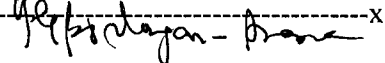


EN BANC

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 ROMEROMAGLAYA, HON. MERIANTHE PACITA M. ZURAEK, HON. ELMO M. ALMEDA, and HON. VICTORIA C. FERNANDEZ-BERNARDO, Respondents.

Promulgated:
February 21, 2017

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

SEPARATE OPINION

LEONEN, J.:

I concur in the result insofar as the finding that respondents did not gravely abuse their discretion in making appointments to the Sandiganbayan as all six vacancies were opened for the first time. I do not find any reasonable basis to cluster nominees in this case, where the law created simultaneous new vacancies for a collegial court. I agree with the *ponencia* that future vacancies for collegial appellate courts and this Court, are not at issue in this case. Hence, this Court should rule on the issues as it does not render advisory opinions.

I likewise concur in the *ponencia's* denial of the Motion for Inhibition filed by the Judicial and Bar Council. This Court, in its Internal Rules, provided the grounds¹ on which a member of the Court must inhibit himself

¹ S. CT. INT. RULES, Rule 8, sec. 1 provides:

Rule 8, Section 1. *Grounds for Inhibition* - A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:

- (a) the Member of the Court was the *ponente* of the decision or participated in the proceedings in the appellate or trial court;
- (b) the Member of the Court was counsel, partner or member of law firm that is or was the counsel in the case subject to Section 3(c) of this rule;
- (c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;
- (d) the Member of the Court is related to either party 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;
- (e) the Member of the Court was executor, administrator, guardian or trustee in the case; and



or herself from participating in the resolution of the case, and none of the cited reasons apply to the *ponente*. I am convinced that there is no reason for the *ponente* to voluntarily inhibit herself from resolving or participating in this case.

The *ponente* has adequately explained that she was neither privy nor consulted by the Judicial and Bar Council on the move to cluster the applicants to the newly created Sandiganbayan positions into six (6) separate shortlists.²

I see no reason to doubt the *ponente*'s statement of impartiality. In the years that I have worked alongside the *ponente*, I have personally witnessed her unblemished character and unwavering commitment to upholding the rule of law. Historically, her moral compass has never waned. I have no reason to doubt her impartiality in this case.

However, the Judicial and Bar Council should be allowed to intervene in the case. As the party who committed the act of clustering the Sandiganbayan applicants—an act that was eventually declared unconstitutional—the Judicial and Bar Council clearly has a legal interest in the matter under litigation. Without the participation of the Judicial and Bar Council, the doctrine in this case will only be about the discretion of the President when there are simultaneous vacancies in newly created divisions of a collegial court. This policy should not extend to other vacancies caused by retirements in the future.

Nonetheless, I reiterate that the Decision³ dated November 29, 2016 only affects collegial bodies such as the Sandiganbayan, when there are simultaneous vacancies. When there are successive vacancies in collegial courts, such as what happened in this Court, with the recent retirement of Associate Justices Jose P. Perez (Associate Justice Perez) and Arturo D. Brion (Associate Justice Brion), there may be valid reasons for the submission of two (2) separate shortlists to the President. However, again, that is not at issue in this case.

On November 16, 2016, the Judicial and Bar Council interviewed the following candidates for the position of Supreme Court Associate Justice to


(f) the Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.

A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.

The inhibiting Member must state the precise reason for the inhibition.

² Resolution (G.R. No. 224302), pp. 5–6.

³ *Aguinaldo v. Aquino*, G.R. No. 224302, November 29, 2016
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/224302.pdf>>
[Per J. Leonardo-De Castro, En Banc].



replace Associate Justice Perez, who compulsorily retired on December 14, 2016:

1. **RUEDA-ACOSTA**, Persida V.
2. **VENTURA-JIMENO**, Rita Linda S.
3. **APAO-ADLAWAN**, Rowena M.
4. **DIMAAMPAO**, Japar B.

....

1. **MARTIRES**, Samuel R.
2. **PARAS**, Ricardo III., V. (also a candidate for the Sandiganbayan)
3. **TIJAM**, Noel G.⁴ (Emphasis in the original)

The following were also candidates for the position of Supreme Court Associate Justice (to replace Associate Justice Perez), although they were no longer interviewed because their previous interviews were still valid:

1. **BRUSELAS**, Apolinario Jr., D.
2. **CARANDANG**, Rosmari D.
3. **CRUZ**, Stephen C.
4. **DAWAY**, Reynaldo B.
5. **QUIROZ**, Alex L.
6. **REYES**, Andres Jr., B.
7. **REYES**, Jose Jr., C.⁵ (Emphasis in the original)

On November 17, 2016, the Judicial and Bar Council interviewed the following candidates for the position of Supreme Court Associate Justice to replace Associate Justice Brion, who compulsorily retired on December 29, 2016:

1. **BORJA**, Romulo V.
2. **LAZARO-JAVIER**, Amy C.
3. **SAN PEDRO**, Joseph P.⁶ (Emphasis in the original)

The following candidates were likewise considered for the position vacated by Associate Justice Brion:

1. **APAO-ADLAWAN**, Rowena M.
2. **DIMAAMPAO**, Japar B.
3. **MARTIRES**, Samuel R.
4. **PARAS**, Ricardo III., V.

⁴ Judicial and Bar Council, Announcement dated October 20, 2016 <http://jbc.judiciary.gov.ph/announcements/2016/Announcement_SC%20Public%20Int%20and%20LEB%20Vacancies_10-20-16.pdf> (visited February 6, 2017).

⁵ Id.

⁶ Judicial and Bar Council, Announcement dated October 28, 2016 <http://jbc.judiciary.gov.ph/announcements/2016/Announcement_SC%20Public%20Int_Justice%20Brion_10-28-16.pdf> (visited February 6, 2017).

5. **RUEDA-ACOSTA**, Persida V.
6. **TIJAM**, Noel G.
7. **VENTURA-JIMENO**, Rita Linda S.

.....

1. **BRUSELAS**, Apolinario Jr., D.
2. **CARANDANG**, Rosmari D.
3. **CRUZ**, Stephen C.
4. **DAWAY**, Reynaldo B.
5. **QUIROZ**, Alex L.
6. **REYES**, Andres Jr., B.
7. **REYES**, Jose Jr., C.⁷ (Emphasis in the original)

On December 2, 2016, the Judicial and Bar Council forwarded to President Rodrigo Roa Duterte (President Duterte) the following nominations for the position of Supreme Court Associate Justice (to replace Associate Justice Perez):

- | | | | |
|----|-----------------------------|---|----------------------|
| 1. | REYES, Jose Jr. C. | - | 7 votes |
| 2. | BRUSELAS, Apolinario Jr. D. | - | 5 votes |
| 3. | DIMAAMPAO, Japar B. | - | 5 votes |
| 4. | MARTIRES, Samuel R. | - | 5 votes |
| 5. | REYES, Andres Jr. B. | - | 4 votes ⁸ |

One (1) week later, on December 9, 2016, the Judicial and Bar Council forwarded to President Duterte a second shortlist for the position of Supreme Court Associate Justice (to replace Associate Justice Brion) with the following nominees:

- | | | | |
|----|-------------------------------|---|----------------------|
| 1. | CARANDANG, Rosmari D. | - | 6 votes |
| 2. | BRUSELAS, Apolinario, Jr. D. | - | 5 votes |
| 3. | REYES, Jose, Jr. C. | - | 5 votes |
| 4. | DIMAAMPAO, Japar B. | - | 4 votes |
| 5. | LAZARO-JAVIER, Amy C. | - | 4 votes |
| 6. | TIJAM, Noel G. | - | 4 votes |
| 7. | VENTURA-JIMENO, Rita Linda S. | - | 4 votes ⁹ |

Although the two situations appear similar, in that the Judicial and Bar Council submitted two separate shortlists for the two vacancies in this Court and six separate shortlists for the six vacancies in the Sandiganbayan, the similarity ends there. The two shortlists for this Court were for the two vacancies brought about by the mandatory retirement of two Associate

⁷ Id.

⁸ Judicial and Bar Council, letter dated December 2, 2016 <http://jbc.judiciary.gov.ph/announcements/2016/Shortlist_SC-Perez_12-2-16.pdf> (visited February 6, 2017).

⁹ Judicial and Bar Council, letter dated December 9, 2016 <http://jbc.judiciary.gov.ph/announcements/2016/Shortlist_SC-Brion_12-9-16.pdf> (visited February 6, 2017).

Justices on two separate dates. Further, applicants such as Romulo V. Borja, Amy C. Lazaro-Javier, and Joseph P. San Pedro opted to apply only for the position vacated by Associate Justice Brion, while the other candidates applied for both vacancies.

In comparison, the applicants for the Sandiganbayan applied for all six vacancies. From September 28, 2015 to October 13, 2015, the Judicial and Bar Council interviewed the following candidates for the six newly created positions of Sandiganbayan Associate Justice:

28 September 2015 (Monday)

9:00 a.m. – 12:00 noon

1. **BASCOS-SARABIA**, Ma. Rita A.
2. **BERNAD**, Ana Celeste P.
3. **BITON**, Lily V.
4. **CALO**, Ofelia L.

2:00 – 5:00 p.m.

1. **ALAMEDA**, Elmo M.
2. **ALARCON-LEONES**, Maria Lourdes
3. **ALHAMBRA**, Reynaldo A.
4. **ROMERO-MAGLAYA**, Rosanna Fe

29 September 2015 (Tuesday)

9:00 a.m. – 12:00 noon

1. **CARILLO**, Edwin M.
2. **CRUZ**, Reynaldo P.
3. **SANTOS**, Efren G.

2:00 – 5:00 p.m.

1. **ALISUAG**, Tita B.
2. **CASTILLO-MARIGOMEN**,
Evangeline C.
3. **CORPUS-MAÑALAC**, Maryann E.
4. **CRUZ-MANGROBANG**, Ma.
Celestina C.

30 September 2015 (Wednesday)

9:00 a.m. – 12:00 noon

1. **RAMOS**, Renan E.
2. **DIZON**, Ma. Antonia Edita C.
3. **POCO-DESLATE**, Esperanza
Isabel E.

2:00 – 5:00 p.m.

1. **DE ALBAN**, Isaac R.
2. **FALCIS**, Rudiger II G.
3. **FERNANDEZ**, Bernelito R.

01 October 2015 (Thursday)

9:00 a.m. – 12:00 noon

1. **GONZALES**, Teodora R.
2. **JACINTO**, Bayani H.
3. **KALLOS**, Robert E.
4. **TURINGAN-SANCHEZ**, Rowena

2:00 – 5:00 p.m.

1. **JORGE-WAGAN**, Wilhelmina B.
2. **POZON**, Benjamin T.
3. **REYES**, Felix P.

02 October 2015 (Friday)

9:00 a.m. – 12:00 noon

1. **MACARAIG**, Virgilio V.
2. **ARETA**, Juanita G.
3. **MARIÑO-RICABLANCA**,
Cynthia R.
4. **TENORIO**, Buenaventura Albert
Jr. J.

2:00 – 5:00 p.m.

1. **APAO-ADLAWAN**, Rowena
2. **MENDOZA-ARCEGA**, Maria Theresa
3. **FERNANDEZ-BERNARDO**, Victoria C.

05 October 2015 (Monday)

9:00 a.m. – 12:00 noon

1. **MIRANDA**, Karl B.

2:00 – 5:00 p.m.

1. **CORTEZ**, Luisito G.

l

- | | |
|---|----------------------------------|
| 2. PAYOYO-VILLORDON , Tita Marilyn | 2. DAMASING , Henry B. |
| 3. TRESPESES , Zaldy V. | 3. TAN , Rowena Nieves A. |
| 4. QUIMBO , Rodolfo Noel S. | |

06 October 2015 (Tuesday)

- | | |
|--------------------------------------|--------------------------------------|
| <u>9:00 a.m. – 12:00 noon</u> | <u>2:00 – 5:00 p.m.</u> |
| 1. SAGUN , Fernando Jr. T. | 1. GENGOS , Vicente Jr. L. |
| 2. GAMOTIN-NERY , Evelyn J. | 2. HIDALGO , Georgina D. |
| 3. MISLOS-LOJA , Rosalyn D. | 3. MACARAIG-GUILLEN , Marissa |
| 4. JUSTALERO , Globert J. | |

07 October 2015 (Wednesday)

- | | |
|---|------------------------------------|
| <u>9:00 a.m. – 12:00 noon</u> | <u>2:00 – 5:00 p.m.</u> |
| 1. GUANZON , Frances V. | 1. SIO , Primo Jr. G. |
| 2. MUSNGI , Michael Frederick L. | 2. PAMPILO , Silvino Jr. T. |
| 3. SANTOS , Maria Bernardita | 3. PANGANIBAN , Elvira DC |

12 October 2015 (Monday)

- | | |
|--------------------------------------|----------------------------------|
| <u>9:00 a.m. – 12:00 noon</u> | |
| 1. AGUINALDO , Philip A. | 3. AVILA , Edgar M. . . . |
| 2. BUNYI-MEDINA , Thelma | |

13 October 2015 (Tuesday)

- | | |
|--------------------------------------|--|
| <u>2:00 p.m. – 5:00 p.m.</u> | |
| 1. RIVERA-COLASITO , Caroline | 2. MALENAB-HORNILLA , Linda L. ¹⁰ (Emphasis in the original) |

The following candidates had been previously interviewed by the Judicial and Bar Council and were also considered for the six newly created Sandiganbayan positions:

- | | |
|---|---|
| 1. ABUNDIENTE , Arthur L. | 16. FIEL-MACARAIG , Geraldine C. |
| 2. ACEBIDO , Jeffre W. | 17. GUTIERREZ , Alice C. |
| 3. AGANON , Cesar L. | 18. MENEZ , Martin T. |
| 4. ALARAS , Selma P. | 19. PAUIG , Vilma T. |
| 5. ATAL-PAÑO , Perpetua | 20. QUIMPO-SALE , Angelene Mary W. |
| 6. BAGUIO , Celso O. | 21. ROBENIOL , Gabriel T. |
| 7. BAUTISTA , Jose Jr. L. | 22. ROXAS , Ruben Reynaldo G. |
| 8. BUSTOS-ONGKEKO , Divinagracia G. | 23. SANDOVAL , Danilo S. |
| 9. CRUZ , Danilo S. | 24. SANTOS , Edgar Dalmacio |
| 10. DE GUZMAN-ALVAREZ , Ma. Theresa E. | 25. SOLIS-REYES , Jocelyn |
| 11. DOCENA , Zaldy B. | 26. SORIANO , Andres Bartolome |
| 12. DOMINGO , Lorna Navarro | 27. TACLA , Esteban Jr. A. |
| 13. ECONG , Geraldine Faith A. | 28. TIMBANG , Salvador Jr. V. |

¹⁰ Judicial and Bar Council, Announcement dated September 11, 2015 <http://jbc.judiciary.gov.ph/announcements/2015/Announcement_9-11-15_Revised.pdf> (visited February 6, 2017).

- | | |
|--|--|
| <p>14. FERNANDEZ, Teodoro C.</p> <p>15. FIDER-REYES, Maria Amifaith S.</p> | <p>29. VIVERO, Kevin Narce B.</p> <p>30. ZURAEK, Merianthe Pacita M.¹¹ (Emphasis in the original)</p> |
|--|--|

None of the candidates applied for a particular Sandiganbayan division, yet on October 26, 2015, the Judicial and Bar Council grouped them in six (6) separate shortlists to correspond to the six (6) newly created Sandiganbayan divisions. The letters to Former President Benigno Simeon C. Aquino III (Former President Aquino) read:

- 1) For the 16th 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 17th 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 SEVENTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

- | | |
|--|-----------|
| 1. CORPUS-MAÑALAC, MARYANN 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 18th 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

¹¹ Id.

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 19th 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 20th 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 21st 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-WAGAN, 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 votes¹²

Unlike the Sandiganbayan shortlists, some of the nominees for the Supreme Court vacancies appeared in both shortlists submitted to the President because they applied for both vacancies. This is a tacit recognition that these nominees qualified for both vacancies in this Court. This is contrary to the unique nature of the Sandiganbayan shortlists in this case, where the nominees were limited to only one shortlist each even if they qualified and applied for all of the vacancies.

With the forthcoming mandatory retirement of Associate Justice Bienvenido L. Reyes on July 6, 2017 and Associate Justice Jose C. Mendoza on August 13, 2017, this Court will have another set of vacancies. By the time the two positions for Supreme Court Associate Justice become vacant, the Judicial and Bar Council might be composed of different members. The composition of the Judicial and Bar Council regularly changes because of the term-sharing arrangement practiced by the Senate and the House of Representatives. The Chair of the House of Representatives Committee on Justice sits as the Judicial and Bar Council ex-officio member from January to June, while the Chair of the Senate Committee on Justice and Human Rights takes over from July to December. Because of the different dates of the vacancies, as well as the possibly different composition of the Judicial and Bar Council, two different shortlists should be submitted.

In its Motion for Reconsideration, the Judicial and Bar Council explained that it merely followed Article VIII, Section 9¹³ of the 1987 Constitution when it clustered into six separate shortlists the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice.¹⁴ It contended that clustering was a practical solution meant to distinguish one shortlist from another and avoid confusion.¹⁵

¹² G.R. No. 224302, November 29, 2016
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/224302.pdf>>
3-4 [Per J. Leonardo-De Castro, En Banc].

¹³ CONST., art. VIII, sec. 9 provides:
SECTION 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.
For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

¹⁴ Resolution (G.R. No. 224302), pp. 13-14.

¹⁵ Id. at 15.

The Judicial and Bar Council¹⁶ was created under the 1987 Constitution. It was intended to be a fully independent constitutional body functioning as a check-and-balance on the President's power of appointment.

Before the existence of the Judicial and Bar Council, the executive and legislative branches had the exclusive prerogative of appointing members of the judiciary, subject only to confirmation by the Commission on Appointments. However, this appointment process was highly susceptible to political pressure and partisan activities and eventually prompted the need for a separate, competent, and independent body to recommend to the President nominees to the Judiciary.¹⁷

The Judicial and Bar Council is not merely a technical committee that evaluates the fitness and integrity of applicants in the Judiciary. It is a constitutional organ participating in the process that guides the direction of the Judiciary. Its composition represents a cross section of the legal profession, retired judges and Justices, and the Chief Justice. More than a technical committee, it has the power to examine the judicial philosophies of the applicants and make selections, which it submits to the President. The President may have the final discretion to choose, but he or she chooses only from that list.

This is the complex relationship mandated by the sovereign through the Constitution. It ensures judicial independence, checks and balances on the Judiciary, and assurance for the rule of law.

In the proper actual case, the exact metes and bounds of the discussion of the Judicial and Bar Council can be determined. Here, however, the President did not abuse his discretion when he decided that there was no reason to cluster the applicants for the Sandiganbayan vacancies.

As a collegial court, the Sandiganbayan seats members who equally share power and sit in divisions of three (3) 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* –

¹⁶ CONST., art. VIII, sec. 8.

¹⁷ *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 188 (2012) [Per J. Mendoza, En Banc].

- (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 the 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:
 - 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 such as 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. On the other hand, the Sandiganbayan divisions, as part of a collegial court, do not possess similar station codes. This is 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: one that is characterized by the equal sharing of authority among the members.

Additionally, in single courts, applicants may apply for each available vacancy; thus, to find the same applicant in shortlists for vacancies in different single courts is common. On the other hand, applicants in collegial courts apply only once even when there are simultaneous vacancies because among divisions in a collegial court, there is no substantial difference to justify the creation of separate shortlists or clusters for each vacancy.

I am of the view that Former President Aquino did not commit grave abuse of discretion in disregarding the shortlists submitted to him by the Judicial and Bar Council for the simultaneous new vacancies and in treating all six shortlists as one from which he could choose the Sandiganbayan Justices. I reserve judgment on future vacancies in any collegial appellate court. This Court is unanimous on the scope of this judgment.

On the issue of this Court's supervision over the Judicial and Bar Council, I acknowledge that this Court has already taken cognizance and docketed as separate matters the deletion of Rule 8, Section 1 of JBC-009

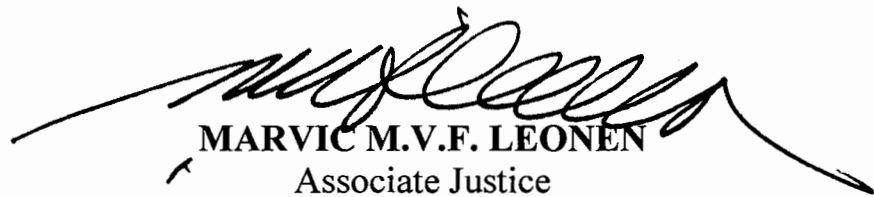


and the removal of incumbent Supreme Court Senior Associate Justices as consultants of the Judicial and Bar Council.¹⁸

However, I reiterate that the Judicial and Bar Council is not mandated to submit its revised internal rules to this Court for approval. *Jardeleza v. Sereno*¹⁹ emphasized that this Court's power of judicial review is only to ensure that rules are followed.²⁰ It has neither the power to lay down these rules nor the discretion to modify or replace them.²¹

The Internal Rules of the Judicial and Bar Council is necessary and incidental to the function conferred to it by the Constitution. The Constitution may have provided the qualifications of the members of the Judiciary, but it 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. To do so would be an unconstitutional affront to the Judicial and Bar Council's independence.

ACCORDINGLY, I concur only in the result.



MARVIC M.V.F. LEONEN
Associate Justice

¹⁸ *Aguinaldo v. Aquino*, G.R. No. 224302, November 29, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/224302.pdf>> 40 [Per J. Leonardo-De Castro, En Banc].

¹⁹ G.R. No. 213181, August 19, 2014, 733 SCRA 279 [Per J. Mendoza, En Banc].

²⁰ Id. at 326.

²¹ Id.