

IN RE FIRST INDORSEMENT FROM HONORABLE RAUL M. GONZALEZ DATED 16 MARCH 1988 REQUESTING HONORABLE JUSTICE MARCELO B. FERNAN TO COMMENT ON AN ANONYMOUS LETTER-COMPLAINT.

Adm. Matter No. 88-4-5433. April 15, 1988

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c6613e3772c7/>

PER CURIAM:

The Court CONSIDERED the 1st Indorsement dated 16 March 1988 from Mr. Raul M. Gonzalez, "Tanodbayan/Special Prosecutor" forwarding to Mr. Justice Marcelo B. Fernan a "letter-complaint, dated 14 December 1987 with enclosure of the Concerned Employees of the Supreme Court", together with a telegram of Miguel Cuenco, for "comment within ten (10) days from receipt hereof". Mr. Justice Fernan had brought this 1st Indorsement to the attention of the Court en banc in view of the important implications of policy raised by said 1st Indorsement.

The mentioned 1st Indorsement has two (2) attachments. First, an anonymous letter by "Concerned Employees of the Supreme Court" addressed to Hon. Raul M. Gonzalez referring to charges for disbarment brought by Mr. Miguel Cuenco against Mr. Justice Marcelo B. Fernan and asking Mr. Gonzalez "to do something about this". The second attachment is a copy of a telegram from Mr. Miguel Cuenco addressed to Hon. Raul M. Gonzalez, where Mr. Cuenco refers to pleadings he apparently filed on 29 February 1988 with the Supreme Court in Administrative Case No. 3135, which, in the opinion of Mr. Cuenco, made improper any "intervention" by Mr. Raul Gonzalez. Mr. Cuenco, nonetheless, encourages Mr. Gonzalez "to file responsive pleading Supreme Court en banc to comply with Petition Concerned Employees Supreme Court asking Tanodbayan's intervention."

The Court DIRECTED the Clerk of Court to FURNISH Mr. Raul M. Gonzalez a copy of the per curiam Resolution, dated 17 February 1988 of the Court in Administrative Case No. 3135 entitled "Miguel Cuenco v. Honorable Marcelo B. Fernan" in which Resolution, the Court Resolved to dismiss the charges made by complainant Cuenco against Mr. Justice Fernan for utter lack of merit. In the same Resolution, the Court Resolved to require complainant Cuenco to show cause why he should not be administratively dealt with for making unfounded serious accusations against Mr. Justice Fernan. Upon request of Mr. Cuenco, the Court had granted him an extension of up to 30 March 1988 within which to file his Motion for Reconsideration of the Resolution of this Court of 17 February 1988. On 28 March 1988, Mr. Cuenco filed a pleading which appears to be an omnibus pleading relating to, inter alia, Administrative Case No. 3135. Insofar as Administrative Case No. 3135 is concerned, the Court treated this pleading as a Motion for Reconsideration. By a per curiam Resolution dated 15 April 1988, the Court denied with finality Mr. Cuenco's Motion for Reconsideration.

It is important to underscore the rule of constitutional law here involved. This principle may be succinctly formulated in the following terms: A public officer who under the Constitution is required to be a Member of the Philippine Bar as a qualification for the office held by him and who may be removed from office only by impeachment, cannot be charged with disbarment during the incumbency of such public officer. Further, such public officer, during his incumbency, cannot be charged criminally before the Sandiganbayan or any other court

with any offense which carries with it the penalty of removal from office, or any penalty service of which would amount to removal from office.

The Court dealt with this matter in its Resolution of 17 February 1988 in Administrative Case No. 3135 in the following terms:

"There is another reason why the complaint for disbarment here must be dismissed. Members of the Supreme Court must, under Article VIII (7) (1) of the Constitution, be members of the Philippine Bar and may be removed from office only by impeachment (Article XI [2], Constitution). To grant a complaint for disbarment of a Member of the Court during the Member's incumbency, would in effect be to circumvent and hence to run afoul of the constitutional mandate that Members of the Court may be removed from office only by impeachment for and conviction of certain offenses listed in Article XI (2) of the Constitution. Precisely the same situation exists in respect of the Ombudsman and his deputies (Article XI [8] in relation to Article XI [2], id.), a majority of the members of the Commission on Elections (Article IX [C] [1] [1] in relation to Article XI [2], id. and the members of the Commission on Audit who are not certified public accountants (Article XI [D] [1] [1], id.), all of whom are constitutionally required to be members of the Philippine Bar." (Underscoring supplied)

This is not the first time the Court has had occasion to rule on this matter. In *Lecaroz v. Sandiganbayan*,^[1] the Court said:

"The broad power of the New Constitution vests the respondent court with jurisdiction over 'public officers and employees, including those in government-owned or controlled corporations.' There are exceptions, however, like constitutional officers, particularly those declared to be removed by impeachment. Section 2, Article XIII of the 1973 Constitution provides:

'Sec. 2. The President, the Members of the Supreme Court, and the Members of the Constitutional Commissions shall be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, other high crimes, or graft and corruption.'

Thus, the above provision prescribes removal from office of the aforementioned constitutional officers by any other method; otherwise, to allow a public officer who may be removed solely by impeachment to be charged criminally while holding his office with an offense that carries the penalty of removal from office, would be violative of the clear mandate of the fundamental law.

Chief Justice Enrique M. Fernando, in his authoritative dissertation on the New Constitution, states that 'judgment in cases of impeachment shall be limited to removal from office and disqualification to hold any office of honor, trust, or profit under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, in accordance with law. The above provision is a reproduction of what was found in the 1935 Constitution. It is quite apparent from the explicit character of the above provision that the effect of impeachment is limited to the loss of position and disqualification to hold any office of honor, trust or profit under the Republic. It is equally manifest that the party thus convicted may be proceeded against, tried and thereafter punished in accordance with law. There can be no clearer expression of the constitutional intent as to the scope of the impeachment process (The Constitution of the Philippines pp. 465-466).' The clear implication is, the party convicted in the impeachment proceeding shall nevertheless be liable and subject to prosecution, trial and punishment according to law; and that if the same does not result in a conviction and the official is not thereby removed, the filing of a criminal action 'in accordance with law' may not prosper."^[2]

The provisions of the 1973 Constitution we referred to above in *Lecaroz v. Sandiganbayan* are substantially reproduced in Article XI of the 1987 Constitution:

"Sec. 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the

Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

Sec. 3. xxx xxx xxx

(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial and punishment according to law."

It is important to make clear that the Court is not here saying that its Members or the other constitutional officers we referred to above are entitled to immunity from liability for possibly criminal acts or for alleged violation of the Canons of Judicial Ethics or other supposed misbehaviour. What the Court is saying is that there is a fundamental procedural requirement that must be observed before such liability may be determined and enforced. A Member of the Supreme Court must first be removed from office via the constitutional route of impeachment under Sections 2 and 3 of Article XI of the 1987 Constitution. Should the tenure of the Supreme Court Justice be thus terminated by impeachment, he may then be held to answer either criminally or administratively (by disbarment proceedings) for any wrong or misbehaviour that may be proven against him in appropriate proceedings.

The above rule rests on the fundamental principles of judicial independence and separation of powers. The rule is important because judicial independence is important. Without the protection of this rule, Members of the Supreme Court would be vulnerable to all manner of charges which might be brought against them by unsuccessful litigants or their lawyers or by other parties who, for any number of reasons might seek to affect the exercise of judicial authority by the Court.

It follows from the foregoing that a fiscal or other prosecuting officer should forthwith and motu proprio dismiss any charges brought against a Member of this Court. The remedy of a person with a legitimate grievance is to file impeachment proceedings.

The Clerk of Court is hereby DIRECTED to serve a copy of this Resolution upon Hon. Raul M. Gonzalez and Mr. Miguel Cuenco.

Teehankee, C.J., Yap, Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, and Griño-Aquino, JJ., concur.

Fernan, J., no part.

Gutierrez, Jr., J., on leave.

[1] 128 SCRA 324 [1984].

[2] Id., at 330-331; underscoring supplied.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.