

Republic of the Philippines
SUPREME COURT
MANILA

**REPUBLIC OF THE
PHILIPPINES,
REPRESENTED BY
SOLICITOR GENERAL
JOSE C. CALIDA,**

Petitioner,

G.R. No. _____

- versus -

**MARIA LOURDES P.A.
SERENO,**

Respondent.

X-----X

**For: *Quo Warranto*
under Section 5(1),
Article VIII of the
1987 Constitution and
Rule 66 of the Rules of
Court**

P E T I T I O N

Petitioner Republic of the Philippines, represented by Solicitor General Jose C. Calida, respectfully submits this Petition:

PREFATORY STATEMENT

1. Under Section 7(3), Article VIII of the 1987 Constitution, the Chief Justice of the Supreme Court of the Republic of the Philippines, like any member of the judiciary, must be of proven integrity. Cognizant of this eligibility requirement, the Judicial and Bar Council in 2012 directed all applicants for the position of Chief Justice to submit *inter alia* all statements of assets and liabilities filed prior to their application. Respondent Maria Lourdes P.A. Sereno did not do so, although she began her government service as a professor at the University of the Philippines College of Law from 1986 to 2006. The Report to the JBC nevertheless mistakenly stated "complete requirements" opposite Sereno's name. This misled the JBC into including her in the shortlist; she was subsequently appointed to the

highest position in the Judiciary notwithstanding her failure to prove her integrity.

2. The Solicitor General has to address this anomaly. He is, after all, duty bound to advocate a uniform and consistent compliance with the Constitution, the laws, and the JBC rules: there can be no special treatment for Sereno no matter how impressive her credentials may be. The principle of equal protection of the laws demands that all aspirants to the judiciary pass the test of integrity. This cannot be done if some are given a pass and others are subjected to strict scrutiny to hurdle that criterion.

3. In the present petition, the Republic through Solicitor General Jose C. Calida asks that this Honorable Court exercise its original jurisdiction to oust Maria Lourdes P.A. Sereno from the office of the Chief Justice, in obeisance to the Court's solemn constitutional duty to apply the law without fear or favor. She is unlawfully holding the position of Chief Justice; the Court cannot, therefore, shirk its responsibility to declare the position vacant.

NATURE AND TIMELINESS OF THE PETITION

4. This is a petition for *quo warranto* under Section 5(1), Article VIII of the 1987 Constitution and Rule 66 of the Rules of Court seeking the ouster of Respondent as Chief Justice of the Supreme Court of the Republic of the Philippines. The suit is being filed with this Honorable Court as an exception to the application of the doctrine of hierarchy of courts because the issues raised are of transcendental importance.¹ This is a case of first impression: it is unprecedented, involving as it does the highest position in the Judiciary. Plainly, no tribunal can best resolve it than the Court.

5. The suit is seasonably filed. To be sure, Section 11, Rule 66 of the Rules of Court provides that "a petition for *quo warranto* against a public officer or employee shall be filed within one year after the cause of his ouster, or the

¹ The Diocese of Bacolod v. Commission on Elections, G.R. No. 205728, January 21, 2015, 747 SCRA [Per J. Leonen, En Banc].

right of the petitioner to hold such office or position, arose.” This limitation, however, does not apply to the petitioner. It has an imprescriptible right to bring a *quo warranto* petition under the maxim *nullum tempus occurit regi* which means, “no time runs against the king.”²

6. Assuming *arguendo* that the one-year bar applies to the Republic, this petition is filed within the reglementary period.

7. An exception to the statute of limitations in *quo warranto* is when “there was no perceived acquiescence to or inaction on the part of Petitioner which amounted to abandonment of his right to the petition.”³ Petitioner only came to know of the disqualification of Respondent during the hearings conducted by the House of Representative’s Committee on Justice on the impeachment complaint against Respondent in December 2017. During the hearings, the appointment of Respondent as Chief Justice was put into question because she failed to submit her statements of assets, liabilities and net worth, showing that she did not pass the test of integrity.

8. The Republic is exempt from filing fees pursuant to Section 22, Rule 141 of the Rules of Court.

THE PARTIES

9. Petitioner Republic is a sovereign entity with capacity to sue and be sued. It has the authority to commence a *quo warranto* proceeding under Section 1, Rule 66 of the Rules of Court. It is represented in this petition by the Solicitor General who has the mandate to “represent the Government of the Philippines, its agencies and instrumentalities, and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of a lawyer.”⁴ The Solicitor General’s authority to institute a *quo warranto* petition on behalf of the Republic

² *Agcaoili v. Suguitan*, G.R. No. L-24806, February 13, 1926.

³ *Cristobal v. Melchor*, G.R. No. L-43203, July 29, 1977.

⁴ Section 1, P.D. 478, June 4, 1974.

is provided under Section 2, in relation to Section 7, Rule 66 of the Rules of Court.

10. The Solicitor General may receive the writs, orders, and processes of the Court at No. 134 Amorsolo Street, Legaspi Village, Makati City.

11. Respondent Maria Lourdes P.A. Sereno may be served with the writs, orders, and processes of the Court at 31 Hunt Street, Filinvest East, Antipolo City, through the Office of the Chief Justice, Supreme Court of the Philippines, Padre Faura, Ermita, Manila.

THE SUBSTANTIVE FACTS⁵

12. Respondent Maria Lourdes P.A. Sereno was appointed as a permanent faculty member of the University of the Philippines College of Law in 1986.⁶ She continued teaching in UP until June 1, 2006.⁷

13. While employed with UP, Respondent submitted her Statement of Assets, Liabilities and Net Worth as of December 31, 2002.⁸ She also submitted to the Office of the Ombudsman, on December 16, 2003, her SALN ending in December 1998.⁹

⁵ Petitioner Republic manifests its earnest efforts to secure and to provide this Honorable Court with certified true copies of all the Annexes appended to its Petition. Inasmuch as petitioner Republic had less than seven (7) working days from receipt of Mallari's letter on 21 February 2018, up to this filing, within which to source said certified true copies, there were government agencies which have yet to comply with petitioner Republic's requests thereon. Hence some annexes are copies only. Heretofore, the petitioner Republic undertakes to submit, or explain non-submission, of certified true copies of documents, should the same be required by this Honorable Court. (rf. GO vs. SUNBANUN [G.R. No. 168240. February 9, 2011.] "The initial determination of what pleadings, documents or order are relevant and pertinent to the petition rests on the petitioner." and REAL vs. BELO [G.R. No. 146224. January 26, 2007.] "When the CA dismisses a petition outright and the petitioner files a motion for the reconsideration of such dismissal, appending thereto the requisite pleadings, documents or order/resolution, this would constitute substantial compliance with the Revised Rules of Court." also QUILO vs. BAJAO [G.R. No. 186199. September 7, 2016.]

⁶ Annex "A," Personal Data Sheet dated July 2, 2012.

⁷ Annex "B," Certification dated December 8, 2017 of Angela D. Escoto, Director of Human Resources Development Office, UP, attaching SALN of Respondent as of December 31, 2002. The OSG requested Escoto of the UP HRDO for certified copies of the certification and its attachments on February 28, 2018 (Annex "B-1"), but Escoto is yet to grant the request. The OSG undertakes to submit to this Honorable Court the certified copies as soon as they are available.

⁸ See Annex "B."

⁹ Annex "C," certified true copy of the Certification dated December 4, 2017 issued by Julie Ann Garcia, SALN In-Charge, Central Records Division of the Office of the Ombudsman attaching the SALN of

14. Respondent took a leave of absence from UP on the following periods:

1. June 1, 2000 – May 31, 2001
2. June 1, 2001 – May 31, 2002
3. November 1, 2003 – May 31, 2004
4. June 1, 2004 – February 10, 2005
5. February 11, 2005 – October 31, 2005
6. November 15, 2005 – May 31, 2006¹⁰

15. On June 1, 2006, Respondent resigned from the UP College of Law.¹¹

16. In July 2010, Respondent applied for the position of Associate Justice of the Supreme Court.¹² In support of her application for appointment, she submitted her SALN for 2006.¹³ Respondent was later appointed as an Associate Justice of the Supreme Court in the same year.¹⁴

17. After the position of Chief Justice became vacant in 2012, the Judicial and Bar Council issued an Announcement for the opening of the position. In the Announcement, the JBC directed that candidates submit the following requirements, in addition to the usual documentary requirements:

1. Sworn Statement of Assets, Liabilities, and Networth (SALN)
 - a. for those in the government: all previous SALNs (up to 31 December 2011)

Respondent as of December 31, 1998. The copy was obtained through the OSG's letter of request dated February 28, 2018 (Annex "C-1").

¹⁰ Annex "D," Letter dated December 8, 2017 from Angela D. Escoto, Director of Human Resources Development Office, UP. The OSG requested Escoto of the UP HRDO for a certified copy of the letter 8 (See Annex "B-1"), but Escoto is yet to grant the request. The OSG undertakes to submit to this Honorable Court the certified copy as soon as it is available.

¹¹ See Annex "D."

¹² Annex "E," Letter dated December 18, 2017 of Atty. Socorro D' Marie T. Inting, Chief of the Office of Recruitment, Selection and Nomination of the JBS to Cong. Reynaldo Umali. The letter attached the SALNs of Respondent for the years 2006, 2009, 2010, 2011 and the Explanation Letter of Respondent dated July 23, 2012.

¹³ See Annex "E."

¹⁴ Annex "F" Oath of Office of Respondent dated August 16, 2010. See also Certificate of Appointment dated August 13, 2010 (Annex "F-1").

b. for those from the private sector: SALN as of 31 December 2011

2. Waiver in favor of the JBC of the confidentiality of local and foreign bank accounts under the Bank Secrecy Law and Foreign Currency Deposits Act.¹⁵

18. On June 5, 2012, the JBC made another Announcement for vacancies in several positions, including that of the Chief Justice of the Supreme Court. In this Announcement, the JBC iterated that applicants to the position of Chief Justice must meet the following Constitutional qualifications:

A member of the Supreme Court must:

- a. be a natural-born citizen of the Philippines
- b. be at least forty (40) years of age but not seventy years old or more
- c. have been for fifteen (15) years or more a judge of a lower court or engaged in the practice of law in the Philippines; and
- d. be of proven competence, integrity, probity, and independence.¹⁶

19. The announcement emphasized that candidates for the Chief Justice post must submit "all previous SALNs (up to 31 December 2011) for those in the government or SALN as of 31 December 2011 for those from the private sector;" and reminded applicants that those with "incomplete or out of date documentary requirements will not be interviewed or considered for nomination."¹⁷

20. In her application for the Chief Justice post, Respondent submitted to the JBC her SALNs for the years 2009, 2010, and 2011. She also submitted an Explanation Letter dated July 23, 2012 on why she submitted her SALN only for the mentioned years.¹⁸ In it, she requested that the requirements she submitted "be viewed as that from a private sector [sic], before [her] appointment to the Government again in 2010 as Associate Justice of the

¹⁵ Annex "G," JBC Announcement dated June 4, 2012.

¹⁶ Annex "H," JBC Announcement dated June 5, 2012.

¹⁷ See Annex "H."

¹⁸ See Annex "E."

Supreme Court."¹⁹ It does not appear that Respondent's request was even approved by the JBC.²⁰

21. On July 2, 2012, Respondent accepted her nomination for the position of Chief Justice.²¹ On August 24, 2012, she was appointed as the Chief Justice of the Supreme Court.²²

22. Five years later, that is, on August 30, 2017, Atty. Larry Gadon filed against Respondent an impeachment complaint based on the following grounds: culpable violation of the Constitution, corruption, high crimes, and betrayal of public trust. Gadon alleged, among others, that Respondent failed to truthfully declare her SALNs.²³ Gadon also claimed that Respondent failed to disclose "exorbitant lawyer's fees in the amount of SEVEN HUNDRED FORTY-FIVE THOUSAND U.S. DOLLARS (\$745,000.00) or THIRTY-SEVEN MILLION PESOS (₱37,000,000.00), which she received from the Philippine government."²⁴

23. The complaint was endorsed by twenty-five congressmen.²⁵ Finding the complaint sufficient in form and substance, the House of Representatives' Committee on Justice conducted hearings on the complaint. During the proceedings, the invalidity of Respondent's appointment as Chief Justice was exposed in view of her failure to submit her SALNs for several years from 1986 to 2006 when she was a professor at the UP College of Law. It was discovered that aside from her SALNS for the years 2006, 2009, 2010, and 2011 which she submitted in her applications for Associate Justice and Chief Justice, Respondent only filed SALNs for the years 1998, 2002, and 2006 during her tenure as law professor at the UP College of Law from 1986

¹⁹ See Annex "E."

²⁰ Annex "I," Excerpts of the Transcript of Stenographic Notes taken on February 7, 2018 (MLMR/VI-3), House of Representatives' Committee on Justice hearings on Respondent's impeachment.

²¹ Annex "J," Letter of Respondent dated July 2, 2012 addressed to Senior Associate Justice Antonio T. Carpio.

²² Annex "K," Certificate of Appointment dated August 24, 2012. See also <http://jbc.judiciary.gov.ph/index.php/about-the-jbc/jbc-members/58>; last accessed on March 2, 2018.

²³ Verified Complaint for Impeachment dated August 2, 2017, par. 3.1.6.

²⁴ Id. at 4.6.2.

²⁵ Annex "L," A.M. No. 17-11-12 dated February 20, 2018.

up to 2006.²⁶ Respondent was nominated to the positions of Associate Justice and Chief Justice despite her failure to file her SALNs which were required to determine whether she passed the Constitutional requirement of integrity.

24. Thereafter, the Solicitor General received a letter dated February 21, 2018 from Atty. Eligio Mallari requesting the filing of *quo warranto* proceedings against Respondent.²⁷

GROUND FOR THE ALLOWANCE OF THE PETITION

A. PROCEDURAL

I

A PETITION FOR *QUO WARRANTO* IS THE APPROPRIATE REMEDY TO QUESTION THE VALIDITY OF THE APPOINTMENT OF RESPONDENT AS CHIEF JUSTICE OF THE SUPREME COURT.

B. SUBSTANTIVE

II

THE APPOINTEE FOR THE POSITION OF CHIEF JUSTICE MUST BE A PERSON OF PROVEN INTEGRITY.

III

RESPONDENT IS UNLAWFULLY HOLDING THE POST OF CHIEF JUSTICE OF THE SUPREME COURT OF THE PHILIPPINES.

²⁶ See Annexes “B” and “E.”

²⁷ Annex “M,” Letter of Atty Eligio Mallari dated February 21, 2018.

IV

RESPONDENT FAILED TO DECLARE HER ASSETS, LIABILITIES, AND NET WORTH IN ACCORDANCE WITH LAW.

V

RESPONDENT IS A DE FACTO PUBLIC OFFICER WHO CAN BE OUSTED THROUGH A QUO WARRANTO PROCEEDING.

DISCUSSION

A. PROCEDURAL ARGUMENT

I. A PETITION FOR QUO WARRANTO IS THE APPROPRIATE REMEDY TO QUESTION THE VALIDITY OF THE APPOINTMENT OF RESPONDENT AS CHIEF JUSTICE OF THE SUPREME COURT.

25. *Quo warranto* is the proper remedy to question the validity of Respondent's appointment.

26. The Latin term, which literally means "by what authority," is now recognized as an extraordinary legal remedy whereby the State challenges a person or an entity to show by what authority he holds a public office or exercises a public franchise. The Revised Rules of Court provide that the action is brought by either the Solicitor General or by the public prosecutor in the name of the

Republic of the Philippines.²⁸ It is the principal remedy and an effective method to challenge a claim to public office.

27. *Quo warranto* was originally used as a writ filed by monarchs to challenge claims of royal subjects to an office or franchise supposedly granted by the crown. The ancient writ of *quo warranto* was a high prerogative writ in the nature of a writ of right by the King against anyone who usurped or claimed any office, franchise or liberty of the crown, to inquire by what authority the usurper supported his claim, in order to determine the right.²⁹

28. In the Philippines, *quo warranto* was formalized into law with the passage of the Code of Civil Procedure in August 7, 1901.³⁰ Section 197 of the Code provides:

Usurpation for Office or Franchise, Etc.

SECTION 197. *Usurpation of an Office or Franchise.* — A civil action may be brought in the name of the Government of the Philippine Islands:

1. Against a person who usurps, intrudes into, or unlawfully holds or exercises a public civil office or a franchise within the Philippine Islands, or an office in a corporation created by the authority of the Government of the Philippine Islands;

2. Against a public civil officer who does or suffers an act which, by the provisions of law, works a forfeiture of his office;

3. Against an association of persons who act as a corporation within the Philippine Islands, without being legally incorporated or without lawful authority so to act.³¹

29. The action was incorporated in the 1940 Rules of Court under Rule 68 which expounded on the procedure. The action was retained in the Original Rules of Court under

²⁸ Section 1 and 2, Rule 66 of the Revised Rules of Court.

²⁹ *Agcaoili vs. Suguitan*, G.R. No. L-24806, February 13, 1926.

³⁰ Act No. 190.

³¹ Section 197 of Code of Civil Procedure, Act No. 190, as amended, August 7, 1901.

Rule 66 and is present in the current Revised Rules of Court, still under Rule 66.

30. Rule 66 at present lays down the grounds for the issuance of the writ of *quo warranto* in its Section 1, to wit:

RULE 66
Quo Warranto

Section 1. *Action by Government against individuals.* — An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:

(a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;

(b) A public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office; or

(c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act.

31. The petition for *quo warranto* against Respondent should be differentiated from the impeachment proceedings against her at the House of Representatives. The writ of *quo warranto* is being sought to question the validity of her appointment; in turn, the impeachment complaint accuses her of committing culpable violation of the Constitution and betrayal of public trust while in office. Stated differently, the petitioner is seeking her ouster from her office because she did not prove her integrity as an applicant for the position. The complainant in the impeachment proceedings wants her removed as the sitting Chief Justice for impeachable offenses.

32. It is beyond cavil that even an impeachable officer can be subject to *quo warranto* proceedings, as the Court itself has shown through its rules and decisions.

33. On May 4, 2010, the Court promulgated A.M. No. 10-4-29-SC, known as the 2010 Rules of the Presidential

Electoral Tribunal. Under these rules an election contest is initiated by the filing of an election protest³² or a petition for *quo warranto*³³ against the President or Vice-President.³⁴ Rules 14, 15, and 16 of the 2010 Rules of the Presidential Electoral Tribunal reads:

RULE 14. *How initiated.* – An election contest is initiated by the filing of an election protest or a petition for *quo warranto* against the President or Vice-President. An election protest shall not include a petition for *quo warranto*. A petition for *quo warranto* shall not include an election protest. (R13).

RULE 15. *Election protest.* – The registered candidate for President or Vice-President of the Philippines who received the second or third highest number of votes may contest the election of the President or Vice-President, as the case may be, by filing a verified election protest with the Clerk of the Presidential Electoral Tribunal within thirty days after the proclamation of the winner. (R14).

RULE 16. *Quo warranto.* – A verified petition for *quo warranto* contesting the election of the President or Vice-President on the ground of ineligibility or disloyalty to the Republic of the Philippines may be filed by any registered voter who has voted in the election concerned within ten days after the proclamation of the winner. (R16).

34. Although the aforesaid rules pertain to the President and Vice President, said rules may be applied by analogy. The Court recognizes the availability of *quo warranto* against an impeachable officer. Hence, Respondent cannot claim that as Chief Justice, she can only be removed by impeachment under Section 2, Article XI of the Constitution.

³² A.M. No. 10-4-29-SC, dated May 4, 2010.

³³ A.M. No. 10-4-29-SC, RULE 16. Quo warranto. – A verified petition for quo warranto contesting the election of the President or Vice-President on the ground of ineligibility or disloyalty to the Republic of the Philippines may be filed by any registered voter who has voted in the election concerned within ten days after the proclamation of the winner. (R16).

³⁴ A.M. No. 10-4-29-SC, RULE 14. How initiated. – An election contest is initiated by the filing of an election protest or a petition for quo warranto against the President or Vice-President. An election protest shall not include a petition for quo warranto. A petition for quo warranto shall not include an election protest. (R13).

35. The ruling of the Court in *Funa v. Villar*³⁵ also shows that *quo warranto* may be resorted to even against impeachable officers. In *Funa*, Villar was designated as an Acting Chairman of the Commission on Audit. Later on, he was appointed as the Chairman. When the Commission on Appointments confirmed his appointment, it indicated in the appointment papers that he was to serve until the expiration of the original term of his office as COA Commissioner. Funa filed a petition for certiorari and prohibition under Rule 65 to challenge the constitutionality of the Villar's appointment. Funa contended that Villar's appointment is proscribed by the constitutional ban on reappointment under Section 1(2), Article IX(D) of the 1987 Constitution. Villar, for his part, initially asserted that his appointment as COA Chairman is valid up to February 2, 2015 or seven years reckoned from February 2, 2008 when he was appointed to the position of Chairman.

36. While the Court stated that the petition was mooted by Villar's act of vacating his position, it nevertheless resolved the case due to the following: (a) there was a grave violation of the Constitution; (b) it involved a situation of exceptional character and is of paramount public interest; (c) the constitutional issue raised required the formulation of controlling principles to guide the bench, the bar and the public; and (d) the case was capable of repetition yet evading review. In upholding the position of Funa, the Court ruled:

Where the Constitution or, for that matter, a statute, has fixed the term of office of a public official, the appointing authority is without authority to specify in the appointment a term shorter or longer than what the law provides. If the vacancy calls for a full seven-year appointment, the President is without discretion to extend a promotional appointment for more or for less than seven (7) years. There is no in between. He or she cannot split terms. It is not within the power of the appointing authority to override the positive provision of the Constitution which dictates that the term of office of members of constitutional [bodies shall be seven (7) years.] A contrary reasoning "would make the term of office to depend upon the pleasure or caprice of the [appointing authority] and not upon the will [of the

³⁵ G.R. No. 192791, April 24, 2012.

framers of the Constitution] of the legislature as expressed in plain and [undoubted language in the law].”

In net effect, then President Macapagal-Arroyo could not have had, under any circumstance, validly appointed Villar as COA Chairman, for a full 7-year appointment, as the Constitution decrees, was not legally feasible in light of the 7-year aggregate rule. Villar had already served 4 years of his 7-year term as COA Commissioner. A shorter term, however, to comply with said rule would also be invalid as the corresponding appointment would effectively breach the clear purpose of the Constitution of giving to every appointee so appointed subsequent to the first set of commissioners, a fixed term of office of 7 years. To recapitulate, a COA commissioner like respondent Villar who serves for a period less than seven (7) years cannot be appointed as chairman when such position became vacant as a result of the expiration of the 7-year term of the predecessor (Carague). **Such appointment to a full term is not valid and constitutional, as the appointee will be allowed to serve more than seven (7) years under the constitutional ban.**³⁶

37. *Funa* belies Respondent’s notion that an impeachable officer, like the COA Chairperson, can only be ousted through impeachment. The Court did not dismiss the petition on the ground that the COA Chairperson may only be removed by impeachment. In other words, the constitutional provision on impeachment does not preclude the separation of an impeachable officer for reasons such as the failure to prove eligibility to the position to which that officer was appointed.

38. Respondent cannot claim that *Funa* is an outlier. Almost seventy years earlier, the Court ruled in similar fashion in *Nacionalista Party v. De Vera*.³⁷ In that case, the Court held that a *quo warranto* proceeding and not prohibition is the proper remedy to inquire into validity of the appointment of then Commission on Elections Chairman Vicente De Vera.

39. The instant *quo warranto* petition was filed because Respondent is performing the functions of Chief

³⁶ Id.; Emphasis supplied.

³⁷ G.R. No. L-3474, December 7, 1949.

Justice by virtue of a void appointment: she did not submit complete SALNs that would have determined whether she possessed the integrity required of members of the judiciary.

40. Thus, Respondent's assumption of the position of Chief Justice under the color of an executive appointment is a public wrong that can only be corrected by *quo warranto*.³⁸ As the Court held in *Agcaoili v. Suguitan*:³⁹

In all public matters a writ of *quo warranto* is a writ of right at the suit of the state, and issues as a matter of course upon demand of the proper officer and the court has no authority to withhold leave to file a petition therefor. (Citations omitted)

B. SUBSTANTIVE ARGUMENTS

II. THE APPOINTEE FOR THE POSITION OF CHIEF JUSTICE MUST BE A PERSON OF PROVEN INTEGRITY.

41. Only a person of proven integrity must be appointed to the position of Chief Justice of the Supreme Court of the Philippines pursuant to the 1987 Constitution, the rules of the JBC, and legislative history.

42. Section 7(3), Article VIII of the 1987 Constitution requires that all members of the Judicial Department, that is, including the Members of the Supreme Court, must be of proven integrity, among others, thus:

Section 7. (3) **A Member of the Judiciary must be a person of proven** competence, **integrity**, probity, and independence.

³⁸ See *Cui vs. Cui*, 60 Phil 37, G.R. No. 39773, April 9, 1934 citing *Murphy vs. Farmers' Bank* (20 Pa., 415).

³⁹ G.R. No. L-24806, February 13, 1926.

43. The Rules of the Judicial and Bar Council⁴⁰ in force at the time of the questioned appointment, citing the 1987 Constitution, similarly state:

RULE 2

CONSTITUTIONAL AND STATUTORY
QUALIFICATIONS
FOR APPOINTMENT

SECTION 1. *Qualifications applicable to all Members of the Judiciary and the Ombudsman and his deputies.*- (a) No person may be appointed Member of the Supreme Court or any lower collegiate court or as Ombudsman or deputy Ombudsman unless he is a natural-born citizen of the Philippines (CONST. Art. VIII, Section 7, par. 1; *Id.*, Art. XI, Section 8)...

(c) A Member of the Judiciary must be of **proven** competence, **integrity**, probity and independence (*id.*, *id.*, par. 3) and a member of the Philippine Bar (*id.*, *id.*, par. 2).

SEC. 2. *Additional qualifications for Members of the Supreme Court.* - No person shall be appointed Member of the Supreme Court unless he is at least forty years of age and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines. (*id.*, *id.*, par 1).

44. During the deliberations of the Constitutional Commission on the Article on the Judiciary, Commissioner Jose N. Nolleto ("Commissioner Nolleto") presented Resolution No. 188 asking the Committee on the Judiciary "to enshrine in the Article on the Judiciary of the new Constitution, **ethical rules on qualifications** and conduct of Members of the Judiciary."⁴¹ In support of his proposal, Commissioner Nolleto explained:

MR. NOLLEDO. If the Commissioner does not mind, I presented Resolution No. 188, which is not mentioned in the committee report, entitled:

RESOLUTION TO ENSHRINE IN THE ARTICLE ON
THE JUDICIARY OF THE NEW CONSTITUTION,

⁴⁰ Promulgated on November 18, 2000; effective on December 1, 2000.

⁴¹ IV Record of the Constitutional Commission, p. 440 (July 10, 1986), emphasis and underscoring supplied.

ETHICAL RULES ON QUALIFICATIONS AND
CONDUCT OF MEMBERS OF THE JUDICIARY.

It is unfortunate that the reputation of our judges is not so good and so, I do not know what is the sense of the Committee. I would like to tell the members in advance that I intend to present this as an amendment for consideration — that in connection with Section 4, perhaps we can add a subsection there which may run like this: THAT NO ONE SHALL BE APPOINTED AS MEMBER OF THE JUDICIARY UNLESS HE IS A PERSON OF PROVEN COMPETENCE, INTEGRITY, PROBITY AND INDEPENDENCE and THAT THE ACTUATIONS OF A MEMBER OF THE JUDICIARY IN OR OUTSIDE THE COURT MUST BE BEYOND REPROACH.

This is similar to a provision in “Canons of Judicial Ethics,” but history states that those provisions are more honored in breach than in observance.⁴²

45. Four days later, Commissioner Nollado formally moved for the amendment of the Article on the Judiciary to prescribe additional qualifications for judicial officers. The amendment was approved, thus:

The Floor Leader is recognized.

MR. RAMA. Mr. Presiding Officer, I ask that Commissioner Nollado be recognized.

THE PRESIDING OFFICER (Mr. Bengzon). Commissioner Nollado is recognized.

MR. NOLLEDO. Thank you, Mr. Presiding Officer.

My amendment is to add a new subsection (3) on Section 4 which reads: A MEMBER OF THE JUDICIARY MUST BE A PERSON OF PROVEN COMPETENCE, INTEGRITY, PROBITY, AND INDEPENDENCE.

Before the Committee decides on whether or not to accept the amendment, I would like to explain it first.

Mr. Presiding Officer, this is a moral provision lifted with modifications from the “Canons of Judicial Ethics.” The reputation of our justices and judges has been unsavory. I hate to say this, but it seems that it has become the general rule that the members of the Judiciary are corrupt and the few honest ones are the exceptions. We hear of justices and judges who would issue injunctive relief to the highest bidder and would decide cases based on hundreds of thousands, and even millions, mercenary reasons.

⁴² Id.

The members of the deposed Supreme Court, with a few exceptions, catered to the political likings and personal convenience of Mr. Marcos by despicably surrendering their judicial independence. Why should we resist incorporating worthy moral principles in our fundamental law? Why should we canalize our conservative thoughts within the narrow confines of pure legalism?

I plead to the members of the Committee and to my colleagues in this Constitutional Commission to support my amendment in order to strengthen the moral fiber of our Judiciary. Let not our Constitution be merely a legal or political document. Let it be a moral document as well.

Thank you.

THE PRESIDING OFFICER (Mr. Bengzon). The Chair commends Commissioner Nolledo for staying within the five-minute rule.

Thank you very much.

What does the Committee say?

MR. ROMULO. **First, we wish to make of record that Commissioner Nolledo has filed with us such a resolution [Resolution No. 188], and we joyfully accept his amendment** in the hope that with his amendment the lawyers in heaven will have more than St. Thomas More.

MR. NOLLEDO. Thank you, Mr. Presiding Officer.

I would like to mention that Commissioners Napoleon Rama and Crispino de Castro are coauthors of this amendment.

I also thank the Committee.

THE PRESIDING OFFICER (Mr. Bengzon). **The amendment has been accepted by the Committee.**

Is there any objection? (Silence) The Chair hears none; **the amendment is approved.**⁴³

46. According to deliberations of the 1986 Constitutional Commission cited above, the framers of the Constitution actually intended to expand the qualifications required of judicial aspirants to include what Commissioner Nolledo coined as a "moral provision" now appearing as Section 7(3), Article VIII of the 1987 Constitution.

⁴³ IV Record of the Constitutional Commission, p. 484 – 485 (July 14, 1986), emphasis and underscoring supplied.

47. The 1987 Constitution is not unique in incorporating a moral provision as a prerequisite for judicial appointments. Generally accepted principles of international law likewise require that only individuals of integrity qualify for appointment to the judiciary.

48. The United Nations Basic Principles on the Independence of the Judiciary (“Basic Principles”) declare that, “**Persons selected for judicial office shall be individuals of integrity.**”⁴⁴ These Basic Principles were unanimously adopted during the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1985.⁴⁵ One hundred twenty-four States were represented at the Congress.⁴⁶

49. In addition, the United Nations General Assembly adopted Resolution 40/146 on December 13, 1985 exhorting governments “to respect [these Basic Principles] and to take them into account within the framework of their national legislation and practice.” This Resolution⁴⁷ was adopted without a vote by the General Assembly,⁴⁸ evidencing consensus among States that their judiciaries are legally bound to abide by these Basic Principles.

50. Seventeen years later, that is, in 2002, these Basic Principles served as a foundation for the Bangalore Draft Code of Judicial Conduct⁴⁹ (“Bangalore Draft”), indicating consistency among States in recognizing these

⁴⁴ Emphasis supplied.

⁴⁵ See UN General Assembly Resolution 40/146, December 13, 1985.

⁴⁶ Report on the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, p. 102.

⁴⁷ See ICJ Reports, 1996, pp. 226, 254–255, Legality of the Threat or Use of Nuclear Weapons Advisory Opinion of the International Court of Justice where the significance of General Assembly Resolutions was explained as follows:

The Court notes that General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an opinio juris. To establish whether this is true of a General Assembly resolution, it is necessary to look at its content and the conditions of its adoption; it is also necessary to see whether an opinio juris exists as to its normative character. Or a series of resolutions may show the gradual evolution of the opinio juris required for the establishment of a new rule. (Emphasis supplied)

⁴⁸ See <https://digitallibrary.un.org/record/280101/> last accessed February 28, 2018.

⁴⁹ See A.M. No. 03-05-01-SC, otherwise known as the New Code of Judicial Conduct, First Whereas Clause.

principles as legally binding. Such unanimity cannot be disputed because even the Court has characterized these principles as having “universal recognition.”⁵⁰

51. These Basic Principles, having satisfied the elements of established, widespread, and consistent state practice, and *opinio juris*,⁵¹ are considered as generally accepted principles of international law incorporated into Philippine law by virtue of Section 2, Article II of the 1987 Constitution. The Basic Principles constitute a binding legal obligation to the Republic of the Philippines, of which the Court is a part, to ensure that only persons of integrity occupy its judicial positions.

52. It is ineluctable that a person’s integrity is an indispensable qualification for membership in the Judiciary. As will be discussed below, Respondent failed to comply with the requirement of being a person of proven integrity, making her ineligible for any position in the Judiciary. Her unlawful occupation of the position of Chief Justice of the Supreme Court is a continuing violation of the Constitution and a breach of international law that the Republic of the Philippines cannot and should not countenance.

III. RESPONDENT IS UNLAWFULLY HOLDING THE POSITION OF CHIEF JUSTICE OF THE SUPREME COURT OF THE PHILIPPINES.

53. Respondent was appointed as Chief Justice of the Supreme Court although she did not show that she is a person of proven integrity, an indispensable qualification for membership in the judiciary under Section 7(3), Article VIII of the 1987 Constitution. Such ineligibility means that she is unlawfully holding the position of Chief Justice of the Supreme Court, although she was ostensibly recommended by the Judicial and Bar Council under Section 8(5), Article VIII of the 1987 Constitution.

⁵⁰ Id., Third Whereas Clause; emphasis supplied.

⁵¹ See *Mijares v. Ranada*, G.R. No. 139325, April 12, 2005.

54. Section 8(5), Article VIII, 1987 Constitution vests the JBC with the principal function of recommending appointees to the Judiciary. Pursuant to its mandate, the JBC promulgated JBC-009, the Rules of the Judicial and Bar Council which should be considered in the selection and nomination of prospective appointees.⁵²

55. The JBC Rules, as administrative regulations that implement the Constitution, have the force and effect of law.⁵³ They are actually "rules implementing the Constitution."⁵⁴ In *Villanueva v. JBC*,⁵⁵ the Court stated that the JBC has the authority to set the standards or criteria in choosing its nominees for every vacancy in the judiciary:

As an offspring of the 1987 Constitution, the JBC 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. Thus, the JBC is burdened with a great responsibility that is imbued with public interest as it determines the men and women who will sit on the judicial bench. While the 1987 Constitution has provided the qualifications of members of the judiciary, this does not preclude the JBC from having its own set of rules and procedures and providing policies to effectively ensure its mandate.

The functions of searching, screening, and selecting are necessary and incidental to the JBC's principal function of choosing and recommending nominees for vacancies in the judiciary for appointment by the President. However, the Constitution did not lay down in precise terms the process that the JBC shall follow in determining applicants' qualifications. In carrying out its main function, the JBC has the authority to set the standards/criteria in choosing its nominees for every vacancy in the judiciary, subject only to the minimum qualifications required by the Constitution and law for every position. The search for these long held qualities necessarily requires a degree of flexibility in order to determine who is most fit among the applicants. Thus, the JBC has sufficient but not unbridled license to

⁵² JBC-009 dated October 18, 2000.

⁵³ National Artist for Literature Virgilio Almario et al. v. The Executive Secretary et al., G.R. No. 189028, 16 July 2013 citing *Spouses Almeda v. Court of Appeals*, 326 Phil. 309, 321 (1996).

⁵⁴ Ferdinand R. Villanueva vs. Judicial and Bar Council, G.R. No. 211833, 07 April 2015.

⁵⁵ *Id.*

act in performing its duties.⁵⁶

56. It cannot be gainsaid that the JBC's role is to determine whether an applicant possesses the qualifications of competence, integrity, probity, and independence as dictated by Section 7(3), Article VIII of the 1987 Constitution.⁵⁷ The JBC is accordingly empowered to require documentary and other evidence from all judicial aspirants which the JBC believes tend to prove their satisfaction of these qualifications.⁵⁸

57. Under Rule 4 of the JBC Rules, the JBC laid down the guidelines on how it will verify an applicant's integrity:

RULE 4 INTEGRITY

SECTION 1. *Evidence of integrity.* - **The Council shall take every possible step to verify the applicant's record of and reputation for honesty, integrity,** incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards. For this purpose, the applicant shall submit to the Council certifications or testimonials thereof from reputable government officials and non-governmental organizations, and clearances from the courts, National Bureau of Investigation, police, and from such other agencies as the Council may require.⁵⁹

58. In *Francis H. Jardeleza v. Chief Justice Maria Lourdes P.A. Sereno*,⁶⁰ the Court, citing guidelines issued by the JBC, stated that *integrity* "is closely related to, or if not, approximately equated to an applicant's good reputation for honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards."⁶¹

59. Among the objective tests of *integrity*, therefore, is compliance with moral and ethical standards, regardless

⁵⁶ Id.

⁵⁷ IV Record of the Constitutional Commission, pp. 440 – 441 (July 10, 1986)

⁵⁸ *Jardeleza v. Sereno*, G.R. No. 213181, August 19, 2014.

⁵⁹ JBC – 009, Rule 4, Sections 1-2; emphasis supplied.

⁶⁰ G.R. No. 213181, August 19, 2014.

⁶¹ Id., citing JBC-009, Rules of the Judicial and Bar Council, promulgated on September 23, 2002.

of their form. These moral and ethical standards must include those embodied in written documents, such as the Constitution and legislative enactments.

60. Aside from setting precedent, the Court likewise codified in 2004 certain standards of judicial conduct when it promulgated A.M. No. 03-05-01-SC adopting the *New Code of Judicial Conduct for the Philippine Judiciary* ("New Code of Judicial Conduct").

61. The New Code of Judicial Conduct, in turn, is based on the aforementioned Bangalore Draft. According to the New Code of Judicial Conduct, the following principles of integrity must be observed in the judiciary:

CANON 2
INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

SEC. 3. Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

62. In its *Commentary on the Bangalore Principles of Judicial Conduct* ("*Commentary*"),⁶² the Judicial Integrity Group explained the concept of *integrity*, as follows:

Integrity is the attribute of rectitude and righteousness. The components of integrity are honesty and judicial morality. A judge should always, not only in the discharge of official duties, act honourably and in a manner befitting the judicial office, and be free from fraud, deceit and falsehood, and be good and virtuous in behaviour and in character. There are no

⁶² See https://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf; Last accessed March 2, 2018.

degrees of integrity as so defined. Integrity is absolute. In the judiciary, integrity is more than a virtue; it is a necessity.

63. As with the test applied by the Court in *Jardeleza*, the Judicial Integrity Group affirmed that “scrupulous respect for the law is required”⁶³ of all Members of the Judiciary. The Group was emphatic that “[a] judge is obliged to uphold the law.”⁶⁴

64. The reason for this facet of integrity is self-evident. As explained by the Group, “[w]hen a judge transgresses the law, the judge may bring the judicial office into disrepute, encourage disrespect for the law, and impair public confidence in the integrity of the judiciary itself.”⁶⁵

65. There is no quibbling that both the New Code of Judicial Conduct and the Canons of Judicial Ethics were adopted pursuant to this Honorable Court’s administrative and disciplinary jurisdiction over judges of lower courts.⁶⁶ It may thus be contended that these codes of conduct operate only during the incumbency of judges, and find no application in the determination of whether a person is qualified for appointment to a judicial position. Nevertheless, the canons, principles, and rules contained in these codes demonstrate the Court’s contemporaneous construction⁶⁷ of the term *integrity* as a quality expected of those applying as magistrates.

66. It should not come as a surprise, therefore, that Commissioner Nollo do referred to the Canons of Judicial Ethics as the basis for his proposal that no one shall be appointed to the judiciary unless he is a person of proven integrity.⁶⁸

⁶³ Commentary, p. 76, emphasis and italics in original.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ See 1987 PHIL. CONST., Article VIII, Sec. 6 and 11.

⁶⁷ See *Lim Hoa Ting v. Central Bank of the Philippines*, G.R. No. L-10666, September 24, 1958 citing *Edwards Lessee vs. Darby*, 12 Wheat. 206, 210, where this Honorable Court held that, “In the construction of a doubtful and ambiguous law, the contemporaneous construction of those who are called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect.”

⁶⁸ IV Record of the Constitutional Commission, p. 440 (July 10, 1986); p. 484 – 485 (July 14, 1986)

67. Besides, it cannot be reasonably argued that standards less exacting than those found in the New Code of Judicial Conduct and the Canons of Judicial Ethics apply to a person seeking appointment as the Chief Justice of the highest court of the land. The Chief Justice, above anyone else, must serve as an exemplar of integrity in the Judiciary.

68. Unfortunately, Respondent – in her bid for appointment as Associate Justice, and later as Chief Justice of the Supreme Court – failed to show that she is a person of proven integrity, an indispensable qualification for appointment to the Court.

69. “Proven” is the operative word effectively requiring Respondent, as candidate to the office of the Chief Justice, to demonstrate the truth or existence of her integrity by evidence. In the proceedings before the JBC, the burden is on “an aspiring judge or justice [to justify] [his/her] qualifications for the office when [he/she] presents proof of [his/her] scholastic records, work experience and laudable citations.”⁶⁹

70. The JBC is conscious of the need to establish an applicant’s integrity. In an *Announcement* dated June 5, 2012, the JBC required all applicants for Chief Justice to submit their SALNs:

Candidates for the **Chief Justice** post must submit, in addition to the foregoing, the following documents:

All⁷⁰ previous **SALNs** (up to 31 December 2011) for those in the government or SALN as of 31 December 2011 for those from the private sector; and (2) Waiver in favor of the JBC of the confidentiality of local and foreign currency bank accounts under the Bank Secrecy Law and Foreign Currency Deposits Act.⁷¹

⁶⁹ Francis H. Jardeleza vs. Chief Justice Maria Lourdes P.A. Sereno, et al, G.R. No. 213181, 19 August 2014.

⁷⁰ Emphasis supplied

⁷¹ See Annex “H.”

71. The JBC also announced⁷² that “[a]pplicants with incomplete or out of date documentary requirements will not be interviewed or considered for nomination.”⁷³

72. Respondent’s failure to fulfill the requirement of complete filing of SALNs means that her integrity remains unproven. That the JBC nominated Respondent for the Chief Justice post does not extinguish the fact that she failed to comply with the SALN requirement under the Constitution and relevant laws. As the filing of the SALNs is a constitutional and statutory requirement, the existence of her previous SALNs for the years 1999, 2000, 2001, 2003, 2004, 2005, and 2006 precisely would have furnished the evidence to prove, among others, that she is meticulous in complying with the law.

73. The JBC cannot waive the filing of SALNs with respect to Respondent but demand compliance from the other applicants because it would amount to a violation of the equal protection clause. All persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.⁷⁴ In any case, the apparent waiver cannot bind the State inasmuch as the State is not estopped by the mistakes or errors of its officials.⁷⁵ In short, Respondent is unlawfully holding the position of Chief Justice of the Supreme Court because she did not comply with the requirements that would have shown whether she met the integrity test.

74. In the context of *quo warranto*, there is “unlawful holding” when the public officer did not meet all the legal qualifications for the office. The basis in resisting the authority of an unlawful holder has been explained in this wise:

The right to resist an unlawful holder of authority arose from the absence of a legal basis for that authority. Such an “invader of authority” (*invasor imperii*) could,

⁷² Id.

⁷³ Id.

⁷⁴ Bartolome v. SSS, G.R. No. 192531, November 12, 2014.

⁷⁵ Heirs of Reyes vs. Republic, G.R. No. 150862, 3 August 2006.

under certain circumstances, be resisted.⁷⁶

75. In *Topacio v. Paredes*,⁷⁷ the Court ruled that the right to hold public office shall be determined by *quo warranto*:

Where it is claimed that such an [sic] one unlawfully holds an office by reason of his lack of a legal qualification therefor, his right should be determined by information in the nature of *quo warranto* in the name of the people of the State.

76. Ineligibility, therefore, does not only affect a candidate's qualification but necessarily affects the right to hold the office. This is the thrust of the ruling of the Court in *Maquiling v. Commission on Elections*:⁷⁸

An ineligible candidate who receives the highest number of votes is a wrongful winner. **By express legal mandate, he could not even have been a candidate in the first place**, but by virtue of the lack of material time or any other intervening circumstances, his ineligibility might not have been passed upon prior to election date. Consequently, he may have had the opportunity to hold himself out to the electorate as a legitimate and duly qualified candidate. However, notwithstanding the outcome of the elections, his ineligibility as a candidate remains unchanged. **Ineligibility does not only pertain to his qualifications as a candidate but necessarily affects his right to hold public office.** The number of ballots cast in his favor cannot cure the defect of failure to qualify with the substantive legal requirements of eligibility to run for public office.⁷⁹

77. Pursuant to *Maquiling*, Respondent has no right to hold the office of the Chief Justice because of her ineligibility. She did not qualify at the outset as a proper candidate for the position of Chief Justice.

⁷⁶ Benjamin Straumann, *Early Modern Sovereignty and its Limits*, 436 *Theoretical Inq L* 16.2 (2015). Emphasis supplied.

⁷⁷ *Topacio v. Paredes*, G.R. No. L-8069, 7 October 1912, citing *Greenwood v. Murphy* (131 Ill., 604).

⁷⁸ *Casan Macode Maquiling v. Commission on Elections, et al.*, G.R. No. 195649, 6 April 2013.

⁷⁹ *Casan Macode Maquiling v. Commission on Elections, et al.*, G.R. No. 195649, 6 April 2013.

**IV. RESPONDENT
FAILED TO DECLARE
HER ASSETS,
LIABILITIES, AND NET
WORTH IN
ACCORDANCE WITH
LAW.**

78. The submission of SALNs is not an empty requirement. It is a mechanism devised by law to test the integrity of a person already in the government service.

79. Section 17, Article XI of the 1987 Constitution cannot be any more categorical on the need for all public officers and employees to declare their assets, liabilities, and net worth. The provision states:

SECTION 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

80. The SALN requirement in the Charter recognized what has already been in the statute books. As early as 1960, Congress imposed that requirement in R.A. No. 3019. Section 7 of the law accordingly states:

Section 7. Statement of assets and liabilities. **Every public officer, within thirty days after the approval of this Act or after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file** with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, **a true detailed**

and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: Provided, That public officers assuming office less than two months before the end of the calendar year, may file their statements in the following months of January.

81. Under Section 2(b) of the same law, the term “public officer” includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government.

82. After the Charter took effect, Congress passed Republic Act No. 6713. It amended R.A. No. 3019 by changing the manner and frequency of a public officer’s submission of her declaration of assets, liabilities, and net worth. The new law also made it a duty of public officials and employees to accomplish and submit declarations, under oath, of their SALNs, to institutionalize a high standard of integrity in public service.⁸⁰

Section 8. Statements and Disclosure. - **Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests** including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statements of Assets and Liabilities and Financial Disclosure. - All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The documents must be filed:

⁸⁰ Code of Conduct and Ethical Standards for Public Officials and Employees, §8.

- (a) within thirty (30) days after assumption of office;
- (b) on or before April 30, of every year thereafter; and
- (c) within thirty (30) days after separation from the service.

83. Respondent was a faculty member of the University of the Philippines from 1986 until her resignation on June 1, 2006.⁸¹ As a faculty member of the state university,⁸² she was considered a public officer occupying a closed career position in the career service.⁸³ She nevertheless failed to regularly file her SALN in accordance with the provisions of the Constitution, R.A. No. 3019, and R.A. No. 6713.

84. The UP Diliman Human Resources Development Office (UPD-HRDO), in its *Letter* dated December 8, 2017 to the Committee on Justice of the House of Representatives, certified that “only the SALN for December 31, 2002 can be found in the 201 file” of Respondent.⁸⁴

85. The UPD-HRDO likewise stated that Respondent had no SALN in her 201 file for the years 2000, 2001, 2003, 2004, 2005, and 2006.⁸⁵

86. The UPD-HRDO letter is corroborated by the Office of the Ombudsman Central Records Division in its *Certification* dated December 4, 2017 which states that “there is no SALN filed by MS. MARIA LOURDES A. SERENO for calendar years 1999 to 2009 except SALN ending December 1998 which was submitted to this Office on December 16, 2003.”⁸⁶

⁸¹ See Annexes “A,” and “B.”

⁸² See Act No. 1870, as amended by Republic Act No. 9500, otherwise known as the University of the Philippines Charter of 2008.

⁸³ ADMIN. CODE OF 1987, Book V, Title I, Subtitle A, Chapter 2, Sec. 7.

⁸⁴ See Annex “D.”

⁸⁵ *Id.*

⁸⁶ See Annex “C.”

87. While the UPD-HRDO noted that Respondent was on official leave from the University during intermittent periods,⁸⁷ such fact did not excuse her from complying with the constitutional and statutory requirement of regularly filing her SALNs.

88. Respondent resigned only on June 1, 2006. It was only on that date that her employment relationship with the government was severed. In fact, Respondent, despite being on leave from June 1, 2001 to May 31, 2002,⁸⁸ filed a SALN for that year.⁸⁹ She cannot therefore excuse her failure to file her SALNs on the ground that she was on leave.

89. Of course, in her *Letter* dated July 23, 2012 addressed to the JBC in relation to her application for the Chief Justice position, Respondent intimated that UP had already cleared her of all academic and administrative responsibilities, money and property accountabilities, and from administrative charges in the University as of June 1, 2006.⁹⁰ To her mind, "this clearance can be taken as an assurance that [her] previous government employer considered the SALN requirement to have been met."⁹¹

90. Respondent's assumption is gratuitous. The fact that a public officer filed her SALN can readily be proved by the existence of such SALN, a written document with an indication that it was received by the appropriate government office. Stated otherwise, the determination of whether a public officer has complied with the Constitution and R.A. No. 6713 cannot be made to depend on the clearances issued by her employer or any other government agency, but on her actual showing that the SALN exists.

91. The legal implication of Respondent's failure to file her SALNs to prove her integrity cannot be downplayed. As the SALN filing is a constitutional and statutory

⁸⁷ See Annex "D."

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ See Annex "B" and attachments.

⁹¹ Id.

requirement for public officers and employees, she was bound to submit her SALNs.

92. By submitting SALNs less than those required by the JBC of other applicants for Chief Justice, and without lawful justification for her non-compliance, Respondent was unable to prove her integrity. As it now appears, her Letter dated July 23, 2012, wherein she requested that she be “treated as a private sector,” is but a subterfuge to hide her non-compliance with the law.

93. As Respondent’s unlawful omissions transpired prior to her appointment as an Associate Justice and, later on, as Chief Justice of the Supreme Court of the Philippines, it cannot be said that, at the time of her appointment to the positions, she possessed the integrity demanded of aspiring members of the Judiciary. The failure to comply with the SALN requirement in Section 7 of R.A. No. 3019 is penalized with fine, or imprisonment, and is considered sufficient cause for the removal or dismissal of a public officer. Even without the penalties being imposed on Respondent, her violation of the SALN requirement meant that she did not pass the requirement of integrity.

V. RESPONDENT IS A DE FACTO PUBLIC OFFICER WHO CAN BE OUSTED THROUGH A QUO WARRANTO PROCEEDING.

94. Respondent is a *de facto* public officer whose appointment is void *ab initio*.

95. A *de facto* public officer is one who acts under a color of authority, unlike a mere usurper or one who has neither title nor color of right of an office:

An officer *de facto* is to be distinguished from an officer *de jure*, and is one who has the reputation or appearance of being the officer he assumes to be but who, in fact, under the law, has no right or title to the

office he assumes to hold. He is distinguished from a mere usurper or intruder by the fact that the former holds by some color of right or title while the latter intrudes upon the office and assumes to exercise its functions without either the legal title or color of right to such office. McQuillin, *Municipal Corporations*, Vol. 3, 3rd ed., pp. 376-377.)

To constitute a de facto officer, there must be an office having a de facto existence, or at least one recognized by law and the claimant must be in actual possession of the office under color of title or authority. *State vs. Babb*, 124 W. Va. 428, 20 S.E. (2d) 683. McQuillin, *Municipal Corporations*, *supra* footnote No. 11, p. 383.⁹²

96. In contrast to an officer *de jure* who exercises the powers of an office as a matter of right because of a valid election or appointment, the Court held:

A judge *de facto* is an officer who is not fully invested with all of the powers and duties conceded to judges, but is exercising the office of judge under some color of right. A judge *de facto* may be said to be one who has the reputation of being the officer he assumes to be and yet is not a good officer in point of law — that is, there exists some defect in his appointment or election and in his right to exercise judicial functions at the particular time. *King vs. Bedford Level*, 6 East [Eng. Com. Law Rep.] 356; *Petersilea vs. Stone*, 119 Mass., 465; 20 Am. Rep., 335; *State vs. Carroll*, 38 Conn, 449; Am. Rep., 409.

A judge *de facto* is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice will hold valid so far as they involve the interest of the public and third persons, where the duties of the office were exercised: (a) Without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumes to be; (b) under color of a known or valid appointment or election, where the officer has failed to conform to some precedent requirement or condition, for example, a failure to take the oath or give a bond, or similar defect; (c) under color of a known election or appointment, void because the officer was not eligible,

⁹² Codilla, et al. v. Martinez, etc., et al., G.R. No. L-14569, November 23, 1960.

or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power or defect being unknown to the public; and (d) under color of an election, or appointment, by the same is adjudged to be such. *State vs. Carroll*, 38 Conn., 449; *Wilcox vs. Smith*, 5 Wendell [N. Y.], 231; 21 Am. Dec., 213; *Sheehan's Case* 122 Mass., 445; 23 Am. Rep., 323.⁹³

97. Because a *de facto* officer holds a colorable title of authority, his or her title cannot be collaterally or indirectly assailed. For instance, a petition for the issuance of a writ of prohibition to prevent a *de facto* officer from doing an act or a suit enjoining the enforcement of a judgment cannot be used to question a *de facto* officer's title.⁹⁴ Such title may be questioned only in a *quo warranto* proceeding.⁹⁵

PRAYER

Petitioner Republic of the Philippines consequently prays that this Honorable Court: (1) **DECLARE** as void Maria Lourdes P.A. Sereno's appointment on August 24, 2012 as Chief Justice of the Supreme Court of the Philippines; and (2) **OUST** Maria Lourdes P.A. Sereno from the position of Chief Justice of the Supreme Court of the Philippines.

Petitioner also requests that the Court grant such other relief as may be just and equitable under the circumstances.

⁹³ Luna v. Rodriguez, G.R. No. L-12647, November 26, 1917.

⁹⁴ Tayko, et al. v. Capistrano, et al., G.R. No. L-30188, October 2, 1928.

⁹⁵ Id.