

EN BANC

[G. R. No. 191002, March 17, 2010]

ARTURO M. DE CASTRO, PETITIONER, VS. JUDICIAL AND BAR COUNCIL (JBC) AND PRESIDENT GLORIA MACAPAGAL - ARROYO, RESPONDENTS.

[G.R. No. 191032]

JAIME N. SORIANO, PETITIONER, VS. JUDICIAL AND BAR COUNCIL (JBC), RESPONDENT.

[G.R. No. 191057]

PHILIPPINE CONSTITUTION ASSOCIATION (PHILCONSA), PETITIONER, VS. JUDICIAL AND BAR COUNCIL (JBC), RESPONDENT.

[A.M. No. 10-2-5-SC]

IN RE APPLICABILITY OF SECTION 15, ARTICLE VII OF THE CONSTITUTION TO APPOINTMENTS TO THE JUDICIARY, ESTELITO P. MENDOZA, PETITIONER,

[G.R. No. 191149]

JOHN G. PERALTA, PETITIONER, VS. JUDICIAL AND BAR COUNCIL (JBC). RESPONDENT.

PETER IRVING CORVERA; CHRISTIAN ROBERT S. LIM; ALFONSO V. TAN, JR.; NATIONAL UNION OF PEOPLE'S LAWYERS; MARLOU B. UBANO; INTEGRATED BAR OF THE PHILIPPINES-DAVAO DEL SUR CHAPTER, REPRESENTED BY ITS IMMEDIATE PAST PRESIDENT, ATTY. ISRAELITO P. TORREON, AND THE LATTER IN HIS OWN PERSONAL CAPACITY AS A MEMBER OF THE PHILIPPINE BAR; MITCHELL JOHN L. BOISER; BAGONG ALYANSANG BAYAN (BAYAN) CHAIRMAN DR. CAROLINA P. ARAULLO; BAYAN SECRETARY GENERAL RENATO M. REYES, JR.; CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE) CHAIRMAN FERDINAND GAITE; KALIPUNAN NG DAMAYANG MAHIHIRAP (KADAMAY) SECRETARY GENERAL GLORIA ARELLANO; ALYANSA NG NAGKAKAISANG KABATAAN NG SAMBAYANAN PARA SA KAUNLARAN (ANAKBAYAN) CHAIRMAN KEN LEONARD RAMOS; TAYO ANG PAG-ASA CONVENOR ALVIN PETERS; LEAGUE OF FILIPINO STUDENTS (LFS) CHAIRMAN JAMES MARK TERRY LACUANAN RIDON; NATIONAL UNION OF

STUDENTS OF THE PHILIPPINES (NUSP) CHAIRMAN EINSTEIN RECEDES; COLLEGE EDITORS GUILD OF THE PHILIPPINES (CEGP) CHAIRMAN VIJAE ALQUISOLA; AND STUDENT CHRISTIAN MOVEMENT OF THE PHILIPPINES (SCMP) CHAIRMAN MA. CRISTINA ANGELA GUEVARRA; WALDEN F. BELLO AND LORETTA ANN P. ROSALES; WOMEN TRIAL LAWYERS ORGANIZATION OF THE PHILIPPINES, REPRESENTED BY YOLANDA QUISUMBING- JAVELLANA; BELLEZA ALOJADO DEMAISIP; TERESITA GANDIONCO-OLEDAN; MA. VERENA KASILAG-VILLANUEVA; MARILYN STA. ROMANA; LEONILA DE JESUS; AND GUINEVERE DE LEON. INTERVENORS.

[G.R. No. 191342]

ATTY. AMADOR Z. TOLENTINO, JR., (IBP GOVERNOR-SOUTHERN LUZON), AND ATTY. ROLAND B. INTING (IBP GOVERNOR-EASTERN VISAYAS), PETITIONERS, VS. JUDICIAL AND BAR COUNCIL (JBC), RESPONDENT.

[G.R. No. 191420]

PHILIPPINE BAR ASSOCIATION, INC., PETITIONER, VS. JUDICIAL AND BAR COUNCIL AND HER EXCELLENCY GLORIA MACAPAGAL-ARROYO, RESPONDENTS.

D E C I S I O N

BERSAMIN, J.:

The compulsory retirement of Chief Justice Reynato S. Puno by May 17, 2010 occurs just days after the coming presidential elections on May 10, 2010. Even before the event actually happens, it is giving rise to many legal dilemmas. May the incumbent President appoint his successor, considering that Section 15, Article VII (Executive Department) of the Constitution prohibits the President or Acting President from making appointments within two months immediately before the next presidential elections and up to the end of his term, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety? What is the relevance of Section 4 (1), Article VIII (Judicial Department) of the Constitution, which provides that any vacancy in the Supreme Court shall be filled within 90 days from the occurrence thereof, to the matter of the appointment of his successor? May the Judicial and Bar Council (JBC) resume the process of screening the candidates nominated or being considered to succeed Chief Justice Puno, and submit the list of nominees to the incumbent President even during the period of the prohibition under Section 15, Article VII? Does *mandamus* lie to compel the submission of the shortlist of nominees by the JBC?

Precís of the Consolidated Cases

Petitioners Arturo M. De Castro and John G. Peralta respectively commenced G.R. No. 191002^[1] and G.R. No. 191149^[2] as special civil actions for *certiorari* and *mandamus*, praying that the JBC be compelled to submit to the incumbent President the list of at least three nominees for the position of the next Chief Justice.

In G.R. No. 191032,^[3] Jaime N. Soriano, *via* his petition for prohibition, proposes to prevent the JBC from conducting its search, selection and nomination proceedings for the position of Chief Justice.

In G.R. No. 191057, a special civil action for *mandamus*,^[4] the Philippine Constitution Association (PHILCONSA) wants the JBC to submit its list of nominees for the position of Chief Justice to be vacated by Chief Justice Puno upon his retirement on May 17, 2010, because the incumbent President is not covered by the prohibition that applies only to appointments in the Executive Department.

In Administrative Matter No. 10-2-5-SC,^[5] petitioner Estelito M. Mendoza, a former Solicitor General, seeks a ruling from the Court for the guidance of the JBC on whether Section 15, Article VII applies to appointments to the Judiciary.

In G.R. No. 191342,^[6] which the Court consolidated on March 9, 2010 with the petitions earlier filed, petitioners Amador Z. Tolentino, Jr. and Roland B. Inting, Integrated Bar of the Philippines (IBP) Governors for Southern Luzon and Eastern Visayas, respectively, want to enjoin and restrain the JBC from submitting a list of nominees for the position of Chief Justice to the President for appointment during the period provided for in Section 15, Article VII.

All the petitions now before the Court pose as the principal legal question whether the incumbent President can appoint the successor of Chief Justice Puno upon his retirement. That question is undoubtedly impressed with transcendental importance to the Nation, because the appointment of the Chief Justice is any President's most important appointment.

A precedent frequently cited is *In Re Appointments Dated March 30, 1998 of Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta as Judges of the Regional Trial Court of Branch 62, Bago City and of Branch 24, Cabanatuan City, respectively (Valenzuela)*,^[7] by which the Court held that Section 15, Article VII prohibited the exercise by the President of the power to appoint to judicial positions during the period therein fixed.

In G.R. No. 191002, De Castro submits that the conflicting opinions on the issue expressed by legal luminaries - one side holds that the incumbent President is prohibited from making appointments within two months immediately before the coming presidential elections and until the end of her term of office as President on June 30, 2010, while the other insists that the prohibition applies only to appointments to executive positions that may influence the election and, anyway, paramount national interest justifies the appointment of a Chief Justice during the election ban - has impelled the JBC to defer the decision to whom to send its list of at least three nominees, whether to the incumbent President or to her successor.^[8] He opines that the JBC is thereby arrogating unto itself "the judicial function that is not conferred upon it by the Constitution," which has limited it to the task of recommending appointees to the Judiciary, but has not empowered it to "finally resolve constitutional questions, which is the power vested only in the Supreme Court under the Constitution." As such, he contends that the JBC acted with grave abuse of discretion in deferring the submission of the list of nominees to the President; and that a "final and definitive resolution of the constitutional questions

raised above would diffuse (*sic*) the tension in the legal community that would go a long way to keep and maintain stability in the judiciary and the political system."^[9]

In G.R. No. 191032, Soriano offers the view that the JBC committed a grave abuse of discretion amounting to lack or excess of its jurisdiction when it resolved unanimously on January 18, 2010 to open the search, nomination, and selection process for the position of Chief Justice to succeed Chief Justice Puno, because the appointing authority for the position of Chief Justice is the Supreme Court itself, the President's authority being limited to the appointment of the Members of the Supreme Court. Hence, the JBC should not intervene in the process, unless a nominee is not yet a Member of the Supreme Court.^[10]

For its part, PHILCONSA observes in its petition in G.R. No. 191057 that "unorthodox and exceptional circumstances spawned by the discordant interpretations, due perhaps to a perfunctory understanding, of Sec. 15, Art. VII in relation to Secs. 4(1), 8(5) and 9, Art. VIII of the Constitution" have bred "a frenzied inflammatory legal debate on the constitutional provisions mentioned that has divided the bench and the bar and the general public as well, because of its dimensional impact to the nation and the people," thereby fashioning "transcendental questions or issues affecting the JBC's proper exercise of its "principal function of recommending appointees to the Judiciary" by submitting only to the President (not to the next President) "a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy" from which the members of the Supreme Court and judges of the lower courts may be appointed."

^[11] PHILCONSA further believes and submits that now is the time to revisit and review *Valenzuela*, the "strange and exotic Decision of the Court en banc."^[12]

Peralta states in his petition in G.R. No. 191149 that *mandamus* can compel the JBC "to immediately transmit to the President, within a reasonable time, its nomination list for the position of chief justice upon the mandatory retirement of Chief Justice Reynato S. Puno, in compliance with its mandated duty under the Constitution" in the event that the Court resolves that the President can appoint a Chief Justice even during the election ban under Section 15, Article VII of the Constitution.^[13]

The petitioners in G.R. No. 191342 insist that there is an actual controversy, considering that the "JBC has initiated the process of receiving applications for the position of Chief Justice and has in fact begun the evaluation process for the applications to the position," and "is perilously near completing the nomination process and coming up with a list of nominees for submission to the President, entering into the period of the ban on midnight appointments on March 10, 2010," which "only highlights the pressing and compelling need for a writ of prohibition to enjoin such alleged ministerial function of submitting the list, especially if it will be done within the period of the ban on midnight appointments."^[14]

Antecedents

These cases trace their genesis to the controversy that has arisen from the forthcoming compulsory retirement of Chief Justice Puno on May 17, 2010, or seven days after the presidential election. Under Section 4(1), in relation to Section 9, Article VIII, *that* "vacancy shall be filled within ninety days from the occurrence thereof" from a "list of at least three nominees prepared by the Judicial and Bar

Council for every vacancy."

On December 22, 2009, Congressman Matias V. Defensor, an *ex officio* member of the JBC, addressed a letter to the JBC, requesting that the process for nominations to the office of the Chief Justice be commenced immediately.

In its January 18, 2010 meeting *en banc*, therefore, the JBC passed a resolution,^[15] which reads:

The JBC, in its *en banc* meeting of January 18, 2010, unanimously agreed to start the process of filling up the position of Chief Justice to be vacated on May 17, 2010 upon the retirement of the incumbent Chief Justice Honorable Reynato S. Puno.

It will publish the opening of the position for applications or recommendations; deliberate on the list of candidates; publish the names of candidates; accept comments on or opposition to the applications; conduct public interviews of candidates; and prepare the shortlist of candidates.

As to the time to submit this shortlist to the proper appointing authority, in the light of the Constitution, existing laws and jurisprudence, the JBC welcomes and will consider all views on the matter.

18 January 2010.

(sgd.)
MA. LUISA D.
VILLARAMA
Clerk of Court &
Ex-Officio Secretary
Judicial and Bar Council

As a result, the JBC opened the position of Chief Justice for application or recommendation, and published for that purpose its *announcement* dated January 20, 2010,^[16] viz:

The Judicial and Bar Council (JBC) announces the opening for application or recommendation, of the position of CHIEF JUSTICE OF THE SUPREME COURT, which will be vacated on 17 May 2010 upon the retirement of the incumbent Chief Justice, HON. REYNATO S. PUNO.

Applications or recommendations for this position must be submitted not later than 4 February 2010 (Thursday) to the JBC Secretariat xxx:

The *announcement* was published on January 20, 2010 in the *Philippine Daily Inquirer* and *The Philippine Star*.^[17]