far as the public or third persons who are interested therein are concerned. The rule is the same in civil and criminal cases. The principle is one founded in policy and convenience, for the right of no one claiming a title or interest under or through the proceedings of an officer having an apparent authority to act would be safe, if it were necessary in every case to examine the legality of the title of such officer up to its original source, and the title or interest of such person were held to be invalidated by some accidental defect or flaw in the appointment, election or qualification of such officer, or in the rights of those from whom his appointment or election emanated; nor could the supremacy of the laws be maintained, or their execution enforced, if the acts of the judge having a colorable, but not a legal title, were to be deemed invalid. As in the case of judges of courts of record, the acts of a justice de facto cannot be called in question in any suit to which he is not a party. The official acts of a de facto justice cannot be attacked collaterally. An exception to the general rule that the title of a person assuming to act as judge cannot be questioned in a suit before him in generally recognized in the case of a special judge, and it is held that a party to an action before a special judge may question his title to the office of judge on the proceedings before him, and that the judgment will be reversed on appeal, where proper exceptions are taken, if the person assuming to act as special judge is not a judge de jure. The title of a de facto officer cannot be indirectly questioned in a proceeding to obtain a writ of prohibition to prevent him from doing an official act nor in a suit to enjoin the collection of a judgment rendered by him. Having at least colorable right to the officer his title can be determined only in a quo warranto proceeding or information in the nature of quo warranto at suit of the sovereign. (Citation omitted)

Although *Tayko* dealt with a challenge to the title of a judge, who is not an impeachable official, the ruling therein finds suitable application since quo warranto as a remedy is available against respondent who is a *de facto* Chief Justice, having a mere colorable right thereto. This must necessarily be so since the Constitution, in providing that impeachable officials can only be removed by impeachment, presumes that such impeachable official is one having *de jure* title to the office.

Upon a finding that respondent is in fact ineligible to hold the position of Chief Justice and is therefore unlawfully holding and exercising such public office, the consequent judgment under Section 9, Rule 66 of the Rules of Court is the ouster and exclusion of respondent from holding and exercising the rights, functions and duties of the Office of the Chief Justice.

IV.
Guidelines for the Bench, the Bar and the JBC

The present is the exigent and opportune time for the Court to establish well-defined guidelines that would serve as guide posts for the bench, the bar and the JBC, as well, in the discharge of its Constitutionally-mandated functions. In sum, this Court holds:

Quo warranto as a remedy to oust an ineligible public official may be availed of, provided that the requisites for the commencement thereof are present, when the subject act or omission was committed prior to or at the time of appointment or election relating to an official's qualifications to hold office as to render such appointment or election invalid. Acts or omissions, even if it relates to the qualification of integrity being a continuing requirement but nonetheless committed during the incumbency of a validly appointed and/or validly elected official cannot be the subject of a *quo warranto* proceeding, but of impeachment if the public official concerned is impeachable and the act or omission constitutes an impeachable offense, or to disciplinary, administrative or criminal action, if otherwise.

Members of the Judiciary are bound by the qualifications of honesty, probity, competence, and integrity. In ascertaining whether a candidate possesses such qualifications, the JBC in the exercise of its Constitutional mandate, set certain requirements which should be complied with by the candidates to be able to qualify. These requirements are announced and published to notify not only the applicants but the public as well. Changes to such set of requirements, as agreed upon by the JBC *En Banc* through a proper deliberation, such as in this case when the JBC decided to allow substantial compliance with the SALN submission requirement, should also be announced and published for the same purpose of apprising the candidates and the public of such changes. At any rate, if a candidate is appointed despite being unable to comply with the requirements of the JBC and despite the lack of the aforementioned qualifications at the time of application, the appointment may be the subject of a *quo warranto* provided it is filed within one year from the appointment or discovery of the defect. Only the Solicitor General may institute the *quo* warranto petition.

The willful non-filing of a SALN is an indication of dishonesty, lack of probity and lack of integrity. Moreso if the non-filing is repeated in complete disregard of the mandatory requirements of the Constitution and the law.

Consistent with the SALN laws, however, SALNs filed need not be retained after more than ten years by the receiving office or custodian or repository unless these are the subject of investigation pursuant to the law. Thus, to be in keeping with the spirit of the law requiring public officers to file SALNs - to manifest transparency and accountability in public office - if public officers cannot produce their SALNs from their personal files, they must obtain a certification from the office where they filed and/or the custodian or repository thereof to attest to the fact of filing. In the event that said offices certify that the SALN was indeed filed but could not be located, said offices must certify the valid and legal reason of their non-availability, such as by reason of destruction by natural calamity due to fire or earthquake, or by reason of the allowed destruction after ten years under Section 8 of R.A. No. 6713.

V.
Blatant Disregard and Open Defiance to the Sub Judice Rule

Perhaps owing to novelty, the instant case has opened a pandora's box of unsolicited opinions, streaming in abundance from those professed legal and non-iegal experts alike. This flurry of opinions, demonstrations, public and media appearances made by the parties themselves or at their

behest, or by their lawyers and spokespersons, had demonstrably shifted the plane from what should otherwise be a purely legal, calm and sober approach to the present controversy into . a detestable feast of *pros* and *cons,* and of a mediocre and haphazard approximation of a perceived good versus evil. This veritable feast had become too delectable to escape the waiting predators' keen sense of attack, especially at a time when the prey appears to be at its most vulnerable. This Court is an institution designed and dedicated to a specific purpose and thus refuses to fall prey and invite claws to dig into its walls. Because of the various extraneous redirections from the merits which the instant case has received, there is a need to emphasize that this case involves a purely legal and justiciable matter which the Court intends, and had resolved, through the application of the Constitution, the law and relevant jurisprudence, unswayed by personalities or sentiments.

As such, the Court had lent extreme tolerance to the parties and nonparties equally, as the Court shall ultimately speak through its decision. Be that as it may, the Court, in jealous regard of judicial independence, cannot simply overlook the open and blatant defiance of the *sub judice* rule suffered by the present action.

The *sub judice* rule restricts comments and disclosures pertaining to the judicial proceedings in order to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. The rationale for this rule is for the courts, in the decision of issues of fact and law, to be immune from every extraneous influence; for the case to be decided upon evidence produced in court; and for the determination of such facts be uninfluenced by bias, prejudice or symphathies. In fine, what is sought to be protected is the primary duty of the courts to administer justice in the resolution of cases before them.

Thus, it is generally inappropriate to discuss the merits of and make comment's on cases *sub Judice* and such acts may even result to contempt of court. In *U.S. v. Sullen* it was stated:

> In a clear case where it is necessary in order to dispose of judicial business unhampered by publications which reasonably tend to impair the impartiality of verdicts; or otherwise obstruct the administration of justice, this Court will not hesitate to exercise its undoubted power to punish for contempt. This Court must be permitted to proceed with the disposition of its business in an orderly manner free from outside interference obstructive of its constitutional functions. This right will be insisted upon as vital to an impartial court, and, as a last resort, as an individual exercises the right of self-defense, it will act to preserve its existence as an unprejudiced tribunal.

In Our jurisdiction, this rule finds legal basis on the Court's power of contempt. Rule 71 of the Rules of Court provides:

> Sec. 3. *Indirect contempt to be punished after charge and hearing.* -After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the folfowing acts may be punished for indirect contempt:
>
> x x x x
>
> (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or **degrade the administration of justice;**
>
> x x x (Emphasis ours)

The oft-cited defense of persons charged with indirect contempt for violating the *sub Judice* rule is their right to free speech. Needless to say, this Court would be the first in line of combat in a legal battle to uphold such constitutionally-protected right. However, when actions, posing to be innocent exercise of such right, "impede, interfere with and embarrass the administration of justice" or "make a serious and imminent threat thereto", this Court will not hesitate to call out and punish the same. In *Sheppard v. Maxwell,* the US Supreme Court reminds that although the freedom of expression should be given great latitude, it must not be so broad as to divert the trial away from its objective which is to adjudicate both criminal and civil matters in an objective, calm, and solemn courtroom setting.

The *sub judice* rule finds a more austere application to members of the Bar and of the Bench as the strict observance thereof is mandated by the Code of Professional Responsibility and the Code of Judicial Conduct:

CODE OF PROFESSIONAL RESPONSIBILITY

CANON 13 - A LAWYER SHALL RELY UPON THE MERITS OF HIS CAUSE AND REFRAIN FROM ANY IMPROPRIETY WHICH TENDS TO INFLUENCE, OR GIVES THE APPEARANCE OF INFLUENCING THE COURT.

Rule 13.02 - A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party.

NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY

CANON 1 – INDEPENDENCE

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

SECTION 3. Judges shall refrain from influencing in any manner the outcome of litigation or dispute pending before any court or administrative agency.

SECTION 7. Judges shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

SECTION 8. Judges shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

CANON 2 - INTEGRITY
Integrity is essentially not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SECTION 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

CANON 3 - IMPARTIALITY
Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but to the process by which the decision is made.

SECTION 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession, and litigants in the impartiality of the judge and of the judiciary.

SECTION 4. Judges shall not knowingly, while a proceeding is before or could come before them, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall judges make any comment in public or otherwise that might affect the fair trial of any person or issue.

CANON 4 - PROPRIETY

SECTION 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity

of the judicial office.

SECTION 6. Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

Lawyer speech is subject to greater regulation for two significant reasons: one, because of the lawyer's relationship to the judicial process; and two, the signficant dangers that a lawyer's speech poses to the trial process. As such, actions in violation of the *sub judice* rule may be dealt with not only through contempt proceedings but also through administrative actions.

It is thus perturbing that certain officials of the separate branches of the Government and even men and women learned in law had succumbed to the tempting affray that tends to divert the instant *quo warranto* action from its primary purpose. Even worse, respondent and her spokepersons chose to litigate respondent's case, apart from her *Ad Cautelam* submissions to the Court, before several media-covered engagements. Through her actuations, respondent appears to have forgotten that this is a court action for *quo warranto,* and as such, the concomitant rule on *sub Judice* unnegotiably applies. Worst still, respondent who is a lawyer and who asserts right to the Chief Justice position and therefore must foremost be aware of the rule, continues to conjure public clamor against the Court and its Members with regard to this pending case in Court.

It is interesting to note that respondent initially refused to participate in the congressional hearings for the impeachment complaint. When this petition for *quo warranto* was filed, respondent continuously refuses to recognize this Court's jurisdiction. Instead of participating in the process and answering the charges against her truthfully to assist in the expeditious resolution of the matter, respondent opted to proceed to a nationwide campaign, conducting speeches and accepting interviews, discussing the merits of the case and making comments thereon to vilify the members of the Congress, cast aspersions on the impartiality of the Members of the Court, degrade the faith of the people to the Judiciary, and falsely impute illmotives against the government that it is orchestrating the charges against her. It is well-nigh unthinkable for respondent to profess deprivation of due process when she herself chose to litigate her case before the media.

These public appearances, to name a few, are as follows:

The public actuation of respondent showing disdain and contempt towards some Members of the Court whom she dubbed as "Biased 5" later increased and modified to "Biased 6" can no longer be tolerated. She may be held liable for disbarment for violating the Canons of Professional Responsibility for violating the *sub Judice* rule by repeatedly discussing the merits of the *quo warranto* petition in different fora and for casting aspersions and ill motives to the Members of the Court even before a decision is made, designed to affect the results of the Court's collegial vote and influence public op1mon. This wrongful actuation exemplify a poor regard for the judicial system and may amount to conduct unbecoming of a Justice and a lawyer.

Such actions, indeed, resulted to the obfuscation of the issues on hand, camouflaging the charges against her with assaults to judicial independence, and falsely conditioning the public's mind that this is a fight for democracy. Once and for all, it should be stated that this is not a fight for democracy nor for judicial independence. This is an undertaking of the Court's duty, as it is called for by the Republic, to judicially determine and settle the uncertainty in the qualification, or otherwise, of respondent to sit on the highest position in the Judiciary.

The detrimental effect of this open and blatant disregard of the *sub Judice* rule or the evil sought to be prevented by the said rule is already manifest. In fact, in the May 2, 2018 issue of the Philippine Daily Inquirer, certain individuals, including lawyers, already made their own pre-judgment on the case:

GRANTING THE QUO WARRANTO PETITION IS ILLEGAL,
A BETRAYAL OF DEMOCRACY

THE SUPREME COURT TRAMPLED ON the Philippine Constitution and betrayed its primary duty to the Filipino people when it violated Chief Justice Ma. Lourdes Sereno's right to due process.

The Supreme Court abandoned its chief mandate to ensure an independent judiciary by accepting a bankrupt Quo Warranto petition and refusing to inhibit five openly biased Justices.

The Judiciary's Code of Conduct decrees resistance against attempts to subvert judicial independence. It orders judges to be impartial. The five justices bowed to Congress' impeachment summons. They attacked the Chief Justice in proceedings that refused her right to question accusers. Doing so, they prejudged the Chief Justice and betrayed the Court's position as a co-equal branch of the government.

We repudiate as illegal a ruling tainted with these shameful acts.

The Quo Warranto action against CJ Sereno, filed beyond the one year deadline, is itself illegal and unconstitutional. the Supreme Court has affirmed many times that impeachment is the only mode for removing an impeachable officer.

In accepting this farcical petition, it crushes constitutional checks and balances it threatens every Filipino citizen's right to a free, impartial justice system.

The State derives its power from the people. When the key instruments of the State conspire to subvert the Constitution and democracy, the people must rise as the last bastion of our rights and freedoms.

We challenge the Supreme Court: Pull back from the brink. Do not be a party to the death of judicial independence. Heed the Constitution. OBEY THE CODE OF JUDICIAL CONDUCT. COMPEL THE INHIBITION OF THE BIASED 5. DISMISS THE ILLEGAL QUO WARRANTO PETITION!

If the Biased 5 will not inhibit, then we call on them to resign. The people will not acccept any Decision tainted by gross injustice and Justices who cannot act with justice. (Emphasis ours)

It could readily be seen that such statements do not only "tend to" but categorically force and influence the deliberative and decision-making process of this Court. Notably, the threatening tenor could not go unnoticed.

To be sure, the Court is not merely being unreasonably sensitive in addressing this matter, as in fact, it guarantees that it is not swayed or influenced by such attacks and maintains its judicial independence in resolving this controversial case. However, when aggressive actions are taken against the Judiciary as an institution and clouds of doubt are casted upon the people's faith in the administration of justice, especially so when the same are perpetrated by members of the Bar, this Court cannot be apathetic to and is not helpless against such attacks, but the prudent thing to do is to stand and deal with it head on.

Epilogue

The foregoing discourse thins down to a public officer's accountability to the public. The very purpose and nature of public office is grounded upon it being a public trust. No less than our Constitution gave special importance on the principle of a public office being a public trust. Section 1, Articie XI of the 1987 Constitution categorically states that:

Section 1. **Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity,** loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

It is therefore an established principle that public office is not "property" but is a public trust or agency, gove1ned by the Constitution and by existing laws. There is no Torrens title to a public office. Justice Malcolm, in *Cornejo v. Gabriel and Provincial Board of Rizal,* expounded on this principle, *viz.:*

In the case of *Taylor v. Beckham* ([1899], 178, U. S., 548), Mr. Chief Justice Fuller said that: "Decisions are numerous to the effect that public offices are mere agencies or trust, and not property as such." The basic idea of government in the Philippine Islands, as in the United

States, is that of a popular representative government, **the officers being mere agents and not rulers of the people, one where no one man or set of men has a proprietary or contractual right to an office, but where every officer accepts office pursuant to the provisions of the law and holds the office as a trust for the people whom he represents.** (Emphasis ours)

The right to hold public office under our political system is therefore not a natural right. It exists, when it exists at all, only because and by virtue of some law expressly or impliedly creating and conferring it. Needless to say, before one can hold public office, he or she must be eligible in accordance with the qualifications fixed by law and the authority conferring and creating the office. There is no such thing as a vested interest or an estate in an office, or even an absolute right to hold office. A public officer who is not truthful, not forthright, in complying with the qualifications to public office, perforce, has not legally qualified, was not legally appointed, and consequently, has not legally assumed the said public office. A disqualification cannot be erased by intentional concealment of certain defects in complying with the qualifications to public office set by the Constitution and laws. The passage of time will not cure such invalidity of holding public office, much less, foreclose the right and duty of the government, the keeper of the said public office, to oust and remove the usurper.

One who claims title to a public office must prove beyond cavil that he/she is legally qualified to the said office, otherwise, he or she has no ground to stand upon his or her claim of title to the office and his or her title may reasonably be challenged. A qualification must be proved positively, clearly, and affirmatively. It cannot be proved by mere acquiescence nor by estoppel or prescription. In the same vein, a disqualification cannot be obliterated by intentional concealment thereof. As a matter of fact, such concealment is a clear manifestation of lack of integrity, probity, and honesty. It cannot be over-emphasized that public service requires integrity. For this reason, public servants must, at all times, exhibit the highest sense of honesty. By the very nature of their duties and responsibilities, they must faithfully adhere to, and hold sacred and render inviolate the constitutional principle that a public office is a public trust. The expectation of a strong adherence to this principle escalates proportionately as one ascends to public office. John Adams, then President of the United States, said, "society's demands· for moral authority and character increase as the importance of the position increases."

In this case, it was found that respondent is ineligible to hold the Chief Justice of the Supreme Court position for lack of integrity on account of her failure to file a substantial number of SALNs and also, her failure to submit the required SALNs to the JBC during her application for the position. Again, one of the Constitutional duties of a public officer is to submit a declaration under oath of his or her assets, liabilities, and net worth upon assumption of office and as often thereafter as may be required by law. When the Constitution and the law exact obedience, public officers must comply and not offer excuses. When a public officer is unable or unwilling to comply, he or she must not assume office in the first place, or if already holding one, he or she must vacate that public office because it is the correct and honorable thing to do. A public officer who ignores, trivializes or disrespects Constitutional and legal provisions, as well as the canons of ethical standards, forfeits his or her right to hold and continue in that office.

WHEREFORE, the Petition for *Quo Warranto* is **GRANTED.** Respondent Maria Lourdes P.A. Sereno is found **DISQUALIFIED** from and is hereby adjudged **GUILTY of UNLAWFULLY HOLDING and EXERCISING** the **OFFICE OF THE CHIEF JUSTICE.** Accordingly, Respondent Maria Lourdes P. A. Sereno is **OUSTED** and **EXCLUDED** therefrom.

The position of the Chief Justice of the Supreme Court is declared vacant and the Judicial and Bar Council is directed to commence the application and nomination process.

This Decision is immediately executory without need of further action from the Court.

Respondent Maria Lourdes P.A. Sereno is ordered to **SHOW CAUSE** within ten (10) days from receipt hereof why she should not be sanctioned for violating the Code of Professional Responsibility and the Code of Judicial Conduct for transgressing the *sub Judice* rule and for casting aspersions and ill motives to the Members of the Supreme Court.

SO ORDERED.

NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:

(No part)
MARIA LOURDES P.A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

C E R T I F I C A T I O N

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

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)