

RE: CONTRACTS WITH ARTES INTERNATIONAL, INC.

A.M. No. 12-6-18-SC. August 07, 2018

Ponente: BERSAMIN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-m-no-12-6-18/>

BERSAMIN, J.:

We hereby consider and resolve the issues pertaining to the matters covered by the Report of the Office of the Chief Attorney dated June 20, 2012 (Report) on the Court's several contracts with Artes International, Inc. (Artes) that Ms. Evelyn Toledo-Dumdum (Ms. Dumdum) entered into as the Administrator of the Court's Program Management Office (PMO) relative to the following events and activities, namely:

- National Forum on Liberty and Prosperity (National Forum) held on August 24-25, 2006 at the Manila Hotel;
- Global Forum on Liberty and Prosperity (Global Forum) undertaken on October 18-20, 2006 at the Makati Shangri-La Hotel, Makati City; and
- Other activities relative to the retirement of Chief Justice Artemio V. Panganiban (Chief Justice Panganiban) consisting of: (a) Musical Interlude at the Cultural Center of the Philippines on November 30, 2006; (b) Commemorative Program on December 6, 2006 at the Fiesta Pavillon, Manila Hotel; (c) Retirement ceremonies on December 6, 2006 at the Supreme Court Hall; and (d) the Celebration of the Life, Love & Achievements of Chief Justice Panganiban Event at the Pan Pacific Hotel on December 7, 2006.

The Office of the Chief Attorney submitted the Report in compliance with the instruction of the Court's Management Committee for the Judicial Reform Support Project (JRSP) at its April 24, 2012 meeting in Baguio City to "summarize [the] facts on the circumstances with Artes International, Inc. (Artes)."[1] The Report was based on the files submitted by the PMO to the Management Committee in said meeting, as well as on the twin studies the OCA had previously conducted on the Artes matter.[2]

Antecedents

On December 21, 2005, or shortly after his assumption of office, Chief Justice Panganiban announced his "judicial philosophy of safeguarding the liberty and nurturing the prosperity of the people under the rule of law." [3] Conformably with his philosophy, the National Forum and the Global Forum were conceptualized and launched.

In planning for the National Forum and the Global Forum, Ad Hoc Committees whose memberships consisted of officers and employees of the Court's various offices were created. It appears, however, that the PMO further engaged an event organizer to assist the Ad Hoc Committees. Ms. Dumdum expressly confirmed so Memorandum PMO JRPAO 09-14-2007:

2.2

To assist the Ad Hoc Committees, specifically by addressing the creative, logistical, physical and technical requirements of the Forum, the services of an event specialists (sic), namely, Artes International, Inc. was

engaged based on the lowest responsive canvass made by this Office. Artes was the same events specialist engaged during the conduct of the International Conference and Showcase on Judicial Reforms (ICSJR) held last November 2005.[4]

The following matters were further spelled out in the certification dated November 23, 2006 issued by the PMO, signed by Dennis Russel D. Baldago, Chief Judicial Staff Officer of the PMO and Vice-Chairperson of the Forum Secretariat; and Dennis T. Velasco, Logistics Management Officer V of the PMO; and noted by Ms. Dumdum, as follows:

This is in relation to the services rendered by Artes International, Inc. for the Global Forum on Liberty and Prosperity held last October 18- 20, 2006 at the Makati Shangri-La Hotel, Philippines.

The evolving requirements for the creative, physical and technical aspects of the Global Forum were finalized only after the conduct of the Academic and National Forum on Liberty and Prosperity last July 20 and August 24-25, 2006 respectively, barely eight (8) weeks or two (2) months to prepare for an international conference which will be participated (sic) by Chief Justices and Judges from ninety five (95) countries, delegates from the executive and the legislative departments of government, international development agencies, members of the diplomatic corps, judicial institutes, leaders of the foreign academe, international bar associations, foreign business chambers and civil society.

Thereafter, the PMO solicited three (3) canvasses, requested authorization from the Chief Justice to fund various activities during the Global Forum, and prepared the necessary Job Order to address the abovementioned requirements. The service provider with the lowest responsive proposal was also the same service provider during the International Conference and Showcase on Judicial Reforms held last November 28-30, 2005 at the Makati Shangri-La Hotel.

This is to further certify that there are limited providers for the abovementioned requirements of the Global Forum.

This Certification is issued at the request of Mrs. Adoracion Yulo, SC Chief Judicial Staff Officer, Finance Division and Ms. Lilianne E. Ulgado, Chief Accountant, Accounting Division.[5]

The services of Artes were extended to other activities related to the retirement of Chief Justice Panganiban on December 6, 2007.

1.

The National Forum and the Global Forum

The PMO first engaged the services of Artes for the International Conference and Showcase for Judicial Reform (ICSJR) in 2005. Based on the records, the OCA found that Ms. Dumdum as the Administrator of the PMO entered into the following contracts with Artes, represented by its Executive Producer Helen R. Dabao (Ms. Dabao), and directly took part in authorizing several disbursements, as follows:

(1) The letter-contract signed on July 18, 2006 by Ms. Dumdum and Ms. Dabao for two logo designs at the total cost of P53,200.00, inclusive of VAT of P5,700.00. The disbursement voucher showed that the VAT was increased to P9,500.00. Check No. 24690, which was eventually issued to Artes on September 25, 2006, indicated only the amount of P43,700.00, which was charged to the SC-JRSP WB LOAN.

(2) The quotation offer dated August 1, 2006 signed by Ms. Dabao offering the services of Artes to undertake the video coverage of the National Forum for the total amount of P180,320.00, inclusive of VAT of P19,320.00. Ms. Dumdum affixed her signature beneath the word Conforme. The disbursement voucher for the total amount of P180,320.00 was prepared and the amount was charged to the SC-JRSP WB LOAN with the recommending

approval of Ms. Dumdum.

(3) The quotation offer dated August 1, 2006 signed by Ms. Dabao offering the services of Artes for the audio-visual presentation entitled Blueprint for Change, with 10 pieces of DVDs as deliverables, at the cost of P666,261.12, inclusive of VAT amounting to P71,385.00. Ms. Dumdum affixed her signature to the quotation offer beneath the word Conforme. Based on the disbursement voucher, the VAT was again increased to P118,975.20, such that the amount of Check No. 24691 issued on September 25, 2006 payable to Artes became only P547,285.92, which was paid to Artes on September 27, 2006. The disbursement voucher indicated that Ms. Dumdum recommended the expenditure to be charged to the SC-JRSP WB LOAN.

(4) The letter-contract between Ms. Dumdum and Ms. Dabao (for Artes) entered into on August 10, 2006 for the Conference Proper of the National Forum. The letter-contract, written on the stationery of Artes, provided:

10 August 2006

EVELYN TOLEDO-DUMDUM

Program Director

Program Management Office

6[th] Floor Centennial Bldg.

P. Faura Street, Ermita

Manila

Dear Ms. Dumdum,

Thank you for considering us to be able to serve your event requirements for the following:

Event Title:

National Forum on August 24 & 25, 2006

"Prosperity & Liberty: Goals of Judicial Reforms"

Venue: Manila Hotel, Centennial Hall

Particulars:

Conference Proper Requirements

- Physical/Creative/Technical Management of the National Forum at Manila Hotel on August 24 & 25, 2006.

Please be assured that Artes International, Inc. shall render the same quality work as the past ICSJR conference if not even more efficiently and professionally. We look forward to working with you again in this conference.

The following are areas that were discussed and agreed upon:

1.

That Artes shall provide script for your guidance;

2.

That your office shall provide all Emcees for the said events;

3.

That you are requiring video coverage of the event; and

4.

That Helen Dabao, Executive Director of Artes International, Inc. shall oversee the execution, coordination and supervision of the conference proper on August 24 & 25, 2006; 8am to 5pm. Our services include the following:

1.

Provision of creative, production and technical staff with HELEN R. DABAO as Over-All Director and Executive Producer; other areas of concern

2.

Provision of production staff to include Technical Director, Lights Director, Writers, Production Manager, Stage Managers, Production Assistants, technical crew and utility men;

3.

Provision of lights & sound system, the screen/projector at the Centennial Hall and Backdrop bearing the official logo. Artes shall manage all coordination & supervision of the venue needed for the conference except booking guests and participants at the hotel.

For and in consideration of the above services ARTES INTERNATIONAL, INC. submits a package cost of all requirements in the Conference Proper amounting to NINE HUNDRED NINETY EIGHT THOUSAND EIGHT HUNDRED FIFTY FOUR & 78/100 PESOS (PhP998,854.78)

Please find attached the Budget Breakdown x x x of the total package cost of the project.

TERMS:

50% downpayment to be paid upon signing of conforme.

50% balance to be paid upon completion of the project.

Termination of contract after signing is subject to 50% fee of the total project cost

Additional requirements shall be charged accordingly.

Quoted price is valid only until 18 August 2005.

Note: Please make cheque payable to Artes International, Inc.

We look forward to working with you. Should you have any questions and concerns, please do not hesitate to get in touch with us.

Thank you very much for giving us the opportunity to offer our services.

Again thank you and more power to you and your office.

ARTES INTERNATIONAL, INC. SUPREME COURT OF THE PHILIPPINES

By: By:

(Sgd.)

HELEN R. DABAO

Managing & Creative Director (Sgd.)
EVELYN TOLEDO-DUMDUM
Program Director

The disbursement voucher shows that Ms. Dumdum recommended approval of the payment in the amount of P998,854.78 charged to the "SC-JRSP WB LOAN." [6]

(5) About August 12, 2006, Ms. Dabao offered to supply 350 pieces of conference bags at P450.00/piece for a total of P176,400.00, inclusive of the P18,900.00 VAT, and 900 pieces of ID holder at P95.00/piece for the total price of P95,760.00, inclusive of the P10,260.00 VAT. The disbursement voucher disclosed that the total sum of P272,160.00 for the offered articles was charged to the SC-JRSP WB LOAN and the JRSP (WB)-GOP Counterpart Funds in the respective amounts of P243,160.00 and P29,160.00. Artes issued a "Sales Invoice" dated August 12, 2006 for both articles. [7]

(6) The letter-contract written on the stationery of Artes and signed on August 14, 2006 by Ms. Dumdum constituted the contract for services for the Closing Ceremonies of the National Forum held on August 24-25, 2006. The pertinent portions of the letter-contract stated:

The following are areas that were discussed and agreed upon:

1.

That we will provide script for your guidance;

2.

That your office will provide all Emcees for the said events;

3.

That you are requiring video coverage of the event; and

4.

That Helen R. Dabao, Managing & Creative Director of Artes International, Inc. shall oversee the execution, coordination and supervision of the said event. Our services include the following:

a.

Provision of production staff to include a Technical Director, Lights Director, Writers, Production Designer, Production Manager, Stage Managers, Production Assistants, technical crew;

b.

Provision of lights and sound system for the Closing Ceremony.

For and in consideration of the above services ARTES INTERNATIONAL, INC. submits a package cost of all requirements in the CLOSING CEREMONY amounting to SIX HUNDRED NINETY ONE THOUSAND ONE HUNDRED EIGHTY NINE & 04/100 (PhP691,189.04)

TERMS:

50% downpayment to be paid upon signing of conforme.

50% balance to be paid upon completion of project.

Termination of contract after signing is subject to 50% fee of the total project cost.

Additional requirements shall be charged accordingly.

Quote price is valid only until 18 August 2006.

NOTE: Please make cheque payable to Artes International, Inc.[8]

The OCA noted that the disbursement voucher for the expenditure was not among the records turned over by the PMO.

(7) The letter-contract for the "Welcome Dinner" was signed by Dabao and Ms. Dumdum on August 15, 2006. It had similar text as the letter-contract for the "Closing Ceremony," viz.:

The following are areas that were discussed and agreed upon:

1.

That we will provide script for your guidance;

2.

That your office will provide all Emcees for the said events;

3.

That you are requiring video coverage of the event;

4.

That Helen R. Dabao, Managing & Creative Director of Artes International, Inc. shall oversee the execution, coordination and supervision of the said event. Our services include the following:

a)

Provision of production staff to include a Technical Director, Lights Director, Writers, Production Designer, Production Manager, Stage Managers, Production Assistants, technical crew and utility men;

b)

Provision of lights & sound system & Backdrop

c)

Provision of food for staff and production people; and

d)

Artes shall manage all coordination with the venue needed for the said event.

For and in consideration of the above services ARTES INTERNATIONAL, INC. submits a package cost of all requirements in the WELCOME DINNER amounting to NINE HUNDRED SEVEN THOUSAND SEVEN HUNDRED SEVENTY SIX & 41/100 PESOS (Php907,776.41)

TERMS:

50% downpayment to be paid upon signing of conforme.

50% balance to be paid upon completion of the project.

Termination of contract after signing is subject to 50% fee of the total project cost.

Additional requirements shall be charged accordingly.

Quoted price is valid only until 18 August 2006.

NOTE: Please make cheque payable to Artes International, Inc.

A disbursement voucher for the two letter-contracts in the total amount of P1,598,965.46 chargeable to the "SC-JRSP WB LOAN" was thereafter prepared. Dumdum affixed her signature thereon to indicate her recommendation for said disbursement.[9]

(8) Through an undated Abstract of Bids, the PMO conducted a canvass for other items intended for the National Forum, and Artes emerged as the "winning bidder" in that canvass.

The Abstract of Bids is quoted below:

SUPREME COURT
PROGRAM MANAGEMENT OFFICE
NATIONAL FORUM ON LIBERTY AND PROSPERITY
ABSTRACT OF BIDS

SOUVENIR ITEMS FOR SPEAKERS & PANELISTS; AND PENS DURING THE
NATIONAL FORUM ON LIBERTY AND PROSPERITY

Name of Bidders

Price Proposal
(in PHP)

Compliance to Minimum
Terms of Reference

REMARKS

ARTES INTERNATIONAL

35,224.00

Comply

Recommended for Award

OFFICEMAN

38,640.00

Comply

CHATESU MANUFACTURING

39,480.00

Comply

Canvassed by:
(Sgd.)

MA. CRISTINA M. AGUILAR

Technical Assistant

Recommended by:

(Sgd.) DENNIS RUSSEL D. BALDAGO

Chief Judicial Staff Officer

Approved by:

(Sgd.)

EVELYN TOLEDO-DUMDUM

Judicial Reform Program Administrator[10]

As the winning and awarded bidder, Artes, through Ms. Dabao, entered into the "Quotation Contract" dated August 14, 2006 and written on its stationery. Ms. Dumdum affixed her signature above her printed name and beneath the word Conforme.

The OCA observed that "canvass #1" was handwritten instead of the date below the word Conforme. The "Quotation Contract" was for the supply of: (a) 25 pieces of jewelry boxes (tokens for the panelists) for P17,500.00; and (b) 450 pieces of ball pens (for the conference kits) for P13,950.00, at the total contract price of P35,224.00, including the 12% VAT of P3,774.00. The copy of the corresponding disbursement voucher for the "Quotation Contract" indicated that the expenditure was charged to JR - () - Counterpart Funds. Ms. Dumdum affixed her signature on the disbursement voucher to recommend her approval thereof.

The OCA further observed that it was only on August 18, 2006 that Ms. Dumdum recommended the approval of the budget of P7,500,000.00 for the National Forum to be charged "against the JRSP funds." The recommendation of Ms. Dumdum was received by the Office of Chief Justice Panganiban at 10:00 a.m. on August 22, 2006, and he affixed his signature on the same day to indicate the approval of the recommendation. After the National Forum, preparations were made for the Global Forum.

(9) The letter-proposal for technical services and equipment rental for the Global Forum submitted on September 16, 2006 by Ms. Dabao. Ms. Dumdum affixed her signature under the word Conforme for the following items and corresponding costs, including the rentals:

ITEM #1-2 PROFESSIONAL CONFERENCE SYSTEM

BRAHLER DIGIMIC CONFERENCE MICROPHONES

with 40 units Microphones

P370,000.00

BRAHLER SIMULTANEOUS INTERPRETATION

with Portable Interpreters' Booth+Console System

for FOUR (4) LANGUAGE TRANSLATIONS

380,000.00

Oakage Price (sic)

750,000.00

Management Fees (17.65%)

132,375.00

Total Package Price

P882,375.00

12% Value Added Tax

105,885.00

TOTAL PACKAGE PRICE

P988,260.00[11]

(10) On September 21, 2006, Ms. Dabao sent Ms. Dumdum a quotation letter for Conference Proper Requirements expressing gratitude for considering Artes to serve the event, the Global Forum, on October 18-20, 2006 at the Shangri-La Makati Hotel. The pertinent portions of the quotation letter ran as follows:

I. Physical/Creative/Technical Management of the GLOBAL FORUM CONFERENCE PROPER.

The following are areas that were discussed and agreed upon:

1. That Artes shall provide script for your guidance
2. That your office shall provide all Emcees for the said events;
3. That you are requiring video coverage of the event; and
4. THAT Helen R. Dabao, Executive Director of Artes International, Inc. shall oversee the execution, coordination and supervision of the conference proper on October 18-20; 8am to 5pm. Our services include the following:

A.)

Provision of creative, production and technical staff with HELEN R. DABAO as Over-all Director and Executive Producer; other areas of concern such as the secretariat, logistics & security, protocol, registration & documentation and the like are under the management of PMO.

B.)

Provision of production staff to include Technical Director, Lights Director, Writers, Production Manager, Stage Managers, Production Assistants, technical crew and stage hands;

C.)

Provision of lights & sound system, the screens/projectors at the Rizal Ballroom and Backdrop bearing the official logo and other non-technical requirements needed in the conference proper.

D.)

Manage all coordination & supervision of all venue preparations needed for the conference except booking guests and participants at the hotel.

E.)

Over-all direct the proceedings of the conference according to the approved program.

For and in consideration of the above services ARTES INTERNATIONAL, INC. submits a package cost of the above requirements at the Conference Proper amounting to NINE HUNDRED NINETY SEVEN THOUSAND THREE HUNDRED FIFTY ONE 99/100 PESOS (PhP997,351.99).

Please find attached the Budget Breakdown (See Attachment A) of the total package cost of the project.

TERMS:

50% down payment to be paid upon signing of conforme.

50% balance to be paid upon completion of the project.

Termination of contract after signing is subject to 50% fee of the total project cost.

Additional requirements shall be charged accordingly.

Note: Please make cheque payable to Artes International, Inc. (emphasis supplied.)[12]

Ms. Dabao and Ms. Dumdum signed the quotation letter.

(11) The letter-contract written on the stationery of Artes for the opening ceremony and welcome lunch for the Global Forum was signed on September 26, 2006 by Ms. Dumdum and Ms. Dabao. Its pertinent portions said:

The following are areas that were discussed and agreed upon:

1.

That Artes shall provide script for your guidance;

2.

That your office shall provide all Emcees for the said events;

3.

That you are requiring video coverage of the event; and

4.

That Helen R. Dabao, Executive Director of Artes International, Inc. shall oversee the execution, coordination and supervision of the OPENING CEREMONY & WELCOME LUNCH of the Global Forum on October 18, 2006 at Makati Shangri-la Hotel.

I. Technical Requirements:

1. Additional Sound & Lights for the Entrance of Color

2. Complete Lights & Sound System at Quezon Ballroom
3. 10 sets 2-Way Radio (3 day conference)
4. 2 Sets of Spot lights (frontal for Parade)
5. Additional Camera w/ Camera man
6. Backdrop for the Quezon Ballroom
7. 2 sets LCD Projectors/Screens
8. Raw materials (mini-dvd tapes)
9. Gen Set

Php25,000.00

45,000.00

30,000.00

6,000.00

15,000.00

30,000.00

25,000.00

12,000.00

15,000.00

II. Talents:

- a) 30 Cadets with Special Uniforms
- b) 20 pc. Marching Bands (sic)
- c) 20 pc. Banda Kawayan
- d) 40 pc. Bayanihan Dancers
- e) Withholding Tax 10%

PhP 80,000.00

50,000.00

45,000.00

100,000.00

27,500.00

III. Technical/Prod./Creative Staff

PhP205,000.00

IV. Other Requirements:

Food & Drinks for 110 talents and participants

Breakfast & Lunch (Php 175.00/pax)

Misc. & Contingencies

PhP 19,250.00

15,000.00

TOTAL PACKAGE COST (I, II, III, IV.)

PhP744,750.00

Management Fees (17.65%)

131,448.38

12% VAT

105,143.81

GRAND TOTAL OF PACKAGE COST-----PHP981,342.18[13]

(12) The letter-contract printed on Artes' stationery signed on September 26, 2006 by Ms. Dabao and Ms. Dumdum to provide creative, technical and physical management for the closing ceremony of the Global Forum at the cost of P789,290.32.

The OCA noted, however, that it was only on October 9, 2006 when Ms. Dumdum requested authority to fund the Global Forum, as borne out by MEMORANDUM PMO JRPAO 10-09-2006, the relevant issuance, to wit:

Your honor:

1.

The estimated budget for the conduct of the Global Forum on Liberty and Prosperity on October 18-20, 2006 at the Makati Shangri-La Hotel is Twenty Million Six Hundred Thousand Pesos (Php20,600,000.00).

2.

Of this Php20.6M estimated budget, funding support will come from our various development partners in the form of grant proceeds as follows:

Amount of Funding
Support (in PhP)

Development Partner

17,000,000.00

JRP-FA Funds (Grant Proceeds). This represents the cumulative unused balance of previous years

500,000.00

ABA-Asia (new/incremental funds)

1,200,000.00

ADB (new/incremental funds)

300,000.00

CIDA (new/incremental funds)

400,000.00

TAF (new/incremental funds)

400,000.00

WB (new/incremental funds)

These new incremental funds will be administered (with the exemption of the World Bank) by our development partners.

3.

In case of the JRP-FA Funds, may we request for Your Honor's approval to disburse these funds for the various expenditures related to the Global Forum, subject to the usual accounting and auditing rules and regulations.

4.

We are pleased to report to your Honor that possible additional new funding support may come from AusAID, British Council, KAS and the UNDP.

5.

For your Honor's kind consideration and approval, please.[14]

On October 10, 2006, Chief Justice Panganiban affixed his signature to approve Ms. Dumdum's request.

On October 13, 2006, Ms. Dumdum sought the authority from Chief Justice Panganiban "to process payment for services rendered of (sic) contractors" at the Global Forum. Her memorandum for that purpose was as follows:

Your Honor:

1.

This is in relation to our Memorandum requesting authority to fund the Global Forum on Liberty and Prosperity on October 18-20, 2006 at the Makati Shangri-la Hotel which was approved by Your Honor. Copy of the approved Memorandum is attached for Your Honor's reference.

2.

In this connection, may we also request for Your Honor's approval for partial payment for the following contractors of the Forum:

Makati Shangri-La Hotel Accommodation and Function Rooms

5,331,143.50

Cultural Center of the Philippines

Production and Artist

517,158.40

Goldcraft and Fashion International

Barong Tagalog for Foreign Delegate; Uniforms for Choir, Secretariat and Ushers

698,320.00

Artes International, Inc.

Physical, Creative and Technical Management

Global Forum AVP and Book Launching AVP

Simultaneous Interpretation System (SIS)

Audiovisual Equipment Rental and Video Coverage

Opening Ceremony

Closing Ceremony

997,351.99

997,483.76

988,260.00

997,483.76

981,342.18

789,290.32

Forum Collaterals (Kits, IDs, Pens, Souvenir and Shell Leis)

693,626.75

3. For Your Honor's kind consideration and approval, please. [15]

Chief Justice Panganiban affixed his signature on October 16, 2006 at the lower left corner of the memorandum to signify approval of the request for authority to process partial payments for expenses incurred during the Global Forum.

(13) Ms. Dumdum signed a disbursement voucher around October 16, 2006 charging to the JRP(FA)-GOP COUNTERPART FUNDS the gross amount of P2,875,606.01, less the sum of P575,121.20 as taxes, leaving the net amount of P2,300,484.80 as partial payment to Artes in connection with the Global Forum. The gross amount of P2,875,606.01 was broken down thusly:

- * Physical, Creatives and Technical Management
- * Global Forum AVP and Book Launching AVP
- * Simultaneous Interpretation System (SIS)
- * Audiovisual Equipment Rental and Video Coverage
- * Opening Ceremony
- * Closing Ceremony

P498,676.00

498,741.88

494,130.00

498,741.88

490,671.09

394,645.16

TOTAL

P2,875,606.01[16]

Check No. 29454 for the total net amount of P2,300,484.81 was issued to Artes on December 5, 2006 as final payment for the production of the Global Forum. Artes received the check on the following day.

Subsequently, the OCA noted then Chief Accountant Lilian Ulgado's Memorandum dated February 27, 2007 addressed to the PMO Finance Division about the claim by the Makati Shangri-la Hotel for the unpaid amount of P651,000.00. The pertinent portion of the Memorandum was as follows:

Per our records, the total claim of Makati Shangri-La was already paid in full per voucher 06-11-33736. Please attach an explanation why there is still an (sic) remaining balance of P651,000.00.

Also, it appears that there is no basis in paying the said remaining balance of P651,000.00. Please attach authority to pay the said amount and charging it to Fiscal Autonomy.

Further, in going over the supporting papers of the full payment to Makati Shangri-La per voucher 11-33736, we noted that the Court paid for the accommodation of Ms. Helen Dabao in Room Nos. 512 and 516. In the Articles of Incorporation submitted to this office, Ms. Helen Dabao is listed as one of the incorporators of Artes International. Is Ms. Dabao a participant to the said event? Is (sic) so, please attach copy of memo circular of those who are authorized to attend the Global Conference showing the inclusion of Ms. Dabao in the said list. (Emphasis supplied)[17]

In her responding Memorandum dated February 28, 2007, PMO Financial Management Analyst Paula Cheryl Dumlao expressed that because the hotel accommodations for Ms. Dabao were being questioned, the expenses therefor should be treated as a "disputed item" that could be excluded from the bill to avoid further delays in the settlement of the obligations to Makati Shangri-La Hotel.

Thereafter, Chief Accountant Ulgado referred the matter to Judicial Staff Head Midas P. Marquez of the Office of Chief Justice Reynato Puno to resolve whether the "remaining balance" of P651,000.00 for the conduct of the Global Forum could be charged to JR-FA GOP Counterpart Funds.[18]

2.

Other activities relative to the retirement
of Chief Justice Panganiban

The transactions between the PMO and Artes continued even after the holding of the National Forum and Global Forum.

In Memorandum PMO JRPAO 15-11-2006 dated November 15, 2006, Ms. Dumdum requested authority from Chief Justice Panganiban to "fund certain activities," thusly:

Your Honor:

1. May we request authority to fund the following activities:

ACTIVITIES

AMOUNT (in PhP)

1. Musical Interlude at the Cultural Center of the Philippines on November 30, 2006

551,536.00

2. State of the Judiciary (Audio-Visual Production)

470,400.00

3. Leadership and Servanthood: The Labor and Legacy of Chief Justice Artemio V. Panganiban (Audio-Visual Production)

650,000.00

TOTAL

1,671,936.00

2.

Should your Honor concur, may we request that the abovementioned amount be charged to the JRP FA (Grant Proceeds), subject to the usual accounting and auditing rules and regulations.

3.

May we also request for Your Honor's approval to issue a Cash Advance in the amount of Eight Hundred Fifty

Thousand Pesos (Php850,000.00) to initially cover the cost of the abovementioned activities and other incidental expenses to Mrs. Araceli Bayuga, Chief, Cash Division, Fiscal Management and Budget Office (FMBO). The breakdown of the cash advance are as follows:

ACTIVITIES

AMOUNT (in PhP)

Musical Interlude at the Cultural Center of the Philippines on November 30, 2006

350,000.00

State of the Judiciary (Audio-Visual Production)

250,000.00

Leadership and Servanthood: The Labor and Legacy of Chief Justice Artemio V. Panganiban (Audio-Visual Production)

250,000.00

TOTAL

850,000.00

4. For Your Honor's kind consideration and approval.[19]

The OCA reported that Associate Justice Angelina Sandoval Gutierrez, as the Chairperson of the Committee on the Chief Justice's Valedictory, recommended the approval of the request. Chief Justice Panganiban later approved the same and affixed his signature on the left-hand corner of the Memorandum.

Having obtained the approval, Ms. Dumdum entered into the following contracts with Artes, namely:

(1) In a letter-quotation dated November 17, 2006, Ms. Dabao offered the services of Artes for 'Retirement AVP: Leadership and Servanthood' for the amount of 620,000.00 plus 12% VAT of P74,400.00 or the total 'AVP cost' of P694,400.00. Ms. Dumdum affixed her signature to the letter-quotation under the word conforme. It appears that the downpayment of 250,000.00 was paid to Artes – this is evident from the Sales Invoice dated December 8, 2006 collecting the 'final payment' of P444,400.00. For the same project, Mindstorm Media, Inc. reportedly quoted the price of P1,025,155.04 while Graymatter offered their services for P1,100,000.00.

(2) Under letter-quotation dated November 22, 2006, Ms. Dabao offered the services of Artes for the 'Commemorative Program (Retirement of CJ Panganiban) on December 6, 2006 at the Fiesta Pavilion, Manila Hotel, 6:30 PM' for the package cost of P997,220.22. Ms. Dumdum signed the letter-quotation for the Court and, in Attachment I thereto, affixed her signature under the word conforme. With the total withholding tax of P62,326.26 deducted from the package cost, the disbursement voucher in favor of Artes is for the net amount of P934,893.96.

(3) On November 25, 2006, Ms. Dabao quoted the contract price of P418,320.00 for the project entitled "Celebration of the Life, Love & Achievement of Chief Justice Panganiban Event" at the Pan Pacific Hotel at 12:00 noon of December 7, 2007. Similarly, Mindstorm Media, Inc. submitted a quoted price of P474,374.80

inclusive of 12% VAT for the same project, while Graymatter offered P450,000.00 inclusive of management fees and 12% VAT. Ms. Dumdum affixed her signature to the letter-quotation as "APJR Administrator." The disbursement voucher prepared for the contract shows that the "technical and non-technical support" services were rendered 'during (the) appreciation luncheon for the APJR non-development partners.' The net contract price of P392,175.00, after deducting taxes of P26,145.00, is to be charged to 'JRSP(WB)-GOP COUNTERPART FUNDS,' as recommended by Ms. Dumdum.

xxx xxx xxx

(4) In an undated letter-quotation, Ms. Dabao offered the services of Artes for the retirement ceremonies in honor of Chief Justice Panganiban on December 6, 2006 at the 'Supreme Court Hall' for the price of P401,520.00, to which letter Ms. Dumdum affixed her signature. The disbursement voucher in favor of Artes shows that it is to be charged to 'JRSP(WB)-GOP COUNTERPART FUNDS.' [20]

On November 27, 2006, Ms. Dumdum requested from Chief Justice Panganiban authority to provide additional funding for additional court--related activities, stating thereon in her Memorandum PMO JRPAO 27-11-2006, as follows:

Your Honor:

1. This is further to our Memorandum requesting authority to conduct and fund the remaining activities for December which Your Honor approved. Copy of said Memorandum is attached for Your Honor's reference.
2. May we request additional authority to provide additional funding for the development and preparation of the Audio-Video (sic) Presentations entitled 'Liberty and Prosperity Under the Rule of Law' and 'Leadership and Servanthood: The Labor and Legacy of Chief Justice Artemio V. Panganiban, Jr.' (sic) to the various internal and external stakeholders of the APJR. The presentation of these AVPs will commence on December 06, 2006. The total cost for the creative design, physical and technical production for the said activities is P1,817,060.22.
3. Should Your Honor concur, may we request that the abovementioned amount be charged to the JRP FA Grant Proceeds or JRSP Funds, whichever is appropriate. May we likewise request authority to disburse and/or draw cash advance for the total amount to Mrs. Araceli Bayuga, Chief, Cash Division, Fiscal Management and Budget Office.
4. For Your Honor's kind consideration and approval. [21]

On November 28, 2006, Chief Justice Panganiban approved the request without specifying the fund source.

3.

Artes' requests for payment of unpaid contract price

Upon the conclusion of the Global Forum, the PMO forwarded to the FMBO pertinent documents relative to the items supplied by Artes (i.e., 350 conference bags, 900 ID holders, 450 units of ball pens, and 25 jewelry boxes as souvenirs) in order to facilitate payment to the latter.

The FMBO declined to process the payment for lack of the necessary purchase orders (POs) as required by law.

Considering that no payment could be processed without the requisite POs, the PMO requested the Property Division of the Office of Administrative Services (OAS) to issue the POs for the supplies delivered by Artes. Being responsible for the determination of the reasonableness of the prices of supplies, the Property Division surveyed suppliers of the conference bags, the ID holders, and ball pens, but not the jewelry boxes which Artes claimed to have been sourced from Cebu. Based on its survey, the Property Division concluded that the following items were overpriced [22] and excessive, [23] to wit:

Qty.

Unit

Description

Unit Price

Total Amount

PMO

Property

Division

PMO

Property

Division

350

pcs.

Conference Bag

P450

P220

P157,500.00

P77,000.00

900

pcs.

I.D. Holder

95

35

85,000.00

34,200.00

450

pcs.

Ball Pens

31

13

13,950.00

5,850.00

25

pcs.

Jewelry Box

700

-

17,500.00

-

In the Memorandum dated January 22, 2007 submitted to the Office of Chief Justice Puno, SC Judicial Staff Head Felicitas D. Caunca (Ms. Caunca) of the Property Division declared that the PMO had itself conducted the canvassing for the supplies on the ground that it had already been pressed for time; that such canvassing could have been done through the Philippine Government Electronic Procurement System (Phil-GEPS) by the Property Division in no time at all; that if the amounts involved were within the Property Division's authority to canvass, it would have issued the requested POs regardless of whether the canvassing had been done by the proper bids committee or by the Property Division itself; and that because the PMO did not observe the proper procurement procedure, what had resulted were "advance deliveries," which were disallowed by law.[24]

Ms. Caunca also clarified:

This Division believes that the price for which the PMO obtained the aforesaid supplies were excessive. In this respect, this Division finds pertinent the provision of Commission on Audit (COA) Circular No. 85- 55-A which states that:

'Price is excessive if it is more than the 10% allowable price variance between the price paid for the item bought and the price of the same item per canvass of the auditor.'

The matter was consulted by the undersigned with the COA Auditor assigned to the Court who expressed her opinion that the Purchased (sic) Order may still be prepared by this Division but the amount should be based on the quotation or canvass obtained by this Division and not that of the PMO. The COA Auditor even reminded (us on) the prohibition on antedating the PO if only to reflect or coincide the dates when the PMO concluded their transactions with the Artes International. Needless to state, the difference between the two (2) amounts is to be borne by the PMO or its responsible official, as the case may be.[25]

On January 23, 2007, Ms. Dabao wrote to Ms. Dumdum requesting that Artes be recognized as a "Supplier of Services" in order to "rectify the taxes that were unwittingly withheld from Artes," which were equivalent to 15% of the contract price. She justified her request by attaching a copy of BIR Ruling DA075-07, which categorically stated that Artes was subject to "2% withholding tax on income payments made by the top 10,000 private corporations and government offices, national, or local, pursuant to section (sic) 3 (M) and (N) of Revenue No. 17-2001." [26]

On January 27, 2007, Chief Accountant Ulgado inquired from the Chief of the Withholding Tax Division of the BIR about the query of Ms. Dabao, thusly:

This refers to the BIR Ruling DA-033-2007 dated January 23, 2007 issued to Ms. Helen R. Dabao of Artes International, Inc. The BIR ruling states that an event organizer, like Artes, is a supplier of service. Consequently, payments made by private corporation and/or government offices are subject to the two percent (2%) withholding tax.

The Articles of Incorporation of Artes International, x x x, states that its primary purpose is Production and Management of Events and Entertainment.

The Court withheld the 15% withholding tax from its payment to Artes International pursuant to Sections 3 and 4 of Revenue Regulations No. 30-2003 based on the entirety of the services rendered by said company. The creative, physical and technical aspects of the event required the hiring of Artes International as production manager providing management and technical services for the conduct of said event.

May we respectfully request for an opinion from your office to clarify whether or not the services presented above were covered by Section 3 (M) and (N) of RR 17-2001 or among those enumerated in Sections (sic) 3 of RR 30-2003.

Thank you for your immediate attention.

However, Chief Accountant Ulgado received no reply from the BIR.[27]

Subsequently, the FMBO requested the Office of the Chief Justice (OCJ) to refer to the OCA the matter of "the propriety of collecting withholding tax of 15% totaling P1,342,637.26 from payments" made by the PMO to Artes "for services rendered" relative to the Global Forum. It appears that on June 6, 2007 the FMBO returned to the PMO four disbursement vouchers issued in the name of Artes "without action," specifically: P376,425.00; P392,175.00; P372,225.00; and P934,893.00, or a total of P2,071,664.10, on the ground that the FMBO was still awaiting instructions from the OCJ.[28]

On August 22, 2007, the PMO, represented by Edilberto A. Davis, Dennis Russell D. Baldago and Atty. Sigrid Promentilla; the OCJ, represented by then Assistant Court Administrator (ACA) Jose Midas P. Marquez (now the Court Administrator); and Artes, represented by Ms. Dabao, met to "discuss the unpaid disbursement vouchers due to Artes International Inc. (sic) for the conduct of the National and Global Forum (sic) on Liberty and Prosperity, and the Retirement Ceremonies for Chief Justice Artemio V. Panganiban held last August, October and December 2007 (sic), respectively." [29]

When the Memorandum of the Property Division was referred to her, Ms. Dumdum maintained through her Memorandum dated September 14, 2007 that Artes had been an events organizer responsible for "outsourcing of supplies and materials used in the forum"; that its services had been engaged to take charge of the details of the Global Forum; that PMO was only involved in "overseeing that Artes took into consideration the important factors in selecting the suppliers, such as capacity to execute the design and timely delivery of such requirements"; that "it would be inaccurate to state that the selection of the canvassed suppliers was done by the PMO arbitrarily because it merely proceeded from the suppliers chosen by Artes;" and that the PMO had been merely instrumental in helping process payments to Artes by the conduct of its "ministerial duty of preparing the disbursement vouchers." [30]

Anent the non-observance of procurement rules, Ms. Dumdum contended that "the procurement of supplies and materials used in the forum need not pass through the Committee on Bids, nor follow the procurement procedures under R.A. 9184 because those were not actual procurement of goods;" and that "[t]hose items[,] for all intents and purposes[,] were to be treated as 'incidental' to the services provided by the events organizer, which in this case happens to be Artes." [31]

Under the circumstances, ACA Marquez, as Chief Justice Puno's Staff Head, referred the Artes matter regarding the "supplies for the National Forum" to the OCA for study and report.

In the meantime, on November 12, 2007, Ms. Dabao transmitted to Ms. Dumdum a letter inquiring on the status of the following:

- The taxes amounting to P1,162,850.00 withheld from the contract price of the National Forum and Global Forum;
- The "collaterals" amounting to P693,626.75 incidental to the National Forum; and
- The payment of the remaining balance of P2,261,460.22 for the Retirement Ceremonies of Chief Justice Panganiban.

In her letter dated November 13, 2007, Ms. Dumdum acknowledged the aforementioned letter of Ms. Dabao, and assured her that a follow-up meeting would be conducted, viz.:

x x x [A]fter the following concerns have been addressed: (a) the x x x OCAT releases its comments to the Office of ACA Marquez regarding the taxes withheld during the conduct of the National and Global Forum (sic) on Liberty and Prosperity in the amount of Php1,162,850.00; (b) the PMO collaterals used during the conduct of the National Forum on Liberty and Prosperity in the amount of Php693,626.75; and (c) the Disbursement Vouchers concerning the remaining balance of Php2,261,460.22 for the conduct of the Retirement Ceremonies of Chief Justice Panganiban are forwarded to the Office of ACA Marquez x x x.[32]

On August 20, 2008, Ms. Dabao sent another letter requesting that Mr. Davis, who had meanwhile taken over as Director of the PMO following the resignation of Ms. Dumdum, issued to her a "formal correspondence" on the unpaid balances.[33]

On September 23, 2008, Ms. Dabao followed up with Mr. Davis, this time threatening to expose the delay to the media.[34]

On October 6, 2008, Ms. Dabao met with ACA Marquez, Mr. Davis and Dennis Russell D. Baldago to thresh out matters relative to the claims of Artes.[35]

On May 26, 2009, Ms. Dabao wrote Chief Justice Puno to appeal for the settlement of the "aggregate overdue accounts" totaling P2,955,086.97 that Artes had been trying to collect since August 2007.[36]

On March 8, 2011, Ms. Dabao wrote Court Administrator Marquez pleading for an audience to discuss the collectibles of Artes.[37]

On April 28, 2011, Ms. Dabao wrote Chief Justice Renato C. Corona for help "in our three year old quest for justice," relevantly stating:

x x x x

We appeal to you, CJ Corona, to aid us in our three year old quest for justice. We are a small events company and Php2.9 million is our entire rolling capital for the business. What pains us is we cannot find any reason nor could the OCAT find any reason for the Supreme Court to hold payment for our company, Artes International, Inc.[38]

On May 30, 2011, Ms. Dabao wrote Atty. Lourdes B. Lim, Department Auditor of the Commission on Audit (COA) assigned to the Court, requesting a certification to the effect that "no audit (pre or post) has yet been conducted on the said collectibles." [39]

In her reply dated June 28, 2011, Atty. Lim responded thusly:

Please be informed that we cannot issue a certification that no audit (pre or post) since no payment has been made yet nor disbursement voucher submitted to this Office (sic). Moreover, an Audit Observation Memorandum dated May 9, 2007 was issued by this Office which was received in the Office of the Chief Justice on May 21, 2007 during the time of the former Chief Justice Reynato S. Puno relative to the retirement

activities in honor of the former Chief Justice Artemio V. Panganiban, Jr. (sic) wherein no comment/reply was received by this Office.

Further, pursuant to Section 2 of P.D. 1445, The Government Auditing Code of the Philippines which provides that 'It is the declared policy of the State that all resources of the government shall be managed, expended or utilized in accordance with law and regulations and safeguarded against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in the operations of government. The responsibility to take care that such policy is faithfully adhered to rests directly with the chief or the head of the government agency concerned.

For your appropriate action.[40]

By her own Memorandum dated February 21, 2012, then JRP Administrator Geraldine Faith Econg requested Atty. Corazon G. Ferrer-Flores, FMBO Chief, for an update on "the advice from the Office of the Chief Justice which you have waited for." However, no action was taken thereon.

4.

The response of the PMO

Chief Justice Puno referred the Report of the OCAt to the PMO for appropriate action or comment.

Inasmuch as Ms. Dumdum had meanwhile resigned as the JRP Administrator effective February 19, 2008 and had immediately gone on terminal leave prior thereto, it was Mr. Davis, using the title of Judicial Reform Program Administrator, who submitted the comment dated February 18, 2008 in behalf of the PMO.[41]

Mr. Davis explained therein that the estimated budget of P7,500,000.00 for the National Forum superseded the approved budget of P6,800,000.00; and that the "latter (?) document was discarded without any intention to be used as an official document." [42]

Justifying why expenditures had been charged to the JRSP Fund even before Chief Justice Panganiban had approved the request for authority to use such fund, Mr. Davis expounded:

The foregoing statement was nothing but obvious misrepresentation, Your Honor. Foremost, it must be considered that the alleged expenditures cited by the OCAT are expenses which were incidental to the services of Artes as Events' specialist. Since Artes procured those items in their own capacity as private contractor and in compliance with their obligations and responsibilities as events specialist, those expenses will eventually be reimbursed by the Supreme Court to Artes. The JRPA merely identified the funding source from which those expenses shall be charged. Thus, those items are not subject of new contracts but are merely part of the services delivered by Artes. Thus, it would be inaccurate to state that those expenses were incurred prior to the grant of approval by the Chief Justice.[43]

Mr. Davis cited the following provision of SC Administrative Circular No. 60-2003 to explain why the PMO had assisted in the procurement activities, to wit:

4.3 All JRSP procurement activities shall be done through, or with the assistance of the PMO. The Project Implementation Monitoring and Evaluation Group of the PMO (PMO-PIMEG) will manage the specific procurement activities, and tract their baseline schedule and actual progress. The Program Director of the PMO will be responsible for the overall monitoring of the procurement process, particularly, the notification of the lagging activities and the responsible offices. Emphasis supplied.[44]

He insisted that the PMO, being the end-user, assisted Artes as the event's specialist, thusly:

The basis of the PMO's functions as an end-user unit was further affirmed by the subsequent issuance by the GPPB of the Generic Procurement Manuals (approved on 14 June 2008), whereby procuring entities are

encouraged to create their respective Procurement Units (an organic unit of office within the agency). These procurement units were envisioned to perform the functions of the BAC Secretariat including the preparation of procurement documents. Considering that "request for quotations" or "canvassing documents" as loosely used, verily fall under the same category, then it may be properly inferred that the PMO, being the end-user unit validly conducted the canvass. Hence the allegation of usurpation of BAC functions in violation of the Administrative Circular on procurement as hastily alleged by OCAT was disputed.[45]

Commenting on the allegation of splitting of contracts, Mr. Davis, focusing only on the production of "a 10-minute Audio-Visual Highlights of International Conference and Showcase on Judicial Reforms (ICSJR) in DVD format and standard casing with 700 copies," denied that there had been any splitting of contracts because such services were distinct from those undertaken by Artes, which consisted of "translating the proceedings of the whole conference into an Audio-Visual Documentary Video Format, with four hundred (400) copies of cover booklets." He insisted that "Artes was engaged to focus on the substantive part of the conference and the important details which should be accurately documented for the purpose of maintaining an official record of the events that transpired during the conference," and, consequently, the allegation of splitting of contracts was "baseless and without merit." [46]

Mr. Davis invoked the presumption of regularity in the performance of official functions, and the maxim *damnum absque injuria*. He manifested that "the OCAT cannot presume that PMO through the JRPA was in bad faith when it entered into the questioned transactions. Absent a clear evidence of bad faith, the same shall not be applied." He added:

Likewise, we also wish to reiterate our previous statement in Memorandum PMO JRPAO 09-14-2007 that the PMO's involvement in the said transaction was merely to facilitate the process by overseeing that Artes took into consideration the important factors in selecting the suppliers, particularly its capacity to execute the design and timely delivery of such requirements. The canvass made by the PMO which reflected quotations from other suppliers (although not generally required due to the very nature of subject items), was in fact an exercise of due diligence because it exerted the effort to ensure that the prices charged by Artes were still within the reasonable market price, even after including a reasonable profit margin in exchange for the additional customized design inputted by Artes to the said items under consideration. There was nothing irregular in the conduct of the PMO, thus it should not be penalized for doing its responsibilities efficiently to ensure that the National and Global Forums were successfully hosted by the Court. (Emphasis supplied.) [47]

Mr. Davis denied the need to secure certificates of availability of funds (CAFs) prior to the execution of the contracts with Artes. He opined that the CAFs were required only for locally funded activities. He submitted that as long as the requirements stated in page 145 of the Handbook on Understanding Foreign Assisted Projects of the COA "are present, there is no reason to delay or disallow disbursement of funds."

The requirements prescribed by the Handbook on Understanding Foreign Assisted Projects adverted to are the following:

a) Documentation.

In general, the documentation required to support disbursements depends on the type of expenditures involved.

If the Bank needs full supporting documentation, two copies of contracts or purchase orders should be sent to the Bank to review by the designated task manager before submitting the first related application. One copy of each of the following supporting documents is normally given to the Bank with the withdrawal application:

b) Supplier's or consultant's invoice, or a summary statement of works performed signed by the supervising engineer or other authorized official

c) Evidence of shipment (for equipment and materials purchased). This can be one of the following:

- Copy of the bill of lading
- Forwarder's certificate

d) Evidence of payment (for reimbursement). This can be one of the following:

- Receipted invoice or formal receipt
- Commercial bank's report of payment

e) Performance security such as bank guarantee in the case of advance payments if required under the terms of the contract, or where an unusually are (sic) advance payment is made (Emphasis supplied.)

Mr. Davis affirmed that there was nothing irregular about "facilitating the conduct of alternative method of procurement of shopping" even though the JRP Administrator did not first seek authority to do so from the Chief Justice. He reminded that: "The act of facilitating and approving the quotations of the items being bought by Artes were mere exercise of the authority granted to it under Section 4.3 of Administrative Circular No. 60-2003." [48] He opined that neither the loan agreement nor the law necessitated the "formal requirements," like the CAFs for the contracts. He reiterated that the CAFs applied only to locally funded projects; hence, the "quotation-contract" was "a valid government contract" that could not be questioned. [49] With respect to the authority issued by Ms. Dumdum to pay amounts beyond the threshold of her authority granted under SC Administrative Circular No. 60-2003, he posited that the observation of the OCA thereon was a "matter of opinion" because "[t]o date, no audit observation has been made by COA to this effect." [50] Finally, he invoked Chief Justice's intervention "to put an end to all these harassments and desperate attempts to tarnish the reputation of the undersigned." [51]

It is noteworthy that in its letter of May 26, 2016, Artes, through Ms. Dabao, communicated to the Court, through the OCJ, that it no longer wished to pursue its claim; that its claim had been the result of a misunderstanding; and that its claim had been already settled to its complete satisfaction. [52]

Artes submitted simultaneously with its letter of May 26, 2016 the so-called Release, Waiver & Quitclaim in which it reiterated the contents to the effect that it was waiving any and all its rights and interests in the claim; and expressly stated that it was releasing the Court from any further liability. [53]

It is possible that the Release, Waiver & Quitclaim rendered moot and academic every issue regarding Artes' several contracts with the Court. An action is considered moot when it no longer presents a justiciable controversy because the issues involved have become academic or dead, or when the dispute has already been resolved and, hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. As the consequence, nothing more needs to be resolved after its determination has been overtaken by subsequent events. [54]

However, the mootness principle bows to certain exceptions, such that mootness will not always deter further proceedings upon a matter until its resolution in due time if there is a valid reason to do so. In *David v. Macapagal-Arroyo*, [55] the Court has defined four instances in which the courts can still decide an otherwise moot case, namely: (a) there is a grave violation of the Constitution; (b) the exceptional character of the situation and the paramount public interest is involved; (c) when the constitutional issue raised requires formulation of controlling principles to guide the Bench, the Bar, and the public; and (d) the case is capable of repetition yet evading review. [56]

The extraordinary character of this case for involving the compliance with the law and rules on procurement as well as the public interest thereby necessarily involved override the applicability of the mootness principle. Based on the Report of the OCA, liability of some form for violations of the law and rules on procurement already

might have probably attached to the public officials involved. To still proceed herein clearly responds to the Constitutional declaration that public office is a public trust. Prudential wisdom also dictates that the Court should not immediately brush aside the irregularities committed in relation to the services rendered by Artes if only to serve the demand for transparency.

Ruling of the Court

The Court is not unmindful that Artes, prior to its submission of the Release, Waiver & Quitclaim, had been consistently and assiduously pleading for the payment of the total sum of P4,117,936.98, itemized as follows:

- The taxes withheld on the "contract" price of the National Forum and Global Forum amounting to P1,162,850.00;
- The "collaterals" used in the National Forum amounting to P693,626.76; and
- The balance of the "contract" price of the "Retirement Ceremonies" of CJ Panganiban amounting to P2,261,460.22.[57]

The Court, albeit fiscally autonomous, could not simply authorize and justify the release of funds to pay Artes' demand in view of the many questions that were raised against the contracts entered into with Artes by Ms. Dumdum as the PMO Administrator. To decide on whether to pay or not, the Court had to be guided by the law on the proper disbursement of public funds, whether emanating from the National Treasury or sourced from loans or credits extended by foreign funding partners.

The WB loan agreement and its implementation

The loan agreement between the Republic of the Philippines and the International Bank for Reconstruction and Development (IBRD), or the World Bank (WB), was signed on October 2, 2003 to fund the Judicial Reform Support Project (JRSP) whose objective was "to assist the Borrower in developing a more effective and accessible Judiciary that would foster public trust and confidence through the implementation of the Supreme Court's Action Program for Judicial Reform." [58]

The JRSP consisted of the following:

- Improving Case Adjudication and Access to Justice;
- Enhancing Institutional Integrity;
- Strengthening the Institutional Capacity of the Judiciary; and
- Support for the Reform of the Judicial System and Program Management Office (PMO)

Based on the forgoing, the "Globalization Lecture Series - Forum with Chief Justice" appeared in the JRSP WB Financial Monitoring Report CY 2006 under the second category, i.e., Enhancing Institutional Integrity.

SC Administrative Circular No. 60-2003 entitled Procurement Policy and Procedures for the Judicial Reform Support Project was issued on November 18, 2003 "to ensure the effective implementation of the Judicial Reform Support Project (JRSP) through the timely procurement of Goods, Works, and Services, guide the concerned Supreme Court Offices in their respective roles in the procurement process, prescribe the allowed lead times for each procurement activity, and monitor and resolve bottlenecks and problem areas in the procurement process." Thus, SC Administrative Circular No. 60-2003 applied when procuring goods, works, and services in furtherance of the implementation of the JRSP, viz.:

3.

SCOPE

3.1

This Administrative Order applies to the procurement of all types of works; goods, and services in the implementation of the JRSP,

x x x

5.

LEGAL FRAMEWORK

5.1

These Guidelines are formulated in fulfillment of a major legal commitment of the Government of the Philippines (GOP) with the World Bank (WB) and therefore, have the force and effect of a legal instrument for compliance of all concerned with the implementation of the JRSP. The provisions of these guidelines are basically premised and substantially based on, and in some parts or instances, literally quoted or drawn from:

5.1.1

JRSP LOAN AGREEMENT. The Loan Agreement executed by and between the GOP and the WB on October 2, 2003 shall govern the legal relationship between the Bank and the Supreme Court as the Project's Implementing Agency. The terms and conditions set forth therein for the procurement of goods, works and consulting services shall be observed in consonance with the Bank Guidelines.

5.1.2

BANK GUIDELINES

5.1.2.1

For Works and Goods procurement, the Guidelines: Procurement under IBRD Loan and Credits, January 1995, revised January and August 1996, September 1997 and January 1999 shall be used.

5.1.2.2

For the selection of Consultants, the Guidelines: Selection and Employment of Consultants by World Bank Borrowers, January 1997, revised in September 1997, January 1999 and May 2002 shall be used.

5.1.2.3

More recent provisions and amendments of Bank Guidelines may be applicable subject to prior notice and clearance by the Bank.

5.1.3

REPUBLIC ACT NO. 9184 (An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes) and its Implementing Rules and Regulations (IRR).

5.2

In case of conflict, the Loan Agreement and the World Bank Guidelines take precedence over Government Guidelines.

Under the aforequoted guidelines set in SC Administrative Circular No. 60-2003, the procurement rules for the JRSP were not exclusively culled from the IBRD Guidelines, but also from the provisions of R.A. No 9184, which were to be applied suppletorily. The OCA noted that under the procurement rules the borrower, which was the Court itself, should identify the body that would conduct the procurement activities for the borrower. For the purpose, SC Administrative Circular No. 60-2003 adopted Article V of R.A. No. 9184 to establish the JRSP Bids and Awards Committee (JRSP BAC) to be in charge of the conduct of the procurement activities. In light of this, and given that the PMO Program Director was tasked with the overall monitoring of the procurement process, Ms. Dumdum and the PMO should not have engaged in actual procurement activities, as their doing so would mean that she and the PMO were risking not being able to perform the monitoring function properly.[59]

The IBRD Guidelines defined two modes of procurement: the international competitive bidding (ICB); and the other methods of procurement. The latter included limited international bidding (LIB); national competitive bidding (NCB); shopping; direct contracting; etc.[60]

Specifically, shopping was defined by the January 1999 IBRD Guidelines in the following manner:

Shopping (International and National)

3.5 Shopping is a procurement method based on comparing price quotations obtained from several Suppliers, usually at least three, to assure competitive prices, and is an appropriate method for procuring readily available off-the-shelf goods or standard specification commodities that are small in value. Requests for quotations shall indicate the description and quantity of the goods, as well as desired delivery time and place. Quotations may be submitted by telex or facsimile. The evaluation of quotations shall follow sound public or private sector practices of the purchaser. The terms of the accepted offer shall be incorporated in a purchase order. (Emphasis Supplied)

The PMO appeared to have resorted to shopping as the method of procurement in canvassing three suppliers for the goods and supplies intended for the National Forum.

Re: Supplies for the National Forum and
the Global Forum on Liberty and Prosperity

Considering that the National Forum and the Global Forum were projects conceptualized under the aegis of the JRSP, SC Administrative Circular No. 60-2003 governed the procurement of goods, works and services.

By resorting to national shopping, however, the PMO ignored the last sentence of the IBRD Guidelines on such alternative method of procurement that required a purchase order (PO) in which the accepted offer should be indicated. The PO was akin to a "contract between the parties as it requires inputs showing the requisites of a contract of consent, object certain, and cause of obligation." [61] Instead of the PO, the PMO used and relied on letter-quotations to reflect and contain the agreements between the parties. All that Ms. Dumdum as the Program Director had to do was to affix her signature on the letter-quotations beneath the word *Conforme* to indicate conformity to the terms stated therein. This manner of contracting was yet again a clear violation of the IBRD Guidelines and the Standard Bidding Documents, Procurement of Goods.[62]

What were to be contained in the contracts was quite clearly stated in the law. In the 1999 version of the IBRD Guidelines, the following parameters were expressly written, to wit:

Conditions of Contract

2.37 The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the rights and obligations of the Borrower and of the supplier or contractor, and the functions and authority of the engineer, architect, or construction manager, if one is employed by the Borrower, in the supervision and administration of the contract. In addition to the general conditions of contract, any special conditions particular to the specific goods or works to be procured and the location of the project shall be included.[63]

Moreover, as the OCAAt has correctly observed, the IBRD Guidelines mentioned of contract documents instead of a single document. This observation is consistent with the Generic Procurement Manual (GPM) that synchronized the provisions of R.A. No. 9184 with the procurement rules of the Asian Development Bank, Japan Bank for International Cooperation, and the World Bank itself by requiring that contracts resulting from procurement activities for goods should be supported not only by a contract document but by a number of documents including the bid documents. Yet, based on the detailed study made by the OCAAt, no proper bidding procedure pursuant to the guidelines of SC Administrative Circular No. 60-2003 was followed by the JRSP-BAC in choosing Artes as the service provider for the National Forum and the Global Forum. Consequently, the patent nullity of the contracts with Artes became the only legal consequence to be reached from the failure to comply with the proper procurement procedure.

We are not also prepared to find that the PMO conducted the canvassing for the supplies for having been already pressed for time. Such explanation was a feeble and implausible excuse in the face of the statement by Caunca of the Property Division to the effect that the Property Division could have done the canvassing in time through the Phil-GEPS despite time constraints. Indeed, the records revealed no immediate or compelling justification for dispensing with the requirement of public bidding in choosing the service provider for the procurement of the goods involved thereon. To insist that a public bidding would have unnecessarily delayed the implementation of the program was truly unacceptable. By conducting the canvass without prior coordination with the Property Division, Ms. Dumdum and the PMO ignored the proper procurement procedure, and unavoidably caused the making of "advance deliveries" in contravention of the law.

The assertion by the JRP Administrator that Artes had itself conducted the canvassing of suppliers, and that the PMO had only facilitated the process was fundamentally discredited by the documents reviewed by the OCAAt. The records disclosed that Ms. Dumdum as the JRP Administrator had approved the recommended award of contracts to Artes as the winning bidder despite Artes having itself conducted the bidding. We advert to the points cogently made by the OCAAt thereon, viz.:

If indeed it is true that the PMO merely facilitated the process as an overseer, and Aries was the actual canvasser, then a lot of questions are raised by the fact that Artes itself emerged the winner in the canvasses "facilitated" by the PMO, as evidenced by the undated Abstracts of Bids approved by the JRP Administrator. Notably, Artes emerged the firm with the "lowest quotation" for jewelry boxes and ball pens even though the JRP Administrator conformed to its quotation and Artes delivered the said goods days before OfficeMAN and Chateau offered their quotations for the same goods;

Moreover, assuming that the PMO had been authorized as a special procurement body, it may not conduct shopping without authority from the Chief Justice as head of the procuring entity. Section 48 of Republic Act No. 9184 provides that to promote economy and efficiency, an alternative method of procurement such as shopping may only be conducted upon prior approval by the Head of the Procuring Entity and "whenever justified by the conditions" provided by Republic Act No. 9184. The JRP Administrator, who does not appear to have been specially authorized by the Chief Justice for the purpose of approving the alternative method of procurement to competitive bidding to be adopted, may not arrogate unto herself the responsibility of the Chief Justice to authorize the conduct of shopping. (Italicized and bold emphases are part of the original)[64]

At the very least, the resulting situation of the canvasser later emerging as the winning bidder was highly irregular

because of the plainly obvious conflict of interest.

Considering that most of the expenditures whose payments were sought by Ms. Dumdum as the authorized approving official came within the threshold allowed in SC Administrative Circular No. 06-2003 (i.e., P1,000,000.00 and below), the payment of contracts on the goods, works, and services procured under the JRSP would have been presumed to have initially complied with the proper procurement procedure conducted by the JRSP-BAC. Yet, we cannot even presume regularity simply because of several indicia of non-compliance with the proper procurement procedure. The presumption of regularity vanished with the appearance of even just one irregularity. We agree with the OCA that it was doubtful if the actual canvass had been conducted in view of the abstracts of canvass, particularly with respect to the jewelry boxes and the ball pens, being undated. The OCA pertinently noted:

Documents show that the JRP Administrator signed the letter-quotation of Artes dated August 14, 2006. The face of the letter-quotation does not show when she signed it. However, two days later or on August 16, 2006, Artes sent her Sales Invoice No. 360 for the full payment of P35,224.00 for the said goods. On August 20, 2006, or four days after Artes had presented Sales Invoice No. 360 to the PMO, OfficeMan and Chateau Manufacturing sent quotations for the same goods. Could there be canvassing of all three proponents under these circumstances? In all probability, the Abstract of Bids was prepared and included in the records only to justify the premature award of the contract to Artes.[65]

It is also true that a contract that has all the essential requisites for its validity is binding between the parties regardless of its form.[66] But when the law requires that a contract be in some form in order that it may be valid or be enforceable, or demands that a contract be proved in a certain way, the requirement of a particular form or manner is absolute and indispensable.[67] Once the formal requirement for the contract is absolute and indispensable, any procurement contract that does not adhere to the requirement can only be deemed invalid and unenforceable. As such, every letter-quotation signed by an unauthorized purchaser in behalf of a government agency in a manner contrary to the loan agreement with the foreign lender and contrary to the local procurement law can only be a mere scrap of paper that cannot by any means be accorded any validity or enforceability.

We cannot but notice that the records do not show that the PMO had secured the CAF for each of the contracts. According to the OCA, the CAFs were still required because the Government Auditing Code of the Philippines,[68] the Administrative Code of 1987,[69] and the General Provisions of the relevant General Appropriations Act[70] uniformly required expenditures of appropriated funds to be supported by CAFs. We hold that the loan proceeds were undoubtedly appropriated funds. In addition, R.A. No. 9184, which was definitely applicable, has specified "confirming the certification of availability of funds, as well as reviewing all relevant documents in relation to their adherence to law"[71] as parts of the assessment of the readiness of the procurement during the pre-procurement conference. With the requirement for the CAFs being sine qua non in government procurement and contracts, every contract without the corresponding CAF should be characterized as null and void.[72]

The transactions consummated by Ms. Dumdum for the PMO could not be classified as regular despite the lack of a contrary finding by the COA. Such contrary finding by the COA was not yet forthcoming because the Court had not yet settled the claim of Artes for the balance of the aggregate contract price in view of the material violations of SC Administrative Circular No. 60-2003 and the relevant procurement laws. Hence, there would be no disbursement of public funds to be disallowed or no expenditure to be declared illegal.

We also clarify that the contracts with Artes did not make it to the category of ineligible as determined by the WB, and this was due to the Court's continued refusal to settle the nearly P3 million supposedly owed to Artes. The refusal to pay was most likely the reason why the contracts with Artes were not included in the WB's list of

ineligibles.

Re: Splitting of contracts

That Ms. Dumdum committed splitting of contracts was undeniable.

Splitting of contracts means the breaking up of contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or subcontracts, for the purpose of making them fall below the threshold for shopping or small value procurement, or evading or circumventing the requirement of public bidding.[73] Public officers and agencies are called upon by the COA to ensure that no splitting of requisitions, purchase orders, vouchers, and the like, is resorted to in order to circumvent the control measures provided in the circulars it issued and other laws and regulations. In this connection, a project funded under a single obligating authority and implemented in several phases whether by the same or different contractors shall be deemed splitting of contracts.[74]

Under the general guidelines of the Government Procurement Policy Board (GPPB), splitting of contracts is strictly prohibited.

COA Circular No. 76-41, dated July 30, 1976, is instructive on the matter of splitting of contracts, to wit:

Forms of Splitting:

1)

Splitting of Requisitions consists in the non-consolidation of requisitions for one or more items needed at or about the same time by the requisitioner.

2)

Splitting of Purchase Orders consists in the issuance of two or more purchase orders based on two or more requisitions for the same or at about the same time by different requisitioners; and

3)

Splitting of Payments consists in making two or more payments for one or more items involving one purchase order.

The above-enumerated forms of splitting are usually resorted to in the following cases:

1)

Splitting of requisitions and purchase orders to avoid inspection of deliveries;

2)

Splitting of requisitions and purchase orders to avoid action, review or approval by higher authorities; and

3)

Splitting of requisitions to avoid public bidding.

The foregoing enumeration of the forms of splitting is merely illustrative and by no means exhaustive. But in whatever form splitting has been resorted to, the idea is to do away with and circumvent control measures promulgated by the government. It is immaterial whether or not loss or damage has been sustained by, or caused to, the government. In a celebrated administrative case wherein a ranking official was charged with and found guilty of splitting of purchases, the Office of the President of the Philippines was quite emphatic when it ruled that "his liability is not contingent on proof of loss to the Government because of said violations of rules

on procurement." For this reason, except "requisitions for supplies materials and equipment spare parts xxx acquired through emergency purchase from reputable firms xxx:" (Section 18, Letter of Implementation No. 44, dated April 8, 1976 of the President of the Philippines), Auditors should be on the lookout for cases of splitting in varied forms such as splitting of requisitions and purchase orders to avoid inspection of deliveries; splitting of requisitions, purchase orders, and payments to avoid action, review or approval by higher authorities; and splitting of requisitions to avoid public bidding.

The Commission on Audit, therefore, cognizant of its responsibility under the Constitution to safeguard expenditures and uses of government funds and property hereby enjoins all concerned to strictly enforce and faithfully adhere to all laws, rules, regulations, and policies calculated to prevent or prohibit splitting in any or all forms for the protection of the government. (Emphasis supplied)

The foregoing COA circular is addressed to all heads of departments; chiefs of bureaus and offices; managing heads of government-owned or - controlled corporations; etc., and proscribes the splitting of requisitions, purchase orders, vouchers and others. The heads of the departments, bureaus or offices are expressly enjoined to observe prudence, accountability and transparency in ensuring that no such splitting of requisitions, POs, vouchers, etc. escape their attention or happen under their charge. With the increasing volume of transactions involving purchases of goods, equipment, supplies and materials, there arises the need to enforce control measures to insure that procurement is effected in a manner that is most advantageous to the Government. The control measures protect the Government from losing millions of pesos through irregularities in the procurement process.

The following elements constitute the act of splitting of contracts or procurement project, to wit:

- That there is a government contract or procurement project;
- That the requisitions, purchase orders, vouchers, and the like of the project are broken up into smaller quantities and amounts, or the implementation thereof is broken into subcontracts or artificial phases; and
- That the splitting of the contract falls under any of the following or similar purposes, namely:
 - evading the conduct of a competitive bidding;^[75]
 - circumventing the control measures provided in the circulars and other laws and regulations;^[76] or
 - making the contract or project fall below the threshold for shopping or small value procurement.^[77]

Applying the foregoing elements to Artes' contracts, we find that the JRSP WB loan was used to fund both the National Forum and the Global Forum in the respective amounts of P7.5 million and P20.6 million; but instead of conducting a public bidding for the two events, Ms. Dumdum entered into several letter-contracts or quotation-contracts with Artes for various phases of the events, each phase involving amounts that were well within her authority to approve under SC Administrative Circular No. 60-2003. Such letter-contracts or quotation-contracts were aimed not only at dispensing with competitive bidding but also at avoiding the control measures set in place under SC Administrative Circular No. 60-2003, the COA Circulars, R.A. No. 9184 and other relevant laws and regulations on government procurement.

In its Report, the OCA^t cogently opined that -

On the claim of Ms. Dumdum that Artes was an "events" organizer, this Office pointed out that the Philippine Convention and Visitors Corporation (PCVC), a non-profit corporation that serves as the marketing arm of the Department of Tourism, was the events organizer under a Memorandum of Agreement that Ms. Dumdum herself signed for the Court.

The various contracts entered into with Artes for each of the two events, in light of the claim of Ms. Dumdum

that Artes was an "events organizer," only led to the conclusion that there was splitting of contracts. If it were true that Artes was engaged as an events organizer, a lump sum contract thereon should have covered all the details of holding the National Forum, including the needed supplies.[78]

Had the PMO engaged Artes as the events organizer of the two events, Ms. Dumdum should have executed with Artes a lump sum contract that covered all the details and incidentals of the events instead of the several letter-contracts and quotation-contracts for each and every phase of the events. That the value of each of the letter-contracts and quotation-contracts entered into by Ms. Dumdum was within her authority to approve (i.e., P1 million and below) was another strong manifestation of splitting of contracts.

Splitting of contracts is a serious transgression of the procurement rules of the Government. Section 65(4) of R.A. No. 9184 penalizes public officers who commit "splitting of contracts which exceed procedural purchase limits and competitive bidding" with "imprisonment of not less than six (6) years and one (1) day but not more than fifteen years."

Personal liability of Ms. Dumdum

Section 103 of the Government Auditing Code of the Philippines declares that "[e]xpenditures of government funds or uses of government property in violation of law or regulations shall be the personal liability of the official or employee found to be directly responsible therefor."

Considering that Artes already waived any and all claims it had against the Court pursuant to the several contracts entered into with Ms. Dumdum, there is no more need to make the latter personally liable for the reimbursement of any amounts that Artes was claiming.

Her release from personal liability for reimbursement notwithstanding, Ms. Dumdum should be investigated for any administrative or criminal liability for acts done in connection with the following circumstances, namely:

- requesting authority to fund the National Forum twice on the same day for the separate amounts of P7,500,000.00 and P6,800,000.00 without indicating whether the first request is superseded or that the latter request was intended to be for an amount to be added to the first request;
- entering into contracts even before the Chief Justice approved the use of funds from which the expenses for the contracts were drawn;
- allowing her subordinates to conduct the alternative method of procurement of shopping without her having been duly authorized as the representative of the Chief Justice for the purpose of approving the alternative mode of procurement;
- prematurely awarding to Artes the contract for the jewelry boxes and ball pens before actual receipt of offers of other proponents;
- participating in procurement activities notwithstanding that her authority was to monitor such activities, in violation of the rule on conflict of interest;
- allowing the conduct of activities that violate procurement rules such as the rule prohibiting splitting of contracts;
- signing contracts prepared by private contracting parties as letter-quotations with no Certificate of Availability of Funds (CAF) attached thereto and hence in violation of formal requirements prescribed by law and the Loan Agreement; and
- authorizing the payment of the amount of P1,313,435.00 (or P1,427,647.72 inclusive of tax), which is beyond

her threshold of authority for payments of P1 million under Administrative Circular No. 60-2003.[79]

Even if the disciplinary procedure provided in Paragraph 9.4 of Administrative Circular No. 60-2003 is no longer applicable to Ms. Dumdum in view of her having meanwhile ceased to be connected with the Court, Paragraph 9.3 of Administrative Circular No. 60-2003 may apply, viz.:

9.3 Sanctions. Supreme Court officials, employees and private individuals who shall fail to comply with the provisions of this Administrative Circular without just cause shall be held liable and subject to sanctions/penalties provided under Articles XXI to XXIII of R.A. 9184 (see Annex J). [Emphasis supplied.]

In addition, the provisions of R.A. No. 3019 may be taken into consideration in order to ascertain whether or not any act or omission committed by any party, including Ms. Dumdum, resulted in or caused undue injury to the Government. However, it is not the Court but another office that should make the ascertainment in that regard.

No personal liability on the part of
Chief Justice Panganiban

We have found nothing in the records that established former Chief Justice Panganiban's privity to the contracts entered into by Ms. Dumdum with Artes. Although he had approved, belatedly, the budgets for the holding of the National Forum and the Global Forum in the respective amounts of P7.5 million and P20.6 million, his approval was within his official authority to grant as the Chief Justice.

The documents presented for Chief Justice Panganiban's approval had undergone the presumed study and verification by the PMO under Ms. Dumdum as well as by the committee constituted for the purpose. He must have relied in utmost good faith on his subordinates, upon whom the primary responsibility of ensuring that all procurement of goods and services were within the limits required by the laws and the procurement rules. Such reliance in good faith absolved him from any personal liability in the absence of proof of any conspiracy between them.

Conclusion

Based on the OCA's Report dated June 20, 2012, violations of law in the disbursement of funds of the Court as well as of funds derived from the loans extended by the World Bank appear to have been committed. The laws on procurement as well as those on auditing and official accountability were also contravened. Although such violations would have resulted in the nullification of the contracts for services and supplies between the Court and Artes, the Court would have still authorized payments to Artes of any unpaid balances based on the equitable principle of quantum meruit in order not to be guilty of being unjustly enriched. The Court would then consequently move to seek from the concerned individuals the reimbursement of whatever amounts it would have thereby paid. That would not happen now because Artes meanwhile expressly released the Court from any further monetary liability upon its claim.

WHEREFORE, acting on the Report dated June 20, 2012 submitted by the Office of the Chief Attorney, the Court RESOLVES to:

- CONSIDER the claim of Artes International, Inc. for payment extinguished in accordance to the unilateral Release, Waiver & Quitclaim executed and submitted by Artes International, Inc.; and
- FURNISH a copy of this RESOLUTION to the OFFICE OF THE OMBUDSMAN and the COMMISSION ON AUDIT as basis for whatever further action may be warranted or necessary to be taken against MS. EVELYN DUMDUM.

The matter subject of this case is now considered CLOSED and TERMINATED.

SO ORDERED.

Leonardo-De Castro, Peralta, Leonen, Jardeleza, Tijam, and Gesmundo, JJ., concur.

Carpio, Acting C.J., see separate opinion.

Velasco, Jr., Del Castillo, Perlas-Bernabe and Reyes, Jr., JJ., join the separate opinion of J. Carpio.

Caguioa, J., on official leave.

[1] Rollo, Vol. I, p. 2 (Report on Contracts with Artes International, Inc., June 20, 2012).

[2] Id. (see footnote 1 of the Report).

[3] Id.

[4] Id.

[5] Id. at 13.

[6] Id. at 46.

[7] At the joint meeting on August 4, 2006 of the Ad Hoc Committees for the two forums, four representatives of events specialist Artes, namely: Dabao, Pauline Galino, Maricris Calilung, and Anna L. Ventura, attended. Paragraph 3.1.4. of the Minutes of the meeting stated:

BAGS AND SOUVENIR ITEMS - The Joint Ad Hoc Committee approved the design of the bags to be provided for the participants of the two fora. For the National Forum, the Joint Committee chose the 'back-with-banig' design combination. The Supplier undertook to bring the finished samples of the souvenirs and bags in the next meeting.

As the only non-employees of the Court present at the meeting, the representatives of Artes could only be the "Supplier" referred to in the Minutes.

[8] Rollo, Vol. I, pp. 6-7.

[9] Id. at 7.

[10] Id. at 8.

[11] Id. at 9.

[12] Id. at 9-10.

[13] Id. at 10-11.

[14] Id. at 11-12.

[15] Id. at 12.

[16] Id. at 13.

[17] Id. at 14.

[18] Id. at 14-15.

[19] Id. at 25-26.

[20] Id. at 26-28.

- [21] Id. at 27.
- [22] Id. at 15.
- [23] Id. at 16.
- [24] Id. at 15-16.
- [25] Id. at 16.
- [26] Id. at 24.
- [27] Id. at 24.
- [28] Id. at 28.
- [29] Id.
- [30] Id. at 16.
- [31] Id. at 17.
- [32] Id. at 28-29.
- [33] Id. at 29.
- [34] Id.
- [35] Id. at 30.
- [36] Id. at 31.
- [37] Id. at 32.
- [38] Id.
- [39] Id.
- [40] Id. at 28-29.
- [41] Id. at 20.
- [42] Id. at 20-21.
- [43] Id. at 21.
- [44] Id.
- [45] Id.
- [46] Id. at 21-22.
- [47] Id.
- [48] Id. at 23.
- [49] Id.
- [50] Id.
- [51] Id.

- [52] Id. at 83.
- [53] Id. at 84-85.
- [54] *Galicto v. Aquino III*, G.R. No. 193978, February 28, 2012, 667 SCRA 150, 177.
- [55] G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489, and 171424, May 3, 2006, 489 SCRA 160.
- [56] Id. at 214-215.
- [57] Rollo, p. 28.
- [58] Rollo, Vol. II, pp. 99-102 (Schedule 2, Loan Agreement between the Republic of the Philippines and the International Bank for Reconstruction and Development, October 2, 2003).
- [59] Rollo, Vol. I, p. 17 (Report on Contracts with Artes International, Inc., June 20, 2012).
- [60] Rollo, Vol. IV, p. 1471 (OCAAt Report on Supplies for the National Forum on Liberty and Prosperity, December 21, 2007).
- [61] Id. at 1472.
- [62] January 1995, Revised in March 2000, January 2001, and March 2002.
- [63] Rollo, Vol. IV, p. 1472.
- [64] Rollo, Vol. I, p. 18 (Report on Contracts with Artes International, Inc., June 20, 2012), citing OCAAt Memorandum of December 21, 2007, rollo, Vol. IV, pp. 1489-1490.
- [65] Id. at 1490.
- [66] Article 1356, Civil Code.
- [67] Id.
- [68] Presidential Decree No. 1445, Sec. 86.
- [69] Book V, Title I, Subtitle B, Chapter 8, Sec. 47; Book VI, Chapter 5, Sec. 40.
- [70] R.A. No. 9336, Sec. 73. It is noted that R.A. No. 9336 was deemed re-enacted for FY 2006.
- [71] Section 20 (2), Article VII, R.A. No. 9184.
- [72] *Commission on Election v. Quijano-Padilla*, G.R. No. 151992, September 18, 2002, 389 SCRA 353, citing *Osmeña v. Commission on Audit*, G.R. No. 98355, March 2, 1994, 230 SCRA 585.
- [73] Section 2 (b). Guidelines for Shopping and Small Value Procurement.
- [74] COA Circular No. 2009-002, May 18, 2009.
- [75] Id.
- [76] *Baldebrin v. Sandiganbayan*, G.R. Nos. 144950-71, March 22, 2007, 518 SCRA 627, 631-632.
- [77] Id.
- [78] Rollo, Vol. I, p. 17 (Report on Contracts with Artes International, Inc., June 20, 2012).
- [79] Rollo, p. 20.

SEPARATE OPINION

CARPIO, J.:

This case involves a contractor who mistakenly claims payment for services rendered to the Court. During the pendency of the case, the contractor submitted a quitclaim, release and waiver informing the Court that there was merely a misunderstanding and the amount claimed is fully settled. Accordingly, the contractor released the Court from any liability whatsoever supposedly arising from the fully-settled contracts which the Court entered into more than a decade ago. Despite this positive development, the Resolution incorrectly finds fault for these mistaken claims and erroneously concludes that the contracts would have been annulled for violating procurement laws.

As narrated in the Resolution, on 21 December 2005, or shortly after then Chief Justice Artemio V. Panganiban took his oath, he declared his "judicial philosophy of safeguarding the liberty and nurturing the prosperity of the people under the rule of law."^[1] Pursuant to this philosophy, the National Forum on Liberty and Prosperity (held on 24-25 August 2006) and the Global Forum on Liberty and Prosperity (held on 18-20 October 2006) were conceptualized and launched.

There is no dispute that the Court, through the Program Management Office with Evelyn Toledo-Dumdum (Dumdum) as then Administrator, entered into several contracts with Artes International, Inc. (Artes) relative to the said fora, as well as other activities relative to the Retirement Ceremony of then Chief Justice Panganiban. There is also no dispute that the Court successfully hosted these events, with Artes being the events specialist hired "[t]o assist the Ad Hoc Committees, specifically by addressing the creative, logistical, physical and technical requirements of the Forum, x x x."^[2]

Thereafter, Artes requested payment for allegedly unpaid balances arising from its contracts with the Court. However, Artes subsequently submitted a Release, Waiver & Quitclaim to the effect that "it was waiving any and all its rights and interests in the claim; and expressly stated that it was releasing the Court from any further financial liability."^[3]

Notwithstanding, the Resolution cites the Report of the Office of the Chief Attorney on the contracts with Artes in concluding that "violations of law in the disbursement of funds of the Court as well as of funds derived from the loans extended by the World Bank appear to have been committed. The laws on procurement as well as those on auditing and official accountability were also contravened."^[4]

The Chief Attorney is gravely mistaken.

First, Republic Act No. 9184 or the Government Procurement Reform Act does not apply to executive agreements.

In the Loan Agreement, dated 2 October 2003, between the Republic of the Philippines,^[5] represented by then Secretary of Finance Jose Isidro N. Camacho, and the International Bank for Reconstruction and Development, the Bank has agreed to extend a Loan to the Philippine government in an amount equal to \$21,900,000 to assist in the financing of the Judicial Reform Support Project (the Project or JRSP).

There is no question that the Loan Agreement in this case is in the nature of an executive agreement. It was entered into by the Philippine government, as a subject of international law possessed of a treaty-making capacity,

and the International Bank for Reconstruction and Development, which, as an international lending institution organized by world governments to provide loans conditioned upon the guarantee of repayment by the borrowing government, is also regarded a subject of international law and possessed of the capacity to enter into executive agreements with sovereign states.[6]

Considering that the Loan Agreement is an executive agreement, Republic Act No. 9184 (RA 9184), or the "Government Procurement Reform Act" does not apply. Section 4 of RA 9184 provides:

SEC. 4. Scope and Application. This Act shall apply to the Procurement of Infrastructure Projects, Goods and Consulting Services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed. (Emphasis supplied)

Section 4 of RA 9184 clearly recognizes the government's commitment to the terms and conditions of executive agreements, such as the Loan Agreement in this case. In *Land Bank of the Philippines v. Atlanta Industries, Inc.*,^[7] which involved a Loan Agreement between the IBRD and the Land Bank, the Court declared:

While mandating adherence to the general policy of the government that contracts for the procurement of civil works or supply of goods and equipment shall be undertaken only after competitive public bidding, RA 9184 recognizes the country's commitment to abide by its obligations under any treaty or international or executive agreement. xxx.^[8]

In the same case of *Land Bank of the Philippines v. Atlanta Industries, Inc.*,^[9] the Court held that public bidding under RA 9184 does not apply to the procurement of goods to be financed from the proceeds of the Loan Agreement subject of that case, thus:

Considering that Loan Agreement No. 4833-PH expressly provides that the procurement of the goods to be financed from the loan proceeds shall be in accordance with the IBRD Guidelines and the provisions of Schedule 4, and that the accessory SLA contract merely follows its principal's terms and conditions, the procedure for competitive public bidding prescribed under RA 9184 therefore finds no application to the procurement of goods for the Iligan City Water Supply System Development and Expansion Project. The validity of similar stipulations in foreign loan agreements requiring the observance of IBRD Procurement Guidelines in the procurement process has, in fact, been previously upheld by the Court in the case of *Department of Budget and Management Procurement Service (DBMPS) v. Kolonwel Trading*. (Emphasis supplied)

In *Abaya v. Ebdane, Jr.*,^[10] petitioners therein assailed the recommendation of the Department of Public Works and Highways, as the implementing agency of the projects in the Loan Agreement therein, to award the road improvement contract to China Road & Bridge Corporation for violating RA 9184. The Court ruled that Executive Order No. 40^[11] was applicable since RA 9184 could not be applied retroactively. The Invitation to Prequalify and to Bid was published in November and December 2002. At the time, the law in effect was EO 40. RA 9184 took effect two months later or on 26 January 2003.

Even assuming that RA 9184 could be given retroactive effect, the Court declared that RA 9184 did not apply to the Loan Agreement. According to the Court, "the terms of the Exchange of Notes dated December 27, 1999 and Loan Agreement No. PH-P204 would still govern the procurement for the CP I project."^[12]

In *DBM-PS v. Kolonwel Trading*,^[13] citing *Abaya v. Ebdane, Jr.*,^[14] the Court made a similar pronouncement. The Court held that the Loan Agreement therein is in the nature of an executive agreement whose terms and

conditions govern the procurement of goods, thus:

The question as to whether or not foreign loan agreements with international financial institutions, such as Loan No. 7118-PH, partake of an executive or international agreement within the purview of Section 4 of R.A. No. 9184, has been answered by the Court in the affirmative in *Abaya*, supra. Significantly, *Abaya* declared that the RP-JBIC loan agreement was to be of governing application over the CP I project and that the JBIC Procurement Guidelines, as stipulated in the loan agreement, shall primarily govern the procurement of goods necessary to implement the main project.

Being an executive agreement, the Loan Agreement subject of this case is governed by international law. As the Court has consistently ruled in numerous cases, the Philippine government, particularly the implementing agency, in this case the Supreme Court, is therefore obligated to comply with the terms and conditions of the Loan Agreement under the international law principle of *pacta sunt servanda* which is embodied in Section 4 of RA 9184.

In dismissing the petition in *Abaya v. Ebdane, Jr.*,^[15] the Court held thus:

Under the fundamental principle of international law of *pacta sunt servanda*, which is, in fact, embodied in Section 4 of RA 9184 as it provides that "[a]ny treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed," the DPWH, as the executing agency of the projects financed by Loan Agreement No. PH-P204, rightfully awarded the contract for the implementation of civil works for the CP I project to private respondent China Road & Bridge Corporation.

Similarly, in *DBM-PS v. Kolonwel Trading*,^[16] the Court held:

Under the fundamental international law principle of *pacta sunt servanda*, which is in fact embodied in the afore-quoted Section 4 of R.A. No. 9184, the RP, as borrower, bound itself to perform in good faith its duties and obligation under Loan No. 7118- PH. Applying this postulate in the concrete to this case, the IABAC was legally obliged to comply with, or accord primacy to, the WB Guidelines on the conduct and implementation of the bidding/procurement process in question.

In *Land Bank of the Philippines v. Atlanta Industries, Inc.*,^[17] the Court held:

x x x. Being similar to a treaty but without requiring legislative concurrence, Loan Agreement No. 4833-PH - following the definition given in the *Bayan Muna* case - is an executive agreement and is, thus, governed by international law. Owing to this classification, the Government of the Philippines is therefore obligated to observe its terms and conditions under the rule of *pacta sunt servanda*, a fundamental maxim of international law that requires the parties to keep their agreement in good faith. It bears pointing out that the *pacta sunt servanda* rule has become part of the law of the land through the incorporation clause found under Section 2, Article II of the 1987 Philippine Constitution, which states that the Philippines "adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

To repeat, under Section 4 of RA 9184, the Government Procurement Reform Act does not apply to executive agreements such as the Loan Agreement in this case. Consequently, RA 9184 does not apply in the procurement of goods and services pursuant to the Loan Agreement between the Philippine government and the IBRD for the Judicial Reform Support Project.

Moreover, the Loan Agreement for the Project expressly provides that the procurement of goods and services shall be in accordance with World Bank guidelines.

Section 3.02 of the Loan Agreement provides: "Except as the Bank shall otherwise agree, procurement of goods,

works and services required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 4 to this Agreement." [18] Schedule 4, in turn, provides: "Goods and works shall be procured in accordance with the provisions of Section I of the 'Guidelines for Procurement under IBRD Loans and IDA Credits' published by the Bank in January 1995 and revised in January and August 1996, September 1997 and January 1999 (the Guidelines) x x x." [19]

The Court's Administrative Circular No. 60-2003, [20] which has the force and effect of a legal instrument for compliance of all concerned with the implementation of the JRSP, [21] expressly provides that the terms and conditions of the Loan Agreement shall be observed in the procurement of goods, works, and consulting services in accordance with World Bank guidelines, thus:

5.1.1 JRSP LOAN AGREEMENT. The Loan Agreement executed by and between the GOP and the WB on October 2, 2003 shall govern the legal relationship between the Bank and the Supreme Court as the Project's Implementing Agency. The terms and conditions set forth therein for the procurement of goods, works and consulting services shall be observed in consonance with the Bank Guidelines. (Emphasis supplied)

Second, the World Bank, from whom the funds for these events were charged, did not consider the expenses for these events ineligible.

To implement the Project, the Philippine government "shall maintain until completion of the Project, a Program Management Office in the Supreme Court, responsible for overseeing the implementation of the Supreme Court's Action Program for Judicial Reform and the Project, chaired by a Director, and said Office to be provided at all times with adequate funds and other resources and staffed by qualified and experienced personnel in adequate numbers as shall be necessary to accomplish its objectives." [22]

In implementing the Project, the PMO, with the approval of the Court, procured the services of Artes through several contracts for the subject events. Significantly, during and after the implementation of the Project, the PMO never received any notice from the World Bank classifying the contracts with Artes, including the incurred expenses for the subject events, as ineligible expenditures. Neither did the World Bank question in any forum the procurement procedures undertaken by the PMO with respect to these contracts. In other words, the World Bank considered these expenditures as eligible, which are defined as "expenditures in respect of the reasonable cost of goods, works and services required for the Project and to be financed out of the proceeds of the Loan allocated from time to time to the eligible Categories x x x." [23]

On the other hand, based on the PMO Memorandum dated 18 June 2012, the World Bank's list of ineligible transactions consisted of five major activities, to wit: (1) Conduct of the distinguished lecture series; (2) Conduct of the seminar on "Revisiting the Code of Conduct for Court Personnel; (3) Conduct of and attendance of SC and Judiciary officials to local and international training, seminars and workshops on court administration, international commercial law and facilitating workshops and trainings; (4) Printing of the Reporter's Case Index for the use of justices, judges, court attorneys and legal researchers, and (5) Procurement of IT equipment for various SC offices. The World Bank considered these as ineligible transactions for being (1) not connected with the project development objective; (2) not agreed with the World Bank; or (3) not reflected in the procurement plan. Attached hereto as Annex "A" is the PMO Memorandum, as well as the list of the ineligible expenditures.

A review of the list of ineligible expenditures shows that there is absolutely no item of expenditure which is even remotely related to the questioned contracts with Artes. In fact, the name Artes or Dumdum does not appear in the list of the names of officials, contractors or suppliers of the ineligible expenditures. Notably, the ineligible expenditures referred to various activities conducted in the years 2010 and 2011, or at least four years after the questioned events were held.

While the PMO in the same Memorandum claims that the listed ineligible transactions were "in fact, incurred in furtherance of the project development objectives of the JRSP" and were "actually regular and eligible transactions undertaken in the course of the JRSP's implementation," the PMO adjusted the total amount to US\$115,416.00, instead of US\$132,766.00, and recommended the refund for the first four transactions from the JRSP-GOP Counterpart Fund and for the procurement of IT equipment from the Court's Fiscal Autonomy Fund.

To repeat, the questioned contracts with Artes and the expenses related to the subject fora and retirement ceremony have not been identified as ineligible expenditures by the World Bank, and in fact, were not among those ineligible expenditures which the PMO recommended to be refunded by the Court using the JRSP-GOP Counterpart Fund or the Court's Fiscal Autonomy Fund. Suffice to state, if there indeed were any violation of the terms and conditions of the Loan Agreement, or any of its procurement procedures, then the World Bank would have categorized such expenses as ineligible and required the Supreme Court to refund the amount of the ineligible expenditures, as what it did for the expenditures in 2010 and 2011 enumerated in its Aide Memoire, covering the period during the incumbency of then Chief Justice Renato C. Corona.

In fact, if the World Bank has found any irregularity or misprocurement related to the subject events, it would have cancelled that portion of the loan allocated to such misprocured goods or services. This is clearly spelled out in the IBRD Guidelines,[24] thus:

Misprocurement

1.12 The Bank does not finance expenditures for goods and works which have not been procured in accordance with the agreed provisions in the Loan Agreement and as further elaborated in the Procurement Plan. In such cases, the Bank will declare misprocurement, and it is the policy of the Bank to cancel that portion of the loan allocated to the goods and works that have been misprocured.

However, no finding of misprocurement or declaration to that effect, with respect to the subject contracts, was ever made by the World Bank.

Third, the COA's Annual Audit Reports on the Supreme Court from 2006 to 2008 and the COA's Annual Audit Reports on the Judicial Reform Support Project from 2004 to 2011 do not contain any finding or observation of irregularity or anomaly as to the Court's contracts with Artes.

In COA's Annual Audit Report on the Supreme Court for calendar year 2006, when the subject events were conducted, there was no finding, observation or recommendation regarding the subject contracts with Artes. Notably, among the deficiencies for 2006 which the COA found was the splitting of contracts in the procurement of steel filing safe cabinets.

Paragraph 4 of the Executive Summary of COA's Annual Audit Report on the Supreme Court for calendar year 2007[25] states that "Commitment Fees in the amount of P13,754,859.51 were incurred due to slow utilization of the proceeds of Loan No. 7191-PH with International Bank for Reconstruction and Development (IBRD)." Accordingly, the COA recommended "that management implement the programs and projects of the JRSP strictly in accordance with timetables and to speed up the procurement of works, goods and services to avoid incurrence of commitment fees." Aside from this observation regarding the slow utilization of the loan proceeds, there was no COA finding, observation or recommendation regarding the subject contracts with Artes.

Paragraph 17 of the Executive Summary of COA's Annual Audit Report on the Supreme Court for calendar year 2008[26] states that "[t]he government paid a commitment fee amounting to P1,509,043.62 for the unwithdrawn principal amount of the International Bank for Reconstruction and Development (IBRD) Loan No. 7191-PH for the Judicial Reform Support Project (JRSP) due to low utilization rate of the loan." Accordingly, the COA recommended that "management fully implement the reforms and measures instituted by the Court to fast-track

the procurement of works, goods and services and finally, to stop the incurrence of commitment fees." Similar to the 2006 and 2007 COA Audit Reports, there was no COA finding, observation or recommendation regarding the subject contracts with Artes.

The COA Annual Audit Reports on the Judicial Reform Support Project for the years 2004 to 2011 yielded the same observation. There was no specific report on the contracts with Artes, much less any finding of irregularity with respect to the expenditures for the subject events.

In COA's Annual Audit Report on the JRSP for calendar year 2009, the COA reported that "[t]he government paid the amount of P1,320,124.97 due to commitment fees incurred for the unwithdrawn principal amount of the loan"[27] and recommended that "management should immediately resolve the implementation issues that arose during the year and to fully implement the reforms and measures instituted by the Court to fast-track the procurement of works, goods and services and finally, to stop the incurrence of commitment fees." [28]

Paragraph 10 of the 2009 Executive Summary on the status of the implementation of prior year's recommendation states that "the audit recommendation for CY 2007 to adopt measures to avoid the incurrence of commitment fees was fully implemented by Management, however, the audit recommendation for CY 2008 to fully implement the reforms and measures to fast-track the procurement of works, goods and services was only partially implemented." [29] There was no observation or recommendation regarding the contracts with Artes for the subject events.

For calendar year 2010, the COA made a similar observation of slow/low availment/utilization rate of the loan for the Project which resulted in the payment of commitment fees. [30] The COA also found, among others, a discrepancy of P40,893,091.88 in reporting the balances of the Property, Plant & Equipment (PPE) accounts between the actual physical count and the accounting records in the PPE account. There was no observation or recommendation regarding the contracts with Artes for the subject events.

In the 2011 Annual Audit Report on the JRSP, the COA observed, among others, that:

1. Procurement of IT equipment in CY totaling P3,850,257.87 was not included in the JRSP Implementation Procurement Plan contrary to the agreement between the Supreme Court and the World Bank. Purchases of IT Equipment were done mostly through shopping instead of competitive public bidding. x x x.
2. Various expenses amounting to P3,038,812.17 incurred were not related to the project/program objectives and not agreed upon in writing with the World Bank. x x x.
3. Out of the four contracts for tri-media monitoring services entered into by the Supreme Court and the Mediabanc Manila Monitoring Services, Inc., two contracts x x x were irregular due to the absence of a signed contract to cover the undertaking. Contracts were signed two to four months after consultancy services had been rendered. x x x.
4. Payment of P982,960.00 to twenty contractual personnel under retroactive Contracts of Services of the Lapu-Lapu Trial Courts were not duly supported with individual work accomplishment report x x x.
5. The Judicial Reform Support Project – Government of the Philippines (GOP) Counterpart Fund temporarily borrowed from the Fiscal Autonomy (FA) Fund the amount of P150,000.00 for the conduct of the Media Forum on Judiciary Coverage x x x but the same was refunded twice resulting in the overstatement of traveling expenses x x x. [31]

Again, there was no observation or recommendation regarding the contracts with Artes for the subject events.

Indeed, were the contracts with Artes irregular or unlawful, or violative of procurement laws and regulations, the COA could have made such a finding in its Audit Reports, as what the COA did in its 2011 Annual Audit Report

on the Project. However, there was none, clearly establishing that the contracts were legal and the expenditures were in accordance with the World Bank guidelines and the terms of the Loan Agreement. Attached hereto as Annexes "B" and "C," respectively, are the Executive Summaries of the COA Annual Audit Reports on the Supreme Court for the years 2006 to 2008, as well as the Executive Summaries of the COA Annual Audit Reports on the JRSP for 2004 to 2011.

Fourth, the Court, upon Dumdum's resignation, issued a Certificate of Clearance dated 7 January 2008, clearing Dumdum of all accountabilities enumerated therein insofar as the Court is concerned, including records and other accountabilities in the Project Management Office. Thereafter, then Chief Justice Reynato S. Puno approved Dumdum's application for terminal leave, which was filed on 15 February 2008. Attached as Annexes "D" and "E," respectively, are Dumdum's Certificate of Clearance and approved Application for Terminal Leave.

Clearance from money and property accountability refers to the act of releasing an official or employee from responsibility and/or liability due to the money and property granted and/or entrusted to officials/employees.[32]

On the other hand, a Clearance Certificate is a certificate given to the officials or employees with properly documented turnover or surrender, liquidation, and transfer of the money/property granted to them, or fulfillment of certain obligations as a condition of such grant when applying for leave of absence or personnel movement. The Clearance is a requirement for the voluntary separation from the service (i.e. resignation, transfer, and optional retirement).[33]

As stated, the Court issued a Certificate of Clearance, which in no uncertain terms cleared Dumdum of all accountabilities in the Court.

Fifth, contrary to the Resolution, there was no splitting of contracts in this case.

Splitting of contracts means the breaking up of contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or subcontracts, for the purpose of making it fall below the threshold for shopping or small value procurement, or evading or circumventing the requirement of public bidding.[34]

The Resolution states that "the JRSP WB Loan was used to fund both the National Forum and Global Forum in the respective amounts of P7.5 million and P20.6 million; but instead of conducting a public bidding for the two events, Ms. Dumdum entered into several letter-contracts or quotation- contracts with Artes for various phases of the events, each phase involving amounts that were well within her authority to approve under SC Administrative Circular No. 60-2003. x x x." [35]

However, there is no dispute that then Chief Justice Panganiban approved the budgets for the National Forum and the Global Forum in the respective amounts of P7.5 million and P20.6 million. The approval of these budgets was within the authority of then Chief Justice Panganiban. The unconditional approval by the Chief Justice of the contracts with Artes entered into by Dumdum, on behalf of the Court, signifies clearly that the hosting of these events, as well as the corresponding expenses for these events embodied in the said contracts, was completely sanctioned by the Court. More importantly, the World Bank has not found any irregularity in the several letter-contracts or quotation--contracts with Artes for the various phases of the National Forum and the Global Forum.

ACCORDINGLY, I vote that this case be considered closed and terminated. Since the contracts with Artes were entered into in accordance with the Loan Agreement, an international executive agreement between the Republic of the Philippines and the International Bank for Reconstruction and Development, and the contracts complied with the terms and conditions of the Loan Agreement, the contracts with Artes are therefore legal and valid under Section 4 of the Government Procurement Reform Act (RA 9184).

[1] Resolution, p. 2.

[2] Id.

[3] Id. at 27.

[4] Id. at 41.

[5] For this Loan Agreement, then President Gloria Macapagal-Arroyo authorized then Secretary of Finance Jose Isidro N. Camacho "to conclude, sign, execute and deliver, in accordance with law, for and on behalf of the Republic of the Philippines, the Loan Agreement and any other documents relating to the Judicial Reform Support Project, x x x" and, together with then Ambassador of the Philippines to the USA Albert F. Del Rosario, were "granted full power and authority to do and perform every act and thing which may be requisite and necessary to be done for the accomplishment of the special power x x x as the President of the Philippines, might or could do if acting personally, x x x. (Special Authority, dated 9 May 2003)

[6] See *Land Bank of the Philippines v. Atlanta Industries, Inc.*, 738 Phil. 243, 259-260 (2014).

[7] 738 Phil. 243 (2014).

[8] Id. at 257.

[9] Id. at 261-262.

[10] 544 Phil. 645 (2007).

[11] Section 1 of EO 40 provides:

Section 1. Scope and Application. This Executive Order shall apply to the procurement of: (a) goods, supplies, materials and related services; (b) civil works; and (c) consulting services, by all National Government agencies, including State Universities and Colleges (SUCs), Government-Owned or-Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs), hereby referred to as "Agencies." This Executive Order shall cover the procurement process from the pre-procurement conference up to award of contract.

Nothing in this Order shall negate any existing and future government commitments with respect to the bidding and award of contracts financed partly or wholly with funds from international financing institutions as well as from bilateral and other similar foreign sources.

[12] *Supra* note 10, at 688.

[13] 551 Phil. 1030, 1049 (2007).

[14] *Supra* note 10.

[15] *Supra* note 10, at 693.

[16] *Supra* note 13, at 1049.

[17] *Supra* note 7, at 260.

[18] Rollo, p. 92. Page 5 of the Loan Agreement.

[19] Id. at 104. Page 18 of the Loan Agreement.

[20] Entitled "Procurement Policy Guidelines and Procedures For the Judicial Reform Support Project." Dated 18 November 2003.

[21] Section 5.1 of SC Administrative Circular No. 60-2003.

[22] Rollo, p. 112. Page 25 of the Loan Agreement.

[23] Id. at 115. Page 28 of the Loan Agreement.

[24] GUIDELINES PROCUREMENT UNDER IBRD LOANS AND IDA CREDITS. Dated November 2003. < <http://siteresources.worldbank.org/INTPROCUREMENT/Resources/Procurement-Guidelines-November-2003.pdf> > (visited 14 April 2018).

[25] Page iii of the Audit Report.

[26] Page vii of the Audit Report.

[27] Rollo, p. 257.

[28] Id.

[29] Id.

[30] Id. at 292.

[31] Id. at 330-331.

[32] See < <http://dotr.gov.ph/images/issuances/DO/2012/departments%20order%202012-02.pdf> > (visited 13 April 2018).

[33] Id.

[34] Guidelines for Shopping and Small Value Procurement < <http://www.gppb.gov.ph/issuances/Guidelines/09-ShoppingSmallValue.pdf> > (visited 14 April 2018).

[35] Resolution, p. 38.

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