

EN BANC

**G.R. No. 224302: 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, Petitioners, v. 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. MERINATHE PACITA M. ZURAEK, HON. ELMO M. ALMEDA, and HON. VICTORIA C. FERNANDEZ-BERNARDO, Respondents.**

**Promulgated:**  
November 29, 2016

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*gfp to Mangon-Dranex*

**CONCURRING OPINION**

**LEONEN, J.:**

I concur in the result in so far as finding that the respondents did not gravely abuse their discretion in making appointments to the Sandiganbayan, considering that all six vacancies were opened for the first time. I disagree that we make findings as to whether the Judicial and Bar Council gravely abused its discretion considering that they were not impleaded and made party to this case. Even for the Judicial and Bar Council, a modicum of fairness requires that we should have heard them and considered their arguments before we proceed to exercise any degree of supervision as they exercise their constitutionally mandated duties.

I also disagree with the expanded concept of supervision implied by the main opinion. I, thus, welcome that the matters relating to the rules of the Judicial and Bar Council is to be separately docketed so the issues are fully and more precisely ventilated with the participation of all parties concerned.

This is a "Petition for Quo Warranto under Rule 66 and Certiorari and Prohibition under Rule 65 with Application for Issuance of Injunctive Writs."<sup>1</sup> The Petition assails President Aquino's appointment of respondents

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<sup>1</sup> *Rollo*, p. 3.

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Hon. Michael Frederick L. Musngi and Hon. Ma. Geraldine Faith A. Econg as Associate Justices of the Sandiganbayan.<sup>2</sup>

Petitioners posit that President Aquino violated Article VIII, Section 9 of the 1987 Constitution in that:

“(a) He did not appoint anyone from the shortlist submitted by the Judicial and Bar Council for the vacancy for position of the 16<sup>th</sup> Associate Justice of the Sandiganbayan; and

(b) He appointed Undersecretary Musngi and Judge Econg as Associate Justices of Sandiganbayan to the vacancy for the position of 21<sup>st</sup> Associate Justice of the Sandiganbayan;

(c) The appointments made were not in accordance with the shortlists submitted by the Judicial and Bar Council for each vacancy, thus affecting the order of seniority of the Associate Justices.<sup>3</sup>

Prior to the existence of the Judicial and Bar Council, the executive and legislative branches of the government had the exclusive prerogative of appointing members of the Judiciary, subject only to confirmation by the Commission on Appointments. However, such an appointment process was highly susceptible to political pressure and partisan activities, prompting the need for a separate, competent, and independent body to recommend nominees to the judiciary to the President.<sup>4</sup>

The creation of a Judicial and Bar Council was proposed by former Chief Justice Roberto Concepcion during the deliberations in the drafting of the 1987 Constitution. The Committee on Justice of the Constitutional Commission “felt neither the President nor the Commission on Appointments would have the time to carefully study the qualifications of every candidate, especially with respect to their probity and sense of morality.”<sup>5</sup>

Commissioner Rene Sarmiento echoed this sentiment, stressing that “the creation of the Council is a step towards achieving judicial independence.”<sup>6</sup> Thus, the Judicial and Bar Council was created under the 1987 Constitution and it was intended to be a fully independent constitutional body functioning as a check on the President’s power of appointment. Article VIII, Section 8 of the Constitution provides:

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<sup>2</sup> Id. at 7.

<sup>3</sup> Id.

<sup>4</sup> *Chavez v. Judicial and Bar Council*, 691 Phil 173, 188 (2012) [Per J. Mendoza, En Banc].

<sup>5</sup> 1 RECORDS, CONSTITUTIONAL COMMISSION, PROCEEDINGS AND DEBATES, JOURNAL NO. 29 (1986).

<sup>6</sup> Id.

## ARTICLE VIII

*Judicial Department*

....

Section 8. (1) 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.

(2) The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.

(3) The Clerk of the Supreme Court shall be the Secretary *ex officio* of the Council and shall keep a record of its proceedings.

(4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.

(5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

The Judicial and Bar Council is mandated to recommend appointees to the judiciary “and only those nominated by the JBC in a list officially transmitted to the President may be appointed by the latter as justice or judge in the judiciary.”<sup>7</sup> In carrying out its main function, the Judicial and Bar Council is given the authority to set standards or criteria in choosing its nominees for every vacancy in the judiciary.<sup>8</sup> Nonetheless, this authority does not give the Judicial and Bar Council unbridled license to act in performing its duties.<sup>9</sup>

**I.**

This Court exercises the powers of supervision only through judicial review over the Judicial and Bar Council and only when there is grave abuse of discretion.

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<sup>7</sup> Villanueva v Judicial and Bar Council, G.R. No. 211833, April 7, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/211833.pdf>> 7 [Per J. Reyes, En Banc].

<sup>8</sup> Id.

<sup>9</sup> Id.

Nothing in the Constitution diminishes the fully independent character of the Judicial and Bar Council. It is a separate constitutional organ with the same autonomy as the House of Representative Electoral Tribunal and the Senate Electoral Tribunal. *Angara v. Electoral Commission*<sup>10</sup> emphasizes that the Electoral Commission is “a constitutional creation, invested with the necessary authority in the performance and execution of the limited and specific function assigned to it by the Constitution.”<sup>11</sup> The grant of power to the Electoral Commission is intended to be “complete and unimpaired.”<sup>12</sup> The rules it promulgates cannot be subject to the review and approval of the legislature because doing so would render ineffective the grant of power to the Electoral Commission:

The grant of power to the Electoral Commission to judge all contests relating to the election, returns and qualifications of members of the National Assembly, is intended to be as complete and unimpaired as if it had remained originally in the legislature. The express lodging of that power in the Electoral Commission is an implied denial of the exercise of that power by the National Assembly. And this is as effective a restriction upon the legislative power as an express prohibition in the Constitution ... *If we concede the power claimed in behalf of the National Assembly that said body may regulate the proceedings of the Electoral Commission and cut off the power of the commission to lay down the period within which protests should be filed, the grant of power to the commission would be ineffective.* The Electoral Commission in such case would be invested with the power to determine contested cases involving the election, returns and qualifications of the members of the National Assembly but subject at all times to the regulative power of the National Assembly. Not only would the purpose of the framers of our Constitution of totally transferring this authority from the legislative body be frustrated, but a dual authority would be created with the resultant inevitable clash of powers from time to time. A sad spectacle would then be presented of the Electoral Commission retaining the bare authority of taking cognizance of cases referred to, but in reality without the necessary means to render that authority effective whenever and whenever the National Assembly has chosen to act, a situation worse than that intended to be remedied by the framers of our Constitution. The power to regulate on the part of the National Assembly in procedural matters will inevitably lead to the ultimate control by the Assembly of the entire proceedings of the Electoral Commission, and, by indirection, to the entire abrogation of the constitutional grant. It is obvious that this result should not be permitted.<sup>13</sup> (Emphasis supplied)

*Chavez v. Judicial and Bar Council*<sup>14</sup> explains that the Judicial and Bar Council was created to address the clamor to rid the process of

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<sup>10</sup> 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

<sup>11</sup> Id. at 175.

<sup>12</sup> Id.

<sup>13</sup> Id. at 175–176.

<sup>14</sup> 691 Phil 173 (2012) [Per J. Mendoza, En Banc].

appointments to the judiciary from political pressure and partisan activities.<sup>15</sup> In our dissent in *Jardeleza v. Sereno*,<sup>16</sup> we emphasized that the Judicial and Bar Council is a fully independent constitutional body, which functions as a check on the President's power of appointment, and called for judicial restraint.

By constitutional design, this court should wisely resist temptations to participate, directly or indirectly, in the nomination and appointment process of any of its members. In reality, nomination to this court carries with it the political and personal pressures from the supporters of strong contenders. This court is wisely shaded from these stresses. We know that the quality of the rule of law is reduced when any member of this court succumbs to pressure.

The separation of powers inherent in our Constitution is a rational check against abuse and the monopolization of all legal powers. We should not nullify any act of any constitutional organ unless there is grave abuse of discretion. The breach of a constitutional provision should be clearly shown and the necessity for the declaration of nullity should be compelling. Any doubt should trigger judicial restraint, not intervention. Doubts should be resolved in deference to the wisdom and prerogative of co-equal constitutional organs.<sup>17</sup>

Nonetheless, the independent character of the Judicial and Bar Council as a constitutional body does not remove it from the Court's jurisdiction when the assailed acts involve grave abuse of discretion.

Judicial review is the mechanism provided by the Constitution to settle actual controversies and to determine whether there has been grave abuse of discretion on the part of any branch or instrumentality of the Government.<sup>18</sup> The expanded power of judicial review gives the court the authority to strike down acts of all government instrumentalities that are contrary to the Constitution. *Angara v Electoral Commission*<sup>19</sup> points out that judicial review is not an assertion of the superiority of the judiciary over other departments, rather, it is the judiciary's promotion of the superiority of the Constitution:

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The

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<sup>15</sup> Id. at 188.

<sup>16</sup> Dissenting Opinion of J. Leonen in *Jardeleza v. Sereno*, G.R. No. 213181, August 19, 2014, 733 SCRA 279, 435-497 [Per J. Mendoza, En Banc].

<sup>17</sup> Id. at 437.

<sup>18</sup> CONST., art. VIII, sec. 1 states:

Section 1. The 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.

<sup>19</sup> 63 Phil.139 (1936) [Per J. Laurel, En Banc].

Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.<sup>20</sup>

## II

In this case, there was no reason to cluster the applicants for the Sandiganbayan vacancies.


There could be reasons to cluster shortlists. For instance, there are Regional Trial Courts that perform functions different from other trial courts. There are Metropolitan Trial Courts, the dockets of which would be different from other Metropolitan Trial Courts. Also, there can be vacancies that become available before other vacancies in the same appellate court.

However, when the law creates new vacancies at the same time, there can be no reasonable basis to cluster nominees.

The Sandiganbayan, a collegial court, was conceived as an anti-graft court under the 1973 Constitution. Article XIII, Section 5 of the 1973 Constitution provides:

Section 5. The National Assembly shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.

On June 11, 1978, Presidential Decree No. 1486 created the Sandiganbayan. Section 1 of P.D. No 1486 provided that the Sandiganbayan shall be "composed of a Presiding Judge and eight (8) Associate Justices who shall be appointed by the President and shall be subject to the same inhibitions and/or disqualifications as judges of courts of first instance."



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<sup>20</sup> Id. at 158.

On December 10, 1978, Presidential Decree No. 1606<sup>21</sup> elevated the Sandiganbayan to the level of the Court of Appeals.

Presidential Decree No. 1606 then underwent the following amendments: (1) Republic Act No. 7975<sup>22</sup> expanded the Sandiganbayan to five divisions; (2) Republic Act No. 8249<sup>23</sup> provided that the Sandiganbayan shall be composed of “a presiding justice and fourteen associate justices who shall be appointed by the President”<sup>24</sup>; and (3) On April 16, 2016, Republic Act No. 10660<sup>25</sup> expanded the Sandiganbayan from five divisions to “seven (7) divisions of three (3) members each.”<sup>26</sup> At present, the Sandiganbayan is composed of one Presiding Justice and twenty Associate Justices.<sup>27</sup>

After screening the applicants for the newly created positions of Associate Justices of the Sandiganbayan, the Judicial and Bar Council submitted six shortlists contained in six separate letters, all dated October 26, 2015, to then-President Aquino. The letters read:

1) For the 16<sup>th</sup> Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the SIXTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

- |                          |           |
|--------------------------|-----------|
| 1. AGUINALDO, PHILIP A.  | - 5 votes |
| 2. ALHAMBRA, REYNALDO A. | - 5 votes |
| 3. CRUZ, DANILO S.       | - 5 votes |
| 4. POZON, BENJAMIN T.    | - 5 votes |
| 5. SANDOVAL, DANILO S.   | - 5 votes |
| 6. TIMBANG, SALVADOR JR. | - 5 votes |

2) For the 17<sup>th</sup> Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the

<sup>21</sup> Revising Presidential Decree No. 1486 Creating a Special Court to be Known as “Sandiganbayan” and for Other Purposes (1978).

<sup>22</sup> An Act to Strengthen the Functional and Structural Organization of the Sandiganbayan, Amending for that Purpose Presidential Decree No. 1606, as Amended (1995).

<sup>23</sup> An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes (1997).

<sup>24</sup> Rep. Act No. 8249, sec. 1.

<sup>25</sup> An Act Strengthening Further the Functional and Structural Organization of the Sandiganbayan, Further Amending Presidential Decree No. 1606, As Amended, and Appropriating Funds Therefor (2015).

<sup>26</sup> Rep. Act No. 10660, sec. 1.

<sup>27</sup> See Sandiganbayan < <http://sb.judiciary.gov.ph/about.html> > (last visited December 1, 2016).

following nominations for the vacancy for the SEVENTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. CORPUS-MAÑALAC, MARYANNE E. - 6 votes
2. MENDOZA-ARCEGA, MARIA THERESA V. - 6 votes
3. QUIMBO, RODOLFO NOEL S. - 6 votes
4. DIZON, MA. ANTONIA EDITA CLARIDADES - 5 votes
5. SORIANO, ANDRES BARTOLOME - 5 votes

3) For the 18<sup>th</sup> Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the EIGHTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. BAGUIO, CELSO O. - 5 votes
2. DE GUZMAN-ALVAREZ, MA. TERESA E. - 5 votes
3. FERNANDEZ, BERNELITO R. - 5 votes
4. PANGANIBAN, ELVIRA DE CASTRO - 5 votes
5. SAGUN, FERNANDO JR. T. - 5 votes
6. TRESPESES, ZALDY V. - 5 votes

4) For the 19<sup>th</sup> Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the NINETEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. GUANZON, FRANCES V. - 6 votes
2. MACARAIG-GUILLEN, MARISSA - 6 votes
3. CRUZ, REYNALDO P. - 5 votes
4. PAUIG, VILMA T. - 5 votes
5. RAMOS, RENAN E. - 5 votes
6. ROXAS, RUBEN REYNALDO G. - 5 votes

5) For the 20<sup>th</sup> Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the TWENTIETH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. MIRANDA, KARL B. - 6 votes



- |                                  |           |
|----------------------------------|-----------|
| 2. ATAL-PAÑO, PERPETUA           | - 5 votes |
| 3. BUNYI-MEDINA, THELMA          | - 5 votes |
| 4. CORTEZ, LUISITO G.            | - 5 votes |
| 5. FIEL-MACARAIG, GERALDINE C.   | - 5 votes |
| 6. QUIMPO-SALE, ANGELENE MARY W. | - 5 votes |
| 7. JACINTO, BAYANI H.            | - 4 votes |

6) For the 21<sup>st</sup> Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the TWENTY-FIRST ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

- |                                    |                         |
|------------------------------------|-------------------------|
| 1. JORGE-WAGA, WILHELMINA B.       | - 6 votes               |
| 2. ECONG, GERALDINE FAITH A.       | - 5 votes               |
| 3. ROMERO-MAGLAYA, ROSANNA FE      | - 5 votes               |
| 4. ZURAEK, MERIANTHE PACITA M.     | - 5 votes               |
| 5. ALAMEDA, ELMO M.                | - 4 votes               |
| 6. FERNANDEZ-BERNARDO, VICTORIA C. | - 4 votes               |
| 7. MUSNGI, MICHAEL FREDERICK L.    | - 4 votes <sup>28</sup> |

As a collegial court, the members of the Sandiganbayan equally share power and sit in divisions of three members each. The numerical designation of each division only pertains to the seniority or order of precedence based on the date of appointment. The Rule on Precedence is in place primarily for the orderly functioning of the Sandiganbayan, as reflected in Rule II, Section 1 of the Revised Internal Rules of the Sandiganbayan:

Section 1. *Composition of the Court and Rule on Precedence* –

- (a) Composition – The Sandiganbayan is composed of a Presiding Justice and fourteen (14) Associate Justices appointed by the President of the Philippines.
- (b) Rules on Precedence – The Presiding Justice shall enjoy precedence over other members of the Sandiganbayan in all official functions. The Associate Justices shall have precedence according to the order of their appointments.
- (c) The Rule on Precedence shall apply:
- 1) In the seating arrangement;
  - 2) In the choice of office space, facilities and equipment, transportation, and cottages;
- (d) The Rule on Precedence shall not be observed:

<sup>28</sup> Ponencia, pp. 3–4.

- 1) In social and other non-official functions.
- 2) To justify any variation in the assignment of cases, amount of compensation, allowances or other forms of remuneration.

In single courts like the regional trial courts or municipal trial courts, each branch carries its own station code and acts separately and independently from other co-equal branches. The Sandiganbayan divisions do not possess similar station codes because there is no discernible difference between the divisions, and decisions are made not by one justice alone, but by a majority or all of the members sitting in a division or *en banc*. This reinforces the collegial nature of the Sandiganbayan, which is characterized by the equal sharing of authority among the members.

Additionally, in single courts, applicants may apply per available vacancy, thus, it is common to see the same applicant in several shortlists for vacancies in different single courts. However, applicants in collegial courts apply only once, even if there are multiple vacancies, because there are no substantial differences among divisions in a collegial court that would justify the creation of separate shortlists or clusters per vacancy.

Applicants to a single court are rightly sent to the President in a shortlist, with as many shortlists as there are vacancies in single courts, as each single court is deemed separate and independent, with a distinct station code to differentiate it from the other single courts. This is not the case with collegial bodies and the different divisions are not given their own station codes.

The Judicial and Bar Council may have acted in excess of its constitutional mandate to recommend nominees to the President when it clustered the Sandiganbayan applicants, in six separate groups, purportedly to account for each newly created division. There seems to be no rational basis in the positioning of the applicants in their respective clusters, with some of the shortlists containing five names, while others having six, and two clusters even containing as many as seven names.

In *Villanueva v. Judicial and Bar Council*,<sup>29</sup> this Court upheld the Judicial and Bar Council's policy of requiring at least five years of experience from judges of first level courts before they can be considered for promotion to second-level courts. This Court ruled that the assailed policy was part of the Judicial and Bar Council's authority to set the standards or criteria in choosing its nominees for every vacancy in the judiciary, making it valid and constitutional:

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<sup>29</sup> Villanueva v Judicial and Bar Council, G.R. No. 211833, April 7, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/211833.pdf>> [Per J. Reyes, En Banc].

That is the situation here. In issuing the assailed policy, the JBC merely exercised its discretion in accordance with the constitutional requirement and its rules that a member of the Judiciary must be of proven competence, integrity, probity and independence. “To ensure the fulfilment 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. In this way, 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.”<sup>30</sup>

However, to the respondents it appeared that the Judicial and Bar Council’s act of clustering the applicants to the Sandiganbayan was not part of its authority in setting standards or criteria. Thus, they did not commit grave abuse of discretion when they considered that there was no rational basis to cluster the applicants in light of the collegial nature of the Sandiganbayan. Unlike in *Villanueva*, where the imposition of five years experience as an additional requirement was held to be a relevant way to determine the competence of an applicant, no such relevance or rationality can be attached to the Judicial and Bar Council’s act of clustering the Sandiganbayan applicants instead of coming up with a single shortlist, as the Judicial and Bar Council has always done in the past.

President Aquino did not commit grave abuse of discretion in disregarding the shortlists submitted to him by the Judicial and Bar Council and treating all six shortlists as one shortlist from which he can choose the new Sandiganbayan justices.

### III.

The Judicial and Bar Council is not mandated to submit its revised internal rules to the Supreme Court for approval. The question as to whether the Judicial and Bar Council must submit its existing rules to the Supreme Court was not raised as an issue in this case.

As a constitutional body, the Judicial and Bar Council is fully independent to discharge its principal function, as shown by Administrative Matter No. 03-11-16-SC or *Resolution Strengthening the Role and Capacity of the Judicial and Bar Council and Establishing the Offices Therein*.

The composition of the Judicial and Bar Council is meant to reflect the stakeholders in the judicial appointment process, hence, the Judicial and

<sup>30</sup> Id. citing *Jardeleza v Sereno*, G.R. No. 213181, August 19, 2014, 733 SCRA 279, 329 [Per J. Mendoza, En Banc].

Bar Council is composed of the Chief Justice as *ex officio* Chair, 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.<sup>31</sup>

The Court goes beyond its constitutional role when its actions border on control. The varied composition of the Judicial and Bar Council shows that it is a unique body with members coming not only from the judiciary, but also from the executive, legislative, academe, and the private sector. There is therefore no basis for this Court to act as if it has the same power of control and supervision over the Secretary of Justice, a representative of Congress, or a member of the private sector, as it does over members of the judiciary.

The exercise of this Court's power of judicial review over the Judicial and Bar Council must always be balanced with the Judicial and Bar Council's independent nature. The Court's authority over the Judicial and Bar Council should, thus, be considered as primarily administrative, with the Chief Justice, as the *ex-officio* Chair, exercising overall administrative authority in the execution of the Judicial and Bar Council's mandate.<sup>32</sup>

Book IV, Chapter 7, Section 38(2) of the Administrative Code, defines administrative supervision as follows:

Sec. 38. Definition of Administrative Relationships. – Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

....

(2) Administrative Supervision.—(a) Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be limited to the authority of the department or its equivalent to generally oversee the operations of such agencies and to insure that they are *managed effectively, efficiently and economically but without interference with day-to-day activities*; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them;

<sup>31</sup> CONST., art. VIII, sec. 8(1).

<sup>32</sup> Adm. Matter No. 03-11-16-SC, sec. 4(a).

(b) Such authority shall not, however, extend to: (1) appointments and other personnel actions in accordance with the decentralization of personnel functions under the Code, except when appeal is made from an action of the appointing authority, in which case the appeal shall be initially sent to the department or its equivalent, subject to appeal in accordance with law; (2) contracts entered into by the agency in the pursuit of its objectives, the review of which and other procedures related thereto shall be governed by appropriate laws, rules and regulations; and (3) the power to review, reverse, revise, or modify the decisions of regulatory agencies in the exercise of their regulatory or quasi-judicial functions; and

(c) Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "supervision" shall encompass administrative supervision as defined in this paragraph. (Emphasis supplied)

This Court's power of judicial review is only to ensure that rules are followed, but with neither the power to lay down such rules nor the discretion to modify or replace them.<sup>33</sup>

The internal rules of the Judicial and Bar Council are necessary and incidental to the function conferred to it by the Constitution. The Constitution has provided the qualifications of the members of the judiciary, but has given the Judicial and Bar Council the latitude to promulgate its own set of rules and procedures to effectively ensure its mandate. This Court cannot meddle in the Judicial and Bar Council's internal rules and policies precisely because doing so would be an unconstitutional affront to the Judicial and Bar Council's independence.

This Court may exercise its expanded jurisdiction under judicial review, but certain conditions must first be met before this Court can exercise this power:

- (1) an actual case or controversy calling for the exercise of judicial power;
- (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;
- (3) the question of constitutionality must be raised at the earliest possible opportunity; and
- (4) the issue of constitutionality must be the very *lis mota* of the case.<sup>34</sup>

<sup>33</sup> *Jardeleza v Sereno*, G.R. No. 213181, August 19, 2014, 733 SCRA 279, 326 [Per J. Mendoza, En Banc].

<sup>34</sup> *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 892 (2003) [Per J. Carpio Morales, En Banc], citing *Angara v. Electoral Commission*, 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

The rationale for the conditions for the exercise of the power of judicial review is to prevent courts from entangling themselves in abstract disagreements, and for this Court to be satisfied that the case does not present a hypothetical injury or claim contingent upon some event that has not and indeed may never transpire.<sup>35</sup>

Thus, the vetting by this Court of the Judicial and Bar Council's internal rules do not fall under the power of judicial review as there is no justiciable controversy in the absence of clashing legal rights.

Be that as it may, if the majority of this Court insists on ruling that the Judicial and Bar Council committed grave abuse of discretion in revising its internal rules and regulations to effectively ensure its constitutional mandate, then the Judicial and Bar Council **MUST** be afforded due process and must be either impleaded or be allowed to comment on the petition.

Denying the Judicial and Bar Council the basic courtesy of due process is to seriously fail to guarantee the fundamental tenets of the rule of law and equity to everyone.

**ACCORDINGLY**, with these qualifications, I vote to **DISMISS** the petition.



MARVIC M.V.F. LEONEN  
Associate Justice

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<sup>35</sup> Separate Opinion of J. Nachura in *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 723–724 (2010) [Per J. Bersamin, En Banc]. *citing Office of the Governor v. Select Committee of Inquiry*, 271 Conn. 540, 570, 858 A.2d 709 (2004).