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EN BANC

[G.R. No. 224302, February 21, 2017]

HON. PHILIP A. AGUINALDO, HON. REYNALDO A. ALHAMBRA, HON. DANILO S. CRUZ, HON. BENJAMIN T. POZON, HON. SALVADOR V. TIMBANG, JR., AND THE INTEGRATED BAR OF THE PHILIPPINES (IBP), PETITIONERS, VS. HIS EXCELLENCY PRESIDENT BENIGNO SIMEON C. AQUINO III, HON. EXECUTIVE SECRETARY PAQUITO N. OCHOA, HON. MICHAEL FREDERICK L. MUSNGI, HON. MA. GERALDINE FAITH A. ECONG, HON. DANILO S. SANDOVAL, HON. WILHELMINA B. JORGE-WAGAN, HON. ROSANA FE ROMERO-MAGLAYA, HON. MERIANTHE PACITA M. ZURAEK, HON. ELMO M. ALAMEDA, AND HON. VICTORIA C. FERNANDEZ-BERNARDO, RESPONDENTS,

JUDICIAL AND BAR COUNCIL, INTERVENOR.

R E S O L U T I O N

LEONARDO-DE CASTRO, J.:

In its Decision dated November 29, 2016, the Court *En Banc* held:

> **WHEREFORE**, premises considered, the Court **DISMISSES** the instant Petition for *Quo Warranto* and *Certiorari* and Prohibition for lack of merit. The Court **DECLARES** the clustering of nominees by the Judicial and Bar Council **UNCONSTITUTIONAL**, and the appointments of respondents Associate Justices Michael Frederick L. Musngi and Geraldine Faith A. Econg, together with the four other newly-appointed Associate Justices of the Sandiganbayan, as **VALID**. The Court further **DENIES** the Motion for Intervention of the Judicial and Bar Council in the present Petition, but **ORDERS** the Clerk of Court *En Banc* to docket as a separate administrative matter the new rules and practices of the Judicial and Bar Council which the Court took cognizance of in the preceding discussion as ***Item No. 2:*** the deletion or non-inclusion in JBC No. 2016-1, or the Revised Rules of the Judicial and Bar Council, of Rule 8, Section 1 of JBC-009; and ***Item No. 3:*** the removal of incumbent Senior Associate Justices of the Supreme Court as consultants of the Judicial and Bar Council, referred to in pages 35 to 40 of this Decision. The Court finally **DIRECTS** the Judicial and Bar Council to file its comment on said ***Item Nos. 2 and 3*** within thirty (30) days from notice.[1]

I

THE JBC MOTIONS

The Judicial and Bar Council (JBC) successively filed a Motion for Reconsideration (with Motion for the Inhibition of the *Ponente*) on December 27, 2016 and a Motion for Reconsideration-in-Intervention (Of the Decision dated 29 November 2016) on February 6, 2017.

At the outset, the Court notes the revelation of the JBC in its Motion for Reconsideration-in-Intervention that it is not taking any position in this particular case on President Aquino's appointments to the six newly-created positions of Sandiganbayan Associate Justice. The Court quotes the relevant portions from the Motion, as follows:

> **The immediate concern of the JBC is this Court's pronouncement that the former's act of submitting six lists for six vacancies was unconstitutional. Whether the President can cross--reach into the lists is not the primary concern of the JBC in this particular case. At another time, perhaps, it may take a position. But not in this particular situation involving the newly created positions in the Sandiganbayan in view of the lack of agreement by the JBC Members on that issue.**
>
> **What the President did with the lists, for the purpose of this particular dispute alone as far as the JBC is concerned, was the President's exclusive domain.**[2]

Nonetheless, the JBC did not categorically withdraw the arguments raised in its previous Motions, and even reiterated and further discussed said arguments, and raised additional points in its Motion for Reconsideration-in-Intervention. Hence, the Court is still constrained to address said arguments in this Resolution.

In its Motion for Reconsideration (with Motion for Inhibition of the *Ponente*) the JBC argues as follows: (a) Its Motion for Intervention was timely filed on November 26, 2016, three days before the promulgation of the Decision in the instant case; (b) The JBC has a legal interest in this case, and its intervention would not have unduly delayed or prejudiced the adjudication of the rights of the original parties; (c) Even assuming that the Motion for Intervention suffers procedural infirmities, said Motion should have been granted for a complete resolution of the case and to

afford the JBC due process; and (d) Unless its Motion for Intervention is granted by the Court, the JBC is not bound by the questioned Decision because the JBC was neither a party litigant nor impleaded as a party in the case, the JBC was deprived of due process, the assailed Decision is a judgment *in personam* and not a judgment *in rem*, and a decision rendered in violation of a party's right to due process is void for lack of jurisdiction.

On the merits of the case, the JBC asserts that in submitting six short lists for six vacancies, it was only acting in accordance with the clear and unambiguous mandate of Article VIII, Section 9[3] of the 1987 Constitution for the JBC to submit a list for every vacancy. Considering its independence as a constitutional body, the JBC has the discretion and wisdom to perform its mandate in any manner as long as it is consistent with the Constitution. According to the JBC, its new practice of "clustering," in fact, is more in accord with the purpose of the JBC to rid the appointment process to the Judiciary from political pressure as the President has to choose only from the nominees for one particular vacancy. Otherwise, the President can choose whom he pleases, and thereby completely disregard the purpose for the creation of the JBC. The JBC clarifies that it numbered the vacancies, not to influence the order of precedence, but for practical reasons, *i.e.*, to distinguish one list from the others and to avoid confusion. The JBC also points out that the acts invoked against the JBC are based on practice or custom, but "practice, no matter how long continued, cannot give rise to any vested right." The JBC, as a constitutional body, enjoys independence, and as such, it may change its practice from time to time in accordance with its wisdom.

Lastly, the JBC moves for the inhibition of the *ponente* of the assailed Decision based on Canon 3, Section 5 of the New Code of Judicial Conduct for Philippine Judiciary.[4] The JBC alleges that the *ponente*, as consultant of the JBC from 2014 to 2016, had personal knowledge of the voting procedures and format of the short lists, which are the subject matters of this case. The *ponente* was even present as consultant during the meeting on October 26, 2015 when the JBC voted upon the candidates for the six new positions of Associate Justice of the Sandiganbayan created under Republic Act No. 10660. The JBC then expresses its puzzlement over the *ponente's* participation in the present proceedings, espousing a position contrary to that of the JBC. The JBC questions why it was only in her Decision in the instant case did the *ponente* raise her disagreement with the JBC as to the clustering of nominees for each of the six simultaneous vacancies for Sandiganbayan Associate Justice. The JBC further quoted portions of the assailed Decision that it claims bespoke of the *ponente's* "already-arrived-at" conclusion as to the alleged ill acts and intentions of the JBC. Hence, the JBC submits that such formed inference will not lend to an even-handed consideration by the *ponente* should she continue to participate in the case.

Ultimately, the JBC prays:

> IN VIEW OF THE FOREGOING, it is respectfully prayed that the DECISION dated 29 November 2016 be reconsidered and set aside and a new one be issued granting the Motion for Intervention of the JBC.
>
> It is likewise prayed that the *ponente* inhibit herself from further participating in this case and that the JBC be granted such other reliefs as are just and equitable under the premises.[5]

The JBC subsequently filed a Motion for Reconsideration-in-Intervention (Of the Decision dated 29 November 2016), praying at the very beginning that it be deemed as sufficient remedy for the technical deficiency of its Motion for Intervention (*i.e.*, failure to attach the pleading-in-intervention) and as Supplemental Motion for Reconsideration of the denial of its Motion for Intervention.

The JBC, in its latest Motion, insists on its legal interest, injury, and standing to intervene in the present case, as well as on the timeliness of its Motion for Intervention.

The JBC proffers several reasons for not immediately seeking to intervene in the instant case despite admitting that it received copies of the appointments of the six Sandiganbayan Associate Justices from the Office of the President (OP) on January 25, 2016, to wit: (a) Even as its individual Members harbored doubts as to the validity of the appointments of respondents Michael Frederick L. Musngi (Musngi) and Geraldine Faith A. Econg (Econg) as Sandiganbayan Associate Justices, the JBC agreed as a body in an executive session that it would stay neutral and not take any legal position on the constitutionality of said appointments since it "did not have any legal interest in the offices of Associate Justices of the Sandiganbayan"; (b) None of the parties prayed that the act of clustering by the JBC be declared unconstitutional; and (c) The JBC believed that the Court would apply the doctrine of presumption of regularity in the discharge by the JBC of its official functions and if the Court would have been inclined to delve into the validity of the act of clustering by the JBC, it would order the JBC to comment on the matter.

The JBC impugns the significance accorded by the *ponente* to the fact that Chief Justice Maria Lourdes P. A. Sereno (Sereno), Chairperson of the JBC, administered the oath of office of respondent Econg as Sandiganbayan Associate Justice on January 25, 2016. Chief Justice Sereno's act should not be taken against the JBC because, the JBC reasons, Chief Justice Sereno only chairs the JBC, but she is not the JBC, and the administration of the oath of office was a purely ministerial act.

The JBC likewise disputes the *ponente's* observation that clustering is a totally new practice of the JBC. The JBC avers that even before Chief Justice Sereno's Chairmanship, the JBC has generally followed the rule of one short list for every vacancy in all first and second level trial courts. The JBC has followed the "one list for every vacancy" rule even for appellate courts since 2013. The JBC even recalls that it submitted on August 17, 2015 to then President

Benigno Simeon C. Aquino III (Aquino) four separate short lists for four vacancies in the Court of Appeals; and present during the JBC deliberations were the *ponente* and Supreme Court Associate Justice Presbitero J. Velasco, Jr. (Velasco) as consultants, who neither made any comment on the preparation of the short lists.

On the merits of the Petition, the JBC maintains that it did not exceed its authority and, in fact, it only faithfully complied with the literal language of Article VIII, Section 9 of the 1987 Constitution, when it prepared six short lists for the six vacancies in the Sandiganbayan. It cites the cases of *Atong Paglaum, Inc. v. Commission on Elections*[6] and *Ocampo v. Enriquez*,[7] wherein the Court allegedly adopted the textualist approach of constitutional interpretation.

The JBC renounces any duty to increase the chances of appointment of every candidate it adjudged to have met the minimum qualifications. It asserts that while there might have been favorable experiences with the past practice of submitting long consolidated short lists, past practices cannot be used as a source of rights and obligations to override the duty of the JBC to observe a straightforward application of the Constitution.

The JBC posits that clustering is a matter of legal and operational necessity for the JBC and the only safe standard operating procedure for making short lists. It presents different scenarios which demonstrate the need for clustering, *viz.*: (a) There are two different sets of applicants for the vacancies; (b) There is a change in the JBC composition during the interval in the deliberations on the vacancies as the House of Representatives and the Senate alternately occupy the *ex officio* seat for the Legislature; (c) The applicant informs the JBC of his/her preference for assignment in the Cebu Station or Cagayan de Oro Station of the Court of Appeals because of the location or the desire to avoid mingling with certain personalities; (d) The multiple vacancies in newly-opened first and second level trial courts; and (e) The dockets to be inherited in the appellate court are overwhelming so the JBC chooses nominees for those particular posts with more years of service as against those near retirement.

To the JBC, it seems that the Court was in a hurry to promulgate its Decision on November 29, 2016, which struck down the practice of clustering by the JBC. The JBC supposes that it was in anticipation of the vacancies in the Court as a result of the retirements of Supreme Court Associate Justices Jose P. Perez (Perez) and Arturo D. Brion (Brion) on December 14, 2016 and December 29, 2016, respectively. The JBC then claims that it had no choice but to submit two separate short lists for said vacancies in the Court because there were two sets of applicants for the same, *i.e.*, there were 14 applicants for the seat vacated by Justice Perez and 17 applicants for the seat vacated by Justice Brion.

The JBC further contends that since each vacancy creates discrete and possibly unique situations, there can be no general rule against clustering. Submitting separate, independent short lists for each vacancy is the only way for the JBC to observe the constitutional standards of (a) one list for every vacancy, and (b) choosing candidates of competence, independence, probity, and integrity for every such vacancy.

It is also the asseveration of the JBC that it did not encroach on the President's power to appoint members of the Judiciary. The JBC alleges that its individual Members gave several reasons why there was an apparent indication of seniority assignments in the six short lists for the six vacancies for Sandiganbayan Associate Justice, particularly: (a) The JBC can best perform its job by indicating who are stronger candidates by giving higher priority to those in the lower-numbered list; (b) The indication could head off the confusion encountered in *Re: Seniority Among the Four Most Recent Appointments to the Position of Associate Justices of the Court of Appeals*;[8] and (c) The numbering of the lists from 16th to 21st had nothing to do with seniority in the Sandiganbayan, but was only an ordinal designation of the cluster to which the candidates were included.

The JBC ends with a reiteration of the need for the *ponente* to inhibit herself from the instant case as she appears to harbor hostility possibly arising from the termination of her JBC consultancy.

The prayer of the JBC in its Motion for Reconsideration-in-Intervention reads:

> IN VIEW OF THE FOREGOING, it is respectfully prayed that JBC's Motion for Reconsideration-in-Intervention, Motion for Intervention and Motion for Reconsideration with Motion for Inhibition of Justice Teresita J. Leonardo-De Castro of the JBC be granted and/or given due course and that:
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> 1. the Court's pronouncements in the Decision dated 29 November 2016 with respect to the JBC's submission of six shortlists of nominees to the Sandiganbayan be modified to reflect that the JBC is deemed to have followed Section 9, Article VIII of the Constitution in its practice of submitting one shortlist of nominees for every vacancy, including in submitting on 28 October 2015 six lists to former President Benigno Simeon C. Aquino III for the six vacancies of the Sandiganbayan, or for the Court to be completely silent on the matter; and
>
> 2. the Court delete the treatment as a separate administrative matter of the alleged new rules and practices of the JBC, particularly the following: (1) the deletion or non-inclusion of Rule 8, Section 1 of JBC-009 in JBC No. 2016-1, or the Revised Rules of the Judicial and Bar Council; and (2) the removal of incumbent Senior Associate Justices of the Supreme Court as consultants of the JBC,

referred to in pages 35 to 40 of the Decision. And as a consequence, the Court excuse the JBC from filing the required comment on the said matters.[9]

II

THE RULING OF THE COURT

There is no legal or factual basis for the ponente to inhibit herself from the instant case.

The Motion for Inhibition of the *Ponente* filed by the JBC is denied.

The present Motion for Inhibition has failed to comply with Rule 8, Section 2 of the Internal Rules of the Supreme Court,[10] which requires that "[a] motion for inhibition must be in writing and **under oath** and shall state the grounds therefor." Yet, even if technical rules are relaxed herein, there is still no valid ground for the inhibition of the *ponente*.

There is no ground[11] for the mandatory inhibition of the *ponente* from the case at bar.

The *ponente* has absolutely no personal interest in this case. The *ponente* is not a counsel, partner, or member of a law firm that is or was the counsel in the case; the *ponente* or her spouse, parent, or child has no pecuniary interest in the case; and the *ponente* is not related to any of the parties in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity.

The *ponente* is also not privy to any proceeding in which the JBC discussed and decided to adopt the unprecedented method of clustering the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice into six separate short lists, one for every vacancy. The *ponente* does not know when, how, and why the JBC adopted the clustering method of nomination for appellate courts and even the Supreme Court.

With due respect to Chief Justice Sereno, it appears that when the JBC would deliberate on highly contentious, sensitive, and important issues, it was her policy as Chairperson of the JBC to hold executive sessions, which excluded the Supreme Court consultants. At the JBC meeting held on October 26, 2015, Chief Justice Sereno immediately mentioned at the beginning of the deliberations "that, as the Council had always done in the past when there are multiple vacancies, the voting would be on a per vacancy basis."[12] Chief Justice Sereno went on to state that the manner of voting had already been explained to the two *ex officio* members of the JBC who were not present during the meeting, namely, Senator Aquilino L. Pimentel III (Pimentel) and then Department of Justice (DOJ) Secretary Alfredo Benjamin S. Caguioa (Caguioa).[13] Then the JBC immediately proceeded with the voting of nominees. This *ponente* was not consulted before the JBC decision to cluster nominees was arrived at and, therefore, she did not have the opportunity to study and submit her recommendation to the JBC on the clustering of nominees.

It is evident that prior to the meeting on October 26, 2015, the JBC had already reached an agreement on the procedure it would follow in voting for nominees, *i.e.*, the clustering of the nominees into six separate short lists, with one short list for each of the six newly-created positions of Sandiganbayan Associate Justice. That Senator Pimentel and DOJ Secretary Caguioa, who were not present at the meeting on October 26, 2015, were informed beforehand of the clustering of nominees only proves that the JBC had already agreed upon the clustering of nominees prior to the said meeting.

Notably, Chief Justice Sereno inaccurately claimed at the very start of the deliberations that the JBC had been voting on a per vacancy basis "as the Council had always done," giving the impression that the JBC was merely following established procedure, when in truth, the clustering of nominees for simultaneous or closely successive vacancies in a collegiate court was a new practice only adopted by the JBC under her Chairmanship. In the Decision dated November 29, 2016, examples were already cited how, in previous years, the JBC submitted just one short list for simultaneous or closely successive vacancies in collegiate courts, including the Supreme Court, which will again be presented hereunder.

As previously mentioned, it is the practice of the JBC to hold executive sessions when taking up sensitive matters. The *ponente* and Associate Justice Velasco, incumbent Justices of the Supreme Court and then JBC consultants, as well as other JBC consultants, were excluded from such executive sessions. Consequently, the *ponente* and Associate Justice Velasco were unable to participate in and were kept in the dark on JBC proceedings/decisions, particularly, on matters involving the nomination of candidates for vacancies in the appellate courts and the Supreme Court. The matter of the nomination to the Supreme Court of now Supreme Court Associate Justice Francis H. Jardeleza (Jardeleza), which became the subject matter of *Jardeleza v. Sereno*,[14] was taken up by the JBC in such an executive session. This *ponente* also does not know when and why the JBC deleted from JBC No. 2016-1, "The Revised Rules of the Judicial and Bar Council," what was Rule 8, Section 1 of JBC-009, the former JBC Rules, which gave due weight and regard to the recommendees of the Supreme Court for vacancies in the Court. The amendment of the JBC Rules could have been decided upon by the JBC when the *ponente* and Associate Justice Velasco were already relieved by Chief Justice Sereno of their duties as consultants of the JBC. The JBC could have

similarly taken up and decided upon the clustering of nominees for the six vacant posts of Sandiganbayan Associate Justice during one of its executive sessions prior to October 26, 2015.

Hence, even though the *ponente* and the other JBC consultants were admittedly present during the meeting on October 26, 2015, the clustering of the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice was already *fait accompli*. Questions as to why and how the JBC came to agree on the clustering of nominees were no longer on the table for discussion during the said meeting. As the minutes of the meeting on October 26, 2015 bear out, the JBC proceedings focused on the voting of nominees. It is stressed that the crucial issue in the present case pertains to the clustering of nominees and not the nomination and qualifications of any of the nominees. This *ponente* only had the opportunity to express her opinion on the issue of the clustering of nominees for simultaneous and closely successive vacancies in collegiate courts in her *ponencia* in the instant case. As a Member of the Supreme Court, the *ponente* is duty-bound to render an opinion on a matter that has grave constitutional implications.

Neither is there any basis for the *ponente's* voluntary inhibition from the case at bar. Other than the bare allegations of the JBC, there is no clear and convincing evidence of the *ponente's* purported bias and prejudice, sufficient to overcome the presumption that she had rendered her assailed *ponencia* in the regular performance of her official and sacred duty of dispensing justice according to law and evidence and without fear or favor. Significant herein is the following disquisition of the Court on voluntary inhibition of judges in *Gochan v. Gochan*,[15] which is just as applicable to Supreme Court Justices:

> **In a string of cases, the Supreme Court has said that bias and prejudice, to be considered valid reasons for the voluntary inhibition of judges, must be proved with clear and convincing evidence. Bare allegations of their partiality will not suffice. It cannot be presumed, especially if weighed against the sacred oaths of office of magistrates, requiring them to administer justice fairly and equitably** - both to the poor and the rich, the weak and the strong, the lonely and the well-connected. (Emphasis supplied.)

Furthermore, it appears from the admitted lack of consensus on the part of the JBC Members as to the validity of the clustering shows that the conclusion reached by the *ponente* did not arise from personal hostility but from her objective evaluation of the adverse constitutional implications of the clustering of the nominees for the vacant posts of Sandiganbayan Associate Justice. It is unfortunate that the JBC stooped so low in casting aspersion on the person of this *ponente* instead of focusing on sound legal arguments to support its position. There is absolutely no factual basis for the uncalled for and unfair imputation of the JBC that the *ponente* harbors personal hostility against the JBC presumably due to her removal as consultant. The *ponente's* removal as consultant was the decision of Chief Justice Sereno, not the JBC. The *ponente* does not bear any personal grudge or resentment against the JBC for her removal as consultant. The *ponente* does not view Chief Justice Sereno's move as particularly directed against her as Associate Justice Velasco had been similarly removed as JBC consultant. The *ponente* has never been influenced by personal motive in deciding cases. The *ponente*, instead, perceives the removal of incumbent Supreme Court Justices as consultants of the JBC as an affront against the Supreme Court itself as an institution, since the evident intention of such move was to keep the Supreme Court in the dark on the changes in rules and practices subsequently adopted by the JBC, which, to the mind of this *ponente*, may adversely affect the exercise of the supervisory authority over the JBC vested upon the Supreme Court by the Constitution.

All the basic issues raised in the Petition had been thoroughly passed upon by the Court in its Decision dated November 29, 2016 and the JBC already expressed its disinterest to question President Aquino's "cross-reaching" in his appointment of the six new Sandiganbayan Associate Justices.

Even if the Motion for Reconsideration and Motion for Reconsideration-in-Intervention of the JBC, praying for the grant of its Motion for Intervention and the reversal of the Decision dated November 29, 2016, are admitted into the records of this case and the issues raised and arguments adduced in the said two Motions are considered, there is no cogent reason to reverse the Decision dated November 29, 2016, particularly, in view of the admission of the JBC of the lack of unanimity among the JBC members on the issue involving the clustering of nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice and their disinterest to question the "cross-reaching" or non-observance by President Aquino of such clustering.

Hence, the Court will no longer belabor the issue that only three JBC Members signed the Motion for Intervention and Motion for Reconsideration and only four JBC Members signed the Motion for Reconsideration-in-Intervention, as well as the fact that Chief Justice Sereno, as Chairperson of the JBC, did not sign the three Motions.

To determine the legal personality of the signatories to file the JBC Motions, the Court has accorded particular significance to who among the JBC Members signed the Motions and to Chief Justice Sereno's act of administering the oath of office to three of the newly-appointed Sandiganbayan Associate Justices, including respondent Econg, in resolving the pending Motions of the JBC. However, in its Motion for Reconsideration-in-Intervention, the JBC now reveals that not all of its Members agree on the official position to take in the case of President Aquino's appointment of the six new Sandiganbayan Associate Justices. Thus, the position of the JBC on the clustering of the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice rests on shaky legal ground.

The JBC takes exception as to why the Court allowed the Petition at bar even when it did not strictly comply with the