RE: SENIORITY AMONG THE FOUR (4) MOST RECENT APPOINTMENTS TO THE POSITION OF ASSOCIATE JUSTICES OF THE COURT OF APPEALS.

A.M. No. 10-4-22-SC. September 28, 2010

Ponente: CORONA, C.J.

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CORONA, C.J.:

On March 10, 2010, the Office of the President transmitted to the Supreme Court the appointments of Court Appeals (CA) Associate Justices Myra G. Fernandez, Eduardo B. Peralta, Jr., Ramon Paul L. Hernando and Nina G. Antonio-Valenzuela. Their respective appointment papers were attached to the transmittal letter which read:

> HON. REYNATO S. PUNO
> Chief Justice
> Supreme Court of the Philippines
> Manila
>
> Re: Appointments to the Judiciary
>
> Sir:
>
> I am pleased to transmit the appointment papers of the following:
>
> Appointees
>
> Positions
>
> xxx
>
> x x x
>
> x x x
>
> 5
>
> Hon. Nina G. Antonio-Valenzuela
>
> Associate Justice, CA
>
> 6
>
> Hon. Myra G. Fernandez
>
> Associate Justice, CA
>
> 7
>
> Hon. Eduardo B. Peralta, Jr.

Associate Justice, CA

8

Hon. Ramon Paul L. Hernando

Associate Justice, CA

xxx

x x x

x x x

March 10, 2010.

Very truly yours,

(Sgd.)
LEANDRO R. MENDOZA

The respective appointment papers of Justices Fernandez, Peralta, Jr., Hernando and Antonio-Valenzuela bore the following dates and bar code numbers:

Name of Associate Justice

Date of Appointment

Bar Code No.

Justice Fernandez

February 16, 2010

55466

Justice Peralta, Jr.

February 16, 2010

55467

Justice Hernando

February 16, 2010

55468

Justice Antonio-Valenzuela

February 24, 2010

55465

All four newly appointed CA Justices took their oath before then Associate Justice, now Chief Justice, Renato C. Corona on March 10, 2010.

After some initial confusion, the four Justices were finally listed in the roster of the CA Justices in the following order of seniority: Justice Fernandez (as most senior), Justice Peralta, Jr., Justice Hernando and Justice Antonio-Valenzuela (as most junior). The ranking was based in a letter dated March 25, 2010 submitted by the

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members of the CA Committee on Rules to CA Presiding Justice Andres B. Reyes, Jr.

According to the CA Committee on Rules, there appears to be a conflict between certain provisions of the 2009 Internal Rules of the Court of Appeals (2009 IRCA). In particular, Section 1, Rule I thereof provides:

> RULE I
> THE COURT, ITS ORGANIZATION AND OFFICIALS
>
> Section 1. Composition of the Court of Appeals. -- Unless otherwiseprovided by law, the Court of Appeals is composed of a Presiding Justice and sixty-eight (68) Associate Justices. It sits en banc, or in twenty-three (23) Divisions of three (3) Justices each. The members of the Court are classified into three groups according to the order of their seniority. The date and sequence of the appointment of the Justices determine their seniority courtwide.
>
> When a senior member is designated to act as Chairperson of a Division, he/she shall be designated as an "Acting Chairperson". In like manner, a junior member designated to act as senior member of a Division shall be an "Acting Senior Member". (Emphasis supplied)

On the other hand, Section 1, Rule II thereof states:

> RULE II
> RULE ON PRECEDENCE AND PROTOCOL
>
> Section 1. Concept. -- The Presiding Justice enjoys precedence over all the other members of the Court in all official functions. The Associate Justices shall have precedence according to the order of their appointments as officially transmitted to the Supreme Court. (Emphasis supplied)

The CA Committee on Rules opined:

> As between the foregoing provisions, it may be conceded that Section 1, Rule II should prevail over Section 1, Rule I pursuant to the basic rule of statutory construction that gives premium to a specific provision over a general one. However, reckoned alongside the circumstances surrounding the appointment of the above-named Associate Justices, it is our considered view that any conflict between or confusion engendered by the above-quoted provisions should be resolved in accordance with Republic Act No. 8246, entitled "An Act Creating Additional Divisions in the Court of Appeals, Increasing the Number of Court of Appeals Justices from Fifty-One (51) to Sixty-Nine (69), Amending for the Purpose Batas Pambansa Bilang 129, As Amended, Otherwise Known as the Judiciary Reorganization Act of 1990, Appropriating Funds Therefor, and for Other Purposes." Section of said lawcategorically states:
>
> "Section 1. Section 3, Chapter 1 of Batas Pambansa Blg. 129, as amended, is hereby further amended to read as follows:
>
> `Sec. 3. Organization. -- There is hereby created a Court of Appeals which shall consist of a Presiding Justice and sixty-eight (68) Associate Justices who shall be appointed by the President of the Philippines. The Presiding Justice shall be so designated in his appointment, and the Associate Justices shall have precedence according to the dates of their respective appointments, or when the appointments of two or more of them shall bear the same date, according to the order in which their appointments were issued by the President.'"[1]

Evident from the foregoing provision is a clear legislative intent to determine the order of precedence seniority of this Court's Justices "according to the dates of their respective appointments." In addition to the general rule of construction that applicable legal provisions should, as far as practicable, always be harmonized with each other, the spirit and intent behind Republic Act No. 8246 should be given precedence if only because it is the enabling law to which the IRCA should conform. Moreover, given its clarity, it also goes without saying that Section 1 of the law should be applied according to its literal tenor, without equivocation and further need of extended

ratiocination from the Committee.

Applying Section 1, Rule I and Section I, Rule II of the IRCA vis-a-vis Section 1 of Republic Act No. 8246, the order of precedence/seniority among Justices Fernandez, Peralta, Jr. and Hernando should be determined according to the chronological order indicated in the March 10, 2010 letter of transmittal from Hon. Executive secretary Leandro R. Mendozaand the barcodes accompanying their respective appointment papers. On the other hand, having been appointed on February 16, 2010, it logically follows that said Justices collectively have precedence/seniority over Justice Valenzuela who, despite the placement of her name in said transmittal letter before the names of the other three new justices of the Court of Appeals and the lower bar code number accompanying her appointed, was appointed only on February 24, 2010.

x x x x x x x x x

While obviously intended to authenticate the appointment papers under consideration, the mechanically-stamped barcode cannot prevail over the date of appointment indicated in the President's own handwriting. Having been personally signed and dated by the President who is the appointing authority, the practical and legal import of said appointment papers of the Justices concerned should be upheld over that of the March 10, 2010 transmittal letter from the Executive Secretary. It should, however, be pointed out that the foregoing interpretation of the Rule on precedence and seniority should only apply to the above named Associate Justices, in view of the peculiar circumstances which attended the issuance/transmission of their appointment papers.[2]

Justice Antonio-Valenzuela disagreed with the interpretation of the CA Committee on Rules, insisting that she is the most senior among the four newly appointed CA Associate Justices pursuant to Section 1, Rule 2 of the 2009 IRCA which provides that seniority of the Associate Justices shall be determined "according to the order of their appointments as transmitted to the Supreme Court." She argued that "the final act in the process of appointing a member of the Judiciary is the transmittal of the appointment to the Supreme Court." She also took "serious exception" to the statement of the CA Committee on Rules that "the foregoing interpretation of the Rule on precedence and seniority should only apply to the above named Associate Justices, in view of the peculiar circumstances which attended the issuance/transmission of their appointment papers." According to her, there was nothing novel or peculiar about the circumstances attending the issuance and transmission of the four newly appointed members of the CA.

The matter was referred to the CA en banc for appropriate action. After deliberation, the CA en banc adopted the opinion of the CA Rules Committee. This was approved by this Court in a resolution dated July 20, 2010.

Justice Antonio-Valenzuela now seeks reconsideration of this Court's resolution dated July 20, 2010. She insists that all four CA Associate Justices whose seniority is involved in this matter "were appointed on March 10, 2010, the day that their appointments were transmitted by the Office of the President" to this Court.

We disagree.

An appointment to a public office is the unequivocal act, of one who has the authority, of designating or selecting an individual to discharge and perform the duties and functions of an office or trust.[3] Where the power of appointment is absolute and the appointee has been determined upon, no further consent or approval is necessary and the formal evidence of the appointment, the commission, may issue at once.[4] The appointment is deemed complete once the last act required of the appointing authority has been complied with.[5]

In Valencia v. Peralta,[6] the Court ruled that a written memorial that can render title to public office indubitable is required. This written memorial is known as the commission. For purposes of completion of the appointment process, the appointment is complete when the commission is signed by the executive, and sealed if necessary,

and is ready to be delivered or transmitted to the appointee.[7] Thus, transmittal of the commission is an act which is done after the appointment has already been completed. It is not required to complete the appointment but only to facilitate the effectivity of the appointment by the appointee's receipt and acceptance thereof.

For purposes of appointments to the judiciary, therefore, the date the commission has been signed by the President (which is the date appearing on the face of such document) is the date of the appointment. Such date will determine the seniority of the members of the Court of Appeals in connection with Section 3, Chapter I of BP 129, as amended by RA 8246. In other words, the earlier the date of the commission of an appointee, the more senior he/she is over the other subsequent appointees. It is only when the appointments of two or more appointees bear the same date that the order of issuance of the appointments by the President becomes material. This provision of statutory law (Section 3, Chapter I of BP 129, as amended by RA 8246) controls over the provisions of the 2009 IRCA which gives premium to the order of appointments as transmitted to this Court. Rules implementing a particular law cannot override but must give way to the law they seek to implement.

In view of the foregoing, the CA en banc acted correctly when it adopted the view of the CA Rules Committee insofar as the reckoning of the seniority of CA Justices Fernandez, Peralta, Jr., Hernando and Antonio-Valenzuela is concerned but erred when it declared that the CA Rules Committee's interpretation applies only to the case of the four aforementioned Justices.

WHEREFORE, the motion for reconsideration of CA Justice Antonio-Valenzuela is hereby DENIED with finality.

SO ORDERED.

Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and Sereno, JJ.

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[1] Italics and underscoring in the original.

[2] Emphasis supplied.

[3] Chavez v. Ronidel, G.R. No. 180941, 11 June 2009, 589 SCRA 103.

[4] Corpuz v. Court of Appeals, 348 Phil. 801 (1998). Mechem, Law of Public Office and Officers, §114, at 46.

[5] Bermudez v. Executive Secretary, 370 Phil. 769 (1999).

[6] 118 Phil. 691 (1963).

[7] Mechem, supra at 47.

SEPARATE CONCURRING OPINION

CARPIO, J.:

On 10 March 2010, Executive Secretary Leandro R. Mendoza transmitted to the Supreme Court the appointment to the Court of Appeals of Nina G. Antonio-Valenzuela, Myra G. Fernandez, Eduardo B. Peralta, Jr., and Ramon Paul L. Hernando. The transmittal letter reads:

> HON. REYNATO S. PUNO
> Chief Justice

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Supreme Court of the Philippines
Manila

Re: Appointments to the Judiciary

Sir:

I am pleased to transmit the appointment papers of the following:

Appointees

Positions

xxx

xxx

xxx

5

Hon. Nina G. Antonio-Valenzuela

Associate Justice, CA

6

Hon. Myra G. Fernandez

Associate Justice, CA

7

Hon. Eduardo B. Peralta, Jr.

Associate Justice, CA

8

Hon. Ramon Paul L. Hernando

Associate Justice, CA

xxx

xxx

xxx

March 10, 2010.

Very truly yours,

(Sgd.)
LEANDRO R. MENDOZA

The respective appointment papers of the four Justices bore the following dates and bar code numbers:

Name of Associate Justices

Date of Appointment

Bar Code No.

Justice Fernandez

February 16, 2010

55466

Justice Peralta, Jr.

February 16, 2010

55467

Justice Hernando

February 16, 2010

55468

Justice Antonio-Valenzuela

February 24, 2010

55465

The appointment papers of Justices Fernandez, Peralta, Jr., and Hernando were all dated 16 February 2010, while the appointment paper of Justice Valenzuela was dated 24 February 2010.[1]

All four nominees accepted their respective appointments by taking the oath of office collectively on 10 March 2010. When the four new appointees were listed in the new roster of Court of Appeals Justices, Justices Fernandez, Peralta, Jr., and Hernando were ranked according to the chronological order indicated in the transmittal letter to the Supreme Court and the bar code number accompanying their respective appointment papers, while Justice Valenzuela was ranked last among the four.[2]

Justice Valenzuela in this motion for reconsideration insists that she is the most senior of the four CA Justices based on two grounds: (1) the order of the appointments as listed in the transmittal letter to the Supreme Court shows her first in the order; and (2) the bar code numbers stamped on the appointment papers show that she has the lowest number.

I cannot agree.

Section 3, Chapter I of Batas Pambansa Blg. 129,[3] as amended by Republic Act No. 8246,[4] states:

> Chapter 1
>
> Section 3. Organization. - There is hereby created a Court of Appeals which shall consist of a Presiding Justice and sixty-eight (68) Associate Justices who shall be appointed by the President of the Philippines. The Presiding Justice shall be so designated in his appointment, and the Associate Justices shall have precedence according to the dates of their respective appointments, or when the appointments of two or more of them shall bear the same date, according to the order in which their appointments were issued by the President. Any member who is reappointed to the Court after rendering service in any other position in the government shall retain the precedence to which he was entitled under his original appointment, and his service in the court shall, for all intents and purposes, be considered as continuous and uninterrupted. (Emphasis supplied)

The highlighted portion of the above provision may be broken down into two parts: (1) when the appointments do

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not bear the same date and (2) when the appointments bear the same date. When the appointments do not bear the same date, precedence in seniority is based on the dates of the respective appointments. However, when the appointments bear the same date, precedence in seniority shall be based on the order in which the appointments were issued by the President. This is the clear language of Section 3, Chapter I of BP 129, as amended.

BP 129, as amended, prevails over Section 1, Rule II of the 2009 Internal Rules of the Court of Appeals,[5] which ranks seniority based on "the order of appointments as officially transmitted to the Supreme Court." It is axiomatic that the Internal Rules of the CA cannot amend an existing law. At most, Section 1, Rule II of the 2009 Internal Rules of the CA applies only when the appointments bear the same date, in which case "the order of appointments as officially transmitted to the Supreme Court" is deemed "the order in which the appointments were issued by the President," as provided in Section 3, Chapter I of BP 129.

Applying the law to the present case, Justices Fernandez, Peralta, Jr., and Hernando, whose appointment papers all bore the same date of 16 February 2010, were correctly ranked in the chronological order in which their appointments were issued by the President. Justice Valenzuela's appointment paper, on the other hand, did not bear the same date, but was distinctly dated later - 24 February 2010. Under the same provision of BP 129, as amended, the date specified in Justice Valenzuela's appointment paper should determine her status in seniority.

In fact, the dates of appointment in the present case assume even greater importance. In fixing in her own handwriting the dates on the appointment papers of the four CA Justices, the President clearly intended some of the appointees to take precedence in seniority over the others. On the other hand, mechanically-stamped bar codes are meant only to authenticate the appointment papers and facilitate record keeping, and should not defeat the will of the appointing authority as signified by the specific dates fixed in the appointment papers. Neither should the transmittal letter to the Supreme Court, signed by Executive Secretary Leandro R. Mendoza, prevail over the dates of the appointment papers signed by the President.

It is a well-known fact that appointees to the judiciary do not necessarily accept their appointments immediately, whether by promptly assuming the judicial post or by taking the oath of office right away. Understandably, appointees often need to clear their desk first or wind up unfinished business from previous practice as is the case of judicial appointees who are plucked from the private sector. Thus, it may take a few days before the appointee is ready to assume the new judicial post or to take the required oath of office. In cases where judicial appointees come from far-flung provinces, acceptance by the appointees may take even longer as it could take awhile before they receive notice of their appointments.

For these reasons, the seniority of the appointees, in cases where the appointments do not bear the same date, cannot be made to depend on extraneous factors such as clerical skill or messengerial speed. Where the appointments do not bear the same date, it is the date specified in the appointment papers that must serve as the reckoning point in determining precedence in seniority. Otherwise, the crucial issue of seniority with all its legal import and far-reaching consequences will be left to the predisposition of clerks or messengers, undermining the express will of the appointing authority in fixing the dates in the appointment papers.

Thus, I concur that in determining seniority among appointees to the Court of Appeals whose appointments do not bear the same date, the date of appointment as stated in the appointment paper prevails over clerical matters like the numbering or sequencing of the bar code or the date of transmission of the appointment papers. This is regardless of when the appointments became complete with the acceptance of the appointment by the appointees. The law[6] clearly specifies that for purposes of determining precedence in seniority in cases where the appointments do not bear the same date, it is the date of appointment that is the reckoning point. The date of acceptance of the appointment by the appointee is of no consequence in determining seniority because the date of

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acceptance depends on the will of the appointee over which the appointing power has no control. Of course, if the appointee does not accept the appointment, the issue of seniority will not arise as to such appointee.

Thus, the well-settled rule in our jurisprudence, that an appointment is a process that begins with the selection by the appointing power and ends with acceptance of the appointment by the appointee, stands. As early as the 1949 case of Lacson v. Romero,[7] this Court laid down the rule that acceptance by the appointee is the last act needed to make an appointment complete. The Court reiterated this rule in the 1989 case of Javier v. Reyes.[8] In the 1996 case of Garces v. Court of Appeals,[9] this Court emphasized that acceptance by the appointee is indispensable to complete an appointment. The 1999 case of Bermudez v. Executive Secretary,[10] cited in the ponencia, affirms this standing rule in our jurisdiction, to wit:

> The appointment is deemed complete once the last act required of the appointing authority has been complied with and its acceptance thereafter by the appointee in order to render it effective. (Emphasis supplied)

In sum, in appointments to collegial courts where the appointments do not bear the same date, precedence in seniority is determined by the dates of the respective appointments. The law[11] expressly states so.

Accordingly, I vote to DENY the motion for reconsideration.

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[1] Annexes "B," "C," "D," and "E" of the Motion for Reconsideration.

[2] Recommendation of the CA Committee on Rules to CA Presiding Justice Andres B. Reyes, Jr., Annex "J" of the Motion for Reconsideration, pp. 3-4.

[3] The Judiciary Reorganization Act of 1980.

[4] An Act Creating Additional Divisions in the Court of Appeals, Increasing the Number of Court of Appeals Justices from Fifty-One (51) to Sixty-Nine (69), Amending for the Purpose Batas Pambansa Bilang 129, As Amended, Otherwise Known as the Judiciary Reorganization Act of 1980, Appropriating Funds Therefor, and for Other Purposes. 3 December 1996.

[5] Rule II

Rule of Precedence and Protocol

Section 1. Concept. - The Presiding Justice enjoys precedence over all the other members of the Court in all official functions. The Associate Justices shall have precedence according to the order of their appointments as officially transmitted to the Supreme Court.

[6] Section 3, Chapter I of BP 129, as amended by RA 8246.

[7] 84 Phil. 740 (1949).

[8] 252 Phil. 369 (1989).

[9] 328 Phil. 403 (1996).

[10] 370 Phil. 769 (1999).

[11] Section 3, Chapter I of BP 129, as amended by RA 8246.

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