

EN BANC

[A.M. No. 18-06-01-SC, July 17, 2018]

RE: SHOW CAUSE ORDER IN THE DECISION DATED MAY 11, 2018 IN G.R. NO. 237428 (REPUBLIC OF THE PHILIPPINES, REPRESENTED BY SOLICITOR GENERAL JOSE C. CALIDA V. MARIA LOURDES P. A. SERENO)

DECISION

TIJAM, J.:

The instant administrative matter is an offshoot of G.R. No. 237428 entitled Republic of the Philippines, *represented by Solicitor General Jose C. Calida v. Maria Lourdes P. A. Sereno*, hereinafter referred to as the *quo warranto* case or proceedings against Maria Lourdes P. A. Sereno (respondent). A brief statement of the factual and procedural antecedents of the case is, thus, in order.

Factual and Procedural Antecedents

On August 30, 2017, an impeachment complaint was lodged before the Committee on Justice of the House of Representatives against respondent for culpable violation of the Constitution, corruption, high crimes, and betrayal of public trust. Having learned of respondent's disqualification as a Chief Justice from the House Committee on Justice's hearings, the Republic of the Philippines (Republic), through the Office of the Solicitor General, filed a petition for *quo warranto* against respondent, basically questioning her eligibility for the Chief Justice position.

The Court observed that since the filing of the impeachment complaint, during the pendency of the *quo warranto* case, and even after the conclusion of the *quo warranto* proceedings, respondent continuously opted to defend herself in public through speaking engagements before students and faculties in different universities, several public forums, interviews on national television, and public rallies. As the Court noted in its decision in the *quo warranto* case, respondent initially refused to participate in the congressional hearings for the impeachment complaint. When the petition for *quo warranto* was filed, respondent likewise continuously refused to recognize this Court's jurisdiction. Instead of participating in the judicial 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 ill motives against the government that it is orchestrating the charges against her. In short, as the Court stated in the said decision, respondent chose to litigate her case before the public and the media instead of the Court.^[1]

The Court was disquieted as doubts against the impartiality and dignity of the Court and its Members emerged, and the obfuscation of the issues in the *quo warranto* proceedings resulted from such out-of-court discussions on the merits of the case. Worse, the Court was perturbed by the fact that respondent, not only being a member of the Bar but one who was asserting her eligibility and right to the highest position in the Judiciary, significantly participated in such detestable and blatant disregard of the *sub judice* rule.^[2]

Consequently, having great regard of judicial independence and its duty to discipline member of the Bar to maintain the dignity of the profession and the institution, the Court in its decision in the *quo warranto* case, ordered respondent to show cause why she should not be sanctioned for violating the Code of Professional Responsibility (CPR) and the New Code of Judicial Conduct for the Philippine Judiciary (NCJC) for transgressing the *sub judice* rule and for casting aspersions and ill motives to the Members of this Court.^[3]

On June 13, 2018, respondent filed her Verified Compliance (To the Show Cause Order dated 11 May 2018) with Respectful Motion for Inhibition (Of Hon. Associate Justices Teresita J. Leonardo-De Castro, Diosdado M. Peralta, Noel G. Tijam, Francis H. Jardeleza, Lucas P. Bersamin, and Samuel R. Martires),^[4] arguing that the acts imputed against her in the May 11, 2018 Decision do not amount to conduct unbecoming of a Justice and a lawyer which would warrant her disbarment nor warrant any other disciplinary measure.

Respondent's Explanations/Arguments

(1) Respondent contends that she should not be judged on the stringent standards set forth in the CPR and the NCJC, emphasizing that her participation in the *quo warranto* case is not as counsel or a judge but as a party-litigant.^[5]

(2) The imputed acts against respondent did not create any serious and imminent threat to the administration of justice to warrant the Court's exercise of its power of contempt in accordance with the "clear and present danger" rule.^[6] Respondent avers that she cannot be faulted for the attention that the *quo warranto* case gained from the public considering that it is a controversial case, which involves issues of transcendental importance.^[7]

(3) Assuming *arguendo* that the CPR and the NCJC apply, respondent argues that in addressing the matters of impeachment and *quo warranto* to the public, she was in fact discharging her duty as a Justice and a lawyer to uphold the Constitution and promote respect for the law and legal processes pursuant to the said Codes.^[8]

(4) Assuming *arguendo* that respondent violated some provisions of the CPR and the NCJC in her public statements, the same does not warrant the exercise of the Court's power to discipline in view of the attendant circumstances, to wit: (a) no less than the Solicitor General repeatedly made personal attacks against her and publicly discussed the merits of the case, hence, she had to respond to such accusations against her; and (b) she was not given her right to due process despite her repeated demand.^[9]

May respondent be held administratively liable for her actions and public statements as regards the *quo warranto* case against her during its pendency?

Ruling of the Court

Before delving into the merits, We first resolve respondent's motion for inhibition. As respondent, herself, stated, the grounds for this motion are the same as those discussed in her motion for inhibition in the *quo warranto* case. We find no cogent reason to belabor on this issue and deviate from what has been discussed in the Court's decision in the *quo warranto* case. We reiterate that mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis.^[10]

Hence, this Court resolves to **DENY** the Motion for Inhibition of Justices Teresita J. Leonardo-De Castro, Diosdado M. Peralta, Noel Gimenez Tijam, Francis H. Jardeleza, Lucas P. Bersamin, and Samuel R. Martires.

Proceeding now to the substantive issue of this administrative matter: May respondent be held administratively liable for her actions and public statements as regards the *quo warranto* case against her during its pendency?

We answer in the affirmative.

First. This Court cannot subscribe to respondent's position that she was merely a party-litigant in the *quo warranto* case, not a counsel nor a judge, hence, should not be judged on the exacting standards expected of a member of the Bar or of the Court.

Respondent argues that she had no obligation to be an impartial judge where she does not act as one. Also, she cannot be expected to be as circumspect with her words or detached from her emotions as a usual legal counsel as she is directly affected by the outcome of the proceedings. Respondent then remarked that just because she is a lawyer and a judge does not mean that she is less affected by the tribulations of a public trial than an ordinary litigant.

Time and again, this Court has emphasized the high sense of morality, honesty, and fair dealing expected *and* required of members of the Bar. Lawyers must conduct themselves with great propriety, and their behavior must be beyond reproach anywhere and at all times,^[11] whether they are dealing with their clients or the public at large.^[12] Lawyers may be disciplined for acts committed even in their private capacity for acts which tend to bring reproach on the legal profession or to injure it in the favorable opinion of the public. There can be no distinction as to whether the transgression is committed in lawyers' private lives or in their professional capacity, for a lawyer may not divide his personality as an attorney at one time and a mere citizen at another.^[13] As eloquently put by the Court in one case: "Any departure from the path which a lawyer must follow as demanded by the virtues of his profession shall not be tolerated by this Court as the disciplining authority for there is perhaps no profession after that of the sacred ministry in which a high-toned morality is more imperative than that of law."^[14]

For the same reasons, judges or Justices are held to a higher standard for they should be the embodiment of competence, integrity, and independence, hence, their conduct should be above reproach.^[15]

The Court is, thus, reluctant to accept respondent's position that she should be treated as an ordinary litigant in judging her actions. The fact that respondent was not the judge nor the counsel but a litigant in the subject case does not strip her off of her membership in the Bar, as well as her being a Member and the head of the highest court of the land at that time. Her being a litigant does not mean that she was free to conduct herself in less honorable manner than that expected of a lawyer or a judge.^[16]

Consequently, any errant behavior on the part of a lawyer and/or a judge, be it in their public or private activities, which tends to show said lawyer/judge deficient in moral character, honesty, probity or good demeanor, is sufficient to warrant suspension or disbarment.^[17] Respondent should be reminded:

Of all classes and professions, the lawyer is most sacredly bound to uphold the laws, as he is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them under foot and to ignore the very bonds of society, argues recreancy to his position and office and sets a pernicious example to the insubordinate and dangerous elements of the body politic.

[T]he practice of law is a privilege burdened with conditions. Adherence to the rigid standards of mental fitness, maintenance of the highest degree of morality and faithful compliance with the rules of the legal profession are the conditions required for remaining a member of good standing of the bar and for enjoying the privilege to practice law. The Supreme Court, as guardian of the legal profession, has ultimate disciplinary power over attorneys. **This authority to discipline its members is not only a right but a bounden duty as well x x x. That is why respect and fidelity to the Court is demanded of its members.**^[18] (Citations omitted and emphasis ours)

Second. Respondent argues that the public statements attributed to her must have created a serious and imminent threat to the administration of justice to warrant punishment.

According to respondent, the public utterances in question did not create such effect of a serious and imminent threat to the administration of justice; did not, in any way, prevent or delay the Court from rendering its judgment; and criticism and public reaction remained within the bounds of proper debate and despite widespread dissent, no violent protest erupted after the decision was promulgated. Further, respondent avers that considering that the *quo warranto* case in itself was already controversial and of transcendental importance, her public statements and actions cannot be blamed for the natural attention that it gained from the public.

Before proceeding to address these arguments, it is necessary, at this juncture, to discuss the concept of the *sub judice* rule for which respondent is being charged of violating in this administrative case.

Sub judice is a Latin term which refers to matters under or before a judge or court; or matters under judicial consideration.^[19] In essence, the *sub judice* rule restricts comments and disclosures pertaining to pending judicial proceedings. The restriction applies to

litigants and witnesses, the public in general, and most especially to members of the Bar and the Bench.^[20]

Historically, the *sub judice* rule is used by foreign courts to insulate members of the jury from being influenced by prejudicial publicity.^[21] It was aimed to prevent comment and debate from exerting any influence on juries and prejudicing the positions of parties and witnesses in court proceedings.^[22] Relatedly, in 2010, the late Senator Miriam Defensor-Santiago, in filing Senate Bill No. 1852, also known as the Judicial Right to Know Act, explained that *sub judice* is a foreign legal concept, which originated and is applicable to countries who have adopted a trial by jury system. She emphasized the difference between a jury system and the Philippine court system, implying the inapplicability of the concept in our jurisdiction.

Acknowledging the fact that *sub judice* is a foreign concept, Justice Arturo Brion noted in a Separate Opinion that in our jurisdiction, the Rules of Court does not contain a specific provision imposing the *sub judice* rule.^[23] He, however, opined that "the fact that the jury system is not adopted in this jurisdiction is not an argument against our observance of the *sub judice* rule; justices and judges are no different from members of the jury, they are not immune from the pervasive effects of media."^[24] In fact, *sub judice* rule finds support in the provision on indirect contempt under Section 3, Rule 71 of the Rules of Court, to wit:

Sec. 3. *Indirect contempt to be punished after charge and hearing.* - x x x, a person guilty of any of the following acts may be punished for indirect contempt:

x x x x

c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;

d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

x x x x

As can be observed, discussions regarding *sub judice* often relates to contempt of court. In this regard, respondent correctly pointed out that the "clear and present danger" rule should be applied in determining whether, in a particular situation, the court's contempt power should be exercised to maintain the independence and integrity of the Judiciary, or the Constitutionally-protected freedom of speech should be upheld. Indeed, in *P/Supt. Marantan v. Atty. Diokno, et al.*,^[25] the Court explained:

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. A violation of this rule may render one liable for indirect contempt under Sec. 3(d), Rule 71 of the Rules of Court, x x x.

x x x x

The proceedings for punishment of indirect contempt are criminal in nature. This form of contempt is conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. Intent is a necessary element in criminal contempt, and no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it.

For a comment to be considered as contempt of court "it must really appear" that such does impede, interfere with and embarrass the administration of justice. What is, thus, sought to be protected is the all important duty of the court to administer justice in the decision of a pending case. The specific rationale for the *sub judice* rule is that courts, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies.

The power of contempt is inherent in all courts in order to allow them to conduct their business unhampered by publications and comments which tend to impair the impartiality of their decisions or otherwise obstruct the administration of justice. As important as the maintenance of freedom of speech, is the maintenance of the independence of the Judiciary. The "clear and present danger" rule may serve as an aid in determining the proper constitutional boundary between these two rights.

The "clear and present danger" rule means that the evil consequence of the comment must be "extremely serious and the degree of imminence extremely high" before an utterance can be punished. There must exist a clear and present danger that the utterance will harm the administration of justice. Freedom of speech should not be impaired through the exercise of the power of contempt of court unless there is no doubt that the utterances in question make a serious and imminent threat to the administration of justice. It must constitute an imminent, not merely a likely, threat.^[26] (Citations omitted)

From the foregoing, respondent may be correct in arguing that there must exist a "clear and present danger" to the administration of justice for statements or utterances covered by the *sub judice* rule to be considered punishable under the rules of contempt.

The case at bar, however, is not a contempt proceeding. The Court, in this case is not geared towards protecting itself from such prejudicial comments outside of court by the exercise of its inherent contempt power. Rather, in this administrative matter, the Court is discharging its Constitutionally-mandated duty to discipline members of the Bar and judicial officers.

As We have stated in Our decision in the *quo warranto* case, actions in violation of the *sub judice* rule may be dealt with not only through contempt proceedings but also through administrative actions. This is because a 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 significant dangers that a lawyer's speech poses to the trial process.^[27] Hence, the Court *En Banc* resolved to treat this matter in this separate administrative action.^[28] Indeed, this Court has the plenary power to discipline erring lawyers through this kind of proceeding, aimed to purge the law profession of unworthy members of the Bar and to preserve the nobility and honor of the legal profession.^[29]

Thus, contrary to respondent's argument, the "clear and present danger" rule does not find application in this case. What applies in this administrative matter is the CPR and NCJC, which mandate the strict observance of the *sub judice* rule both upon members of the Bar and the Bench, specifically:

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 PIDLIPPINE 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 also 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.

Besides, as We have stated in the *quo warranto* case decision, the Court takes judicial notice of the undeniably manifest detrimental effect of this open and blatant disregard of the *sub judice* rule, which is a clear manifestation of the evil sought to be prevented by the said rule, *i.e.*, "to avoid prejudging the issue, influencing the court, or obstructing the administration of justice."^[30] In the said decision, We cited the May 2, 2018 issue of the *Philippine Daily Inquirer*, wherein certain individuals from different sectors of the society, lawyers included, not only pre-judged the case but worse, accused certain Members of the Court of being unable to act with justice, and threatening that the people will not accept any decision of such Members of the Court as the same is tainted by gross injustice. To be sure, these statements do not only "tend to" but categorically force and attempt to influence the deliberative and decision-making process of this Court.^[31]

Albeit advancing explanations of her actions, respondent undoubtedly violated the above-cited provisions of the CPR and the NCJC. The Court, in the *quo warranto* case, enumerated some of the instances where respondent openly and blatantly violated the *sub judice* rule:^[32]

Event	Source	Quote
'Speak Truth to Power' forum in UP Diliman,	Video: https://web.facebook.com/juliusnleonen/videos/889291114607029/ Article: https://www.rappler.com/nation/201854-serenoquo-warranto-destroy-judicial-independence	"Kung quo mapup diktatu

<p>Quezon City on May 5, 2018</p>		<p>said wawasi comple warran ang juc</p> <p>"Pag warran hindi n reason, will whoever So kail pigilan said.</p>
<p>Integrated Bar of the Philippines (IBP) Central Luzon Regional Convention and Mandatory Continuing Legal Education at the Quest Hotel here on May 2, 2018</p>	<p>Article: <https://businessmirror.com.ph/sereno-seesdictatorship-after-filingof-quo-warranto-petition-against-her/></p>	<p>"Ano po sa koi ang cit kalabar gobyern Justice Lourde: asked. po dictator po ci democr tawag said.</p> <p>"That going t the qu petitior granted stated.</p> <p>"The voice Vicente has r that i warran is gra Judicial destroy Seren also p IBP's oppose dismiss petitior.</p>
<p>Forum on upholding Judicial Independence at the Ateneo Law School in Rockwell, Makati City on Wednesday, April 25, 2018</p>	<p>Video: <https://web.facebook.com/24OrasGMA/videos/10156438427991977/?t=16> Article: <http://newsinfo.inquirer.net/985460/defendjudicial-independence-cjsereno-tells-law-students></p>	<p>"Of my I know of then their qu their submit docume require waived, them. was saying attemp require good t be acc 14, inc against am I t being out?," : student Ateneo during judicial indep</p> <p>"The propou. Supren</p>