

RENATO L. CAYETANO, PETITIONER, VS. CHRISTIAN MONSOD, HON. JOVITO R. SALONGA, COMMISSION ON APPOINTMENTS, AND HON. GUILLERMO CARAGUE, IN HIS CAPACITY AS SECRETARY OF BUDGET AND ...

G.R. No. 100113. September 03, 1991

Ponente: PARAS, J.

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PARAS, J.:

We are faced here with a controversy of far-reaching proportions. While ostensibly only legal issues are involved, the Court's decision in this case would indubitably have a profound effect on the political aspect of our national existence.

The 1987 Constitution provides in Section 1 (1), Article IX-C:

"There shall be a Commission on Elections composed of a Chairman and six Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, holders of a college degree, and must not have been candidates for any elective position in the immediately preceding elections. However, a majority thereof, including the Chairman, shall be members of the Philippine Bar who have been engaged in the practice of law for at least ten years." (Italics supplied)

The aforequoted provision is patterned after Section 1(1), Article XII-C of the 1973 Constitution which similarly provides:

"There shall be an independent Commission on Elections composed of a Chairman and eight Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age and holders of a college degree. However, a majority thereof, including the Chairman, shall be members of the Philippine Bar who have been engaged in the practice of law for at least ten years." (Italics supplied)

Regrettably, however, there seems to be no jurisprudence as to what constitutes practice of law as a legal qualification to an appointive office.

Black defines "practice of law" as:

"The rendition of services requiring the knowledge and the application of legal principles and technique to serve the interest of another with his consent. It is not limited to appearing in court, or advising and assisting in the conduct of litigation, but embraces the preparation of pleadings, and other papers incident to actions and special proceedings, conveyancing, the preparation of legal instruments of all kinds, and the giving of all legal advice to clients. It embraces all advice to clients and all actions taken for them in matters connected with the law. An attorney engages in the practice of law by maintaining an office where he is held out to be an attorney, using a letterhead describing himself as an attorney, counseling clients in legal matters, negotiating with opposing counsel about pending litigation, and fixing and collecting fees for services rendered by his associate." (Black's Law Dictionary, 3rd ed.)

The practice of law is not limited to the conduct of cases in court. (*Land Title Abstract and Trust Co. v. Dworken*, 129 Ohio St. 23, 193 N. E. 650) A person is also considered to be in the practice of law when he:

"x x x for valuable consideration engages in the business of advising person, firms, associations or corporations as to their rights under the law, or appears in a representative capacity as an advocate in proceedings pending or prospective, before any court, commissioner, referee, board, body, committee, or commission constituted by law or authorized to settle controversies and there, in such representative capacity performs any act or acts for the purpose of obtaining or defending the rights of their clients under the law. Otherwise stated, one who, in a representative capacity, engages in the business of advising clients as to their rights under the law, or while so engaged performs any act or acts either in court or outside of court for that purpose, is engaged in the practice of law." (*State ex. rel. Mckittrick v. C.S. Dudley and Co.*, 102 S.W. 2d 895, 340 Mo. 852)

This Court in the case of *Philippine Lawyers Association v. Agrava*, (105 Phil. 173, 176-177) stated:

"The practice of law is not limited to the conduct of cases or litigation in court; it embraces the preparation of pleadings and other papers incident to actions and special proceedings, the management of such actions and proceedings on behalf of clients before judges and courts, and in addition, conveying. In general, all advice to clients, and all action taken for them in matters connected with the law incorporation services, assessment and condemnation services contemplating an appearance before a judicial body, the foreclosure of a mortgage, enforcement of a creditor's claim in bankruptcy and insolvency proceedings, and conducting proceedings in attachment, and in matters of estate and guardianship have been held to constitute law practice, as do the preparation and drafting of legal instruments, where the work done involves the determination by the trained legal mind of the legal effect of facts and conditions." (5 Am. Jr. p. 262, 263). (Italics supplied)

"Practice of law under modern conditions consists in no small part of work performed outside of any court and having no immediate relation to proceedings in court. It embraces conveyancing, the giving of legal advice on a large variety of subjects, and the preparation and execution of legal instruments covering an extensive field of business and trust relations and other affairs. Although these transactions may have no direct connection with court proceedings, they are always subject to become involved in litigation. They require in many aspects a high degree of legal skill, a wide experience with men and affairs, and great capacity for adaptation to difficult and complex situations. These customary functions of an attorney or counselor at law bear an intimate relation to the administration of justice by the courts. No valid distinction, so far as concerns the question set forth in the order, can be drawn between that part of the work of the lawyer which involves appearance in court and that part which involves advice and drafting of instruments in his office. It is of importance to the welfare of the public that these manifold customary functions be performed by persons possessed of adequate learning and skill, of sound moral character, and acting at all times under the heavy trust obligations to clients which rests upon all attorneys." (*Moran*, Comments on the Rules of Court, Vol. 3 [1953 ed.], p. 665-666, citing *In re Opinion of the Justices [Mass.]*, 194 N. E. 313, quoted in *Rhode Is. Bar Assoc. v. Automobile Service Assoc. [R.I.]* 179 A. 139, 144)). (Italics ours)

The University of the Philippines Law Center in conducting orientation briefing for new lawyers (1974--1975) listed the dimensions of the practice of law in even broader terms as advocacy, counseling and public service.

"One may be a practicing attorney in following any line of employment in the profession. If what he does exacts knowledge of the law and is of a kind usual for attorneys engaging in the active practice of their profession, and he follows some one or more lines of employment such as this he is a practicing attorney at law within the meaning of the statute.'" (*Barr v. Cardell*, 155 NW 312)

Practice of law means any activity, in or out of court, which requires the application of law, legal procedure,

knowledge, training and experience. "To engage in the practice of law is to perform those acts which are characteristics of the profession. Generally, to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill." (111 ALR 23)

The following records of the 1986 Constitutional Commission show that it has adopted a liberal interpretation of the term "practice of law."

"MR. FOZ. Before we suspend the session, may I make a manifestation which I forgot to do during our review of the provisions on the Commission on Audit. May I be allowed to make a very brief statement?

"THE PRESIDING OFFICER (Mr. Jamir). The Commissioner will please proceed.

"MR. FOZ. This has to do with the qualifications of the members of the Commission on Audit. Among others, the qualifications provided for by Section 1 is that 'They must be Members of the Philippine Bar' — I am quoting from the provision — 'who have been engaged in the practice of law for at least ten years.'"

"To avoid any misunderstanding which would result in excluding members of the Bar who are now employed in the COA or Commission on Audit, we would like to make the clarification that this provision on qualifications regarding members of the Bar does not necessarily refer or involve actual practice of law outside the COA. We have to interpret this to mean that as long as the lawyers who are employed in the COA are using their legal knowledge or legal talent in their respective work within COA, then they are qualified to be considered for appointment as members or commissioners, even chairman, of the Commission on Audit.

"This has been discussed by the Committee on Constitutional Commissions and Agencies and we deem it important to take it up on the floor so that this interpretation may be made available whenever this provision on the qualifications as regards members of the Philippine Bar engaging in the practice of law for at least ten years is taken up.

"MR. OPLE. Will Commissioner Foz yield to just one question.

"MR. FOZ. Yes, Mr. Presiding Officer.

"MR. OPLE. Is he, in effect, saying that service in the COA by a lawyer is equivalent to the requirement of a law practice that is set forth in the Article on the Commission on Audit?

"MR. FOZ. We must consider the fact that the work of COA, although it is auditing, will necessarily involve legal work: it will involve legal work. And, therefore, lawyers who are employed in COA now would have the necessary qualifications in accordance with the provision on qualifications under our provisions on the Commission on Audit. And, therefore, the answer is yes.

"MR. OPLE. Yes. So that the construction given to this is that this is equivalent to the practice of law.

"MR. FOZ. Yes, Mr. Presiding Officer.

"Mr. OPLE, Thank you."

x x x (Italics supplied)

Section 1(1), Article IX-D of the 1987 Constitution, provides, among others, that the Chairman and two Commissioners of the Commission on Audit (COA) should either be certified public accountants with not less than ten years of auditing practice, or members of the Philippine Bar who have been engaged in the practice of law for at least ten years. (Italics supplied)

Corollary to this is the term "private practitioner" and which is in many ways synonymous with the word "lawyer." Today, although many lawyers do not engage in private practice, it is still a fact that the majority of

lawyers are private practitioners. (Gary Munneke, *Opportunities in Law Careers* [VGM Career Horizons: Illinois, 1986], p. 15)).

At this point, it might be helpful to define private practice. The term, as commonly understood, means "an individual or organization engaged in the business of delivering legal services." (Ibid.). Lawyers who practice alone are often called "sole practitioners." Groups of lawyers are called "firms." The firm is usually a partnership and members of the firm are the partners. Some firms may be organized as professional corporations and the members called shareholders. In either case, the members of the firm are the experienced attorneys. In most firms, there are younger or more inexperienced salaried attorneys called "associates." (Ibid.).

The test that defines law practice by looking to traditional areas of law practice is essentially tautologous, unhelpfully defining the practice of law as that which lawyers do. (Charles W. Wolfram, *Modern Legal Ethics* [West Publishing Co.: Minnesota, 1986], p. 593). The practice of law is defined as "the performance of any acts . . . in or out of court, commonly understood to be the practice of law. (State Bar Ass'n v. Connecticut Bank & Trust Co., 145 Conn. 222, 140 A.2d 863, 870 [1958] [quoting *Grievance Comm. v. Payne*, 128 Conn. 325, 22 A.2d 623, 626 [1941]]). Because lawyers perform almost every function known in the commercial and governmental realm, such a definition would obviously be too global to be workable. (Wolfram, *op. cit.*).

The appearance of a lawyer in litigation in behalf of a client is at once the most publicly familiar role for lawyers as well as an uncommon role for the average lawyer. Most lawyers spend little time in courtrooms, and a large percentage spend their entire practice without litigating a case. (Ibid., p. 593). Nonetheless, many lawyers do continue to litigate and the litigating lawyer's role colors much of both the public image and the self-perception of the legal profession. (Ibid.).

In this regard thus, the dominance of litigation in the public mind reflects history, not reality. (Ibid.). Why is this so? Recall that the late Alexander SyCip, a corporate lawyer, once articulated on the importance of a lawyer as a business counselor in this wise: "Even today, there are still uninformed laymen whose concept of an attorney is one who principally tries cases before the courts. The members of the bench and bar and the informed laymen such as businessmen, know that in most developed societies today, substantially more legal work is transacted in law offices than in the courtrooms. General practitioners of law who do both litigation and non-litigation work also know that in most cases they find themselves spending more time doing what [is] loosely describe[d] as business counseling than in trying cases. The business lawyer has been described as the planner, the diagnostician and the trial lawyer, the surgeon. I[t] need not [be] stress[ed] that in law, as in medicine, surgery should be avoided where internal medicine can be effective." (Business Star, "Corporate Finance Law," Jan. 11, 1989, p. 4).

In the course of a working day the average general practitioner will engage in a number of legal tasks, each involving different legal doctrines, legal skills, legal processes, legal institutions, clients, and other interested parties. Even the increasing numbers of lawyers in specialized practice will usually perform at least some legal services outside their specialty. And even within a narrow specialty such as tax practice, a lawyer will shift from one legal task or role such as advice-giving to an importantly different one such as representing a client before an administrative agency. (Wolfram, *supra*, p. 687).

By no means will most of this work involve litigation, unless the lawyer is one of the relatively rare types — a litigator who specializes in this work to the exclusion of much else. Instead, the work will require the lawyer to have mastered the full range of traditional lawyer skills of client counseling, advice-giving, document drafting, and negotiation. And increasingly lawyers find that the new skills of evaluation and mediation are both effective for many clients and a source of employment. (Ibid.).

Most lawyers will engage in non-litigation legal work or in litigation work that is constrained in very important

ways, at least theoretically, so as to remove from it some of the salient features of adversarial litigation. Of these special roles, the most prominent is that of prosecutor. In some lawyers' work the constraints are imposed both by the nature of the client and by the way in which the lawyer is organized into a social unit to perform that work. The most common of these roles are those of corporate practice and government legal service. (Ibid.).

In several issues of the Business Star, a business daily, hereinbelow quoted are emerging trends in corporate law practice, a departure from the traditional concept of practice of law.

We are experiencing today what truly may be called a revolutionary transformation in corporate law practice. Lawyers and other professional groups, in particular those members participating in various legal-policy decisional contexts, are finding that understanding the major emerging trends in corporation law is indispensable to intelligent decision-making.

Constructive adjustment to major corporate problems of today requires an accurate understanding of the nature and implications of the corporate law research function accompanied by an accelerating rate of information accumulation. The recognition of the need for such improved corporate legal policy formulation, particularly "model-making" and "contingency planning," has impressed upon us the inadequacy of traditional procedures in many decisional contexts.

In a complex legal problem the mass of information to be processed, the sorting and weighing of significant conditional factors, the appraisal of major trends, the necessity of estimating the consequences of given courses of action, and the need for fast decision and response in situations of acute danger have prompted the use of sophisticated concepts of information flow theory, operational analysis, automatic data processing, and electronic computing equipment. Understandably, an improved decisional structure must stress the predictive component of the policy-making process, wherein a "model", of the decisional context or a segment thereof is developed to test projected alternative courses of action in terms of futuristic effects flowing therefrom.

Although members of the legal profession are regularly engaged in predicting and projecting the trends of the law, the subject of corporate finance law has received relatively little organized and formalized attention in the philosophy of advancing corporate legal education. Nonetheless, a cross-disciplinary approach to legal research has become a vital necessity.

Certainly, the general orientation for productive contributions by those trained primarily in the law can be improved through an early introduction to multi-variable decisional contexts and the various approaches for handling such problems. Lawyers, particularly with either a master's or doctorate degree in business administration or management, functioning at the legal-policy level of decision-making now have some appreciation for the concepts and analytical techniques of other professions which are currently engaged in similar types of complex decision-making.

Truth to tell, many situations involving corporate finance problems would require the services of an astute attorney because of the complex legal implications that arise from each and every necessary step in securing and maintaining the business issue raised. (Business Star, "Corporate Finance Law," Jan. 11, 1989, p. 4).

In our litigation-prone country, a corporate lawyer is assiduously referred to as the "abogado de campanilla." He is the "big-time" lawyer, earning big money and with a clientele composed of the tycoons and magnates of business and industry.

Despite the growing number of corporate lawyers, many people could not explain what it is that a corporate lawyer does. For one, the number of attorneys employed by a single corporation will vary with the size and type of the corporation. Many smaller and some large corporations farm out all their legal problems to private law firms. Many others have in-house counsel only for certain matters. Other corporations have a staff large enough to handle most legal problems in-house.

A corporate lawyer, for all intents and purposes, is a lawyer who handles the legal affairs of a corporation. His areas of concern or jurisdiction may include, inter alia: corporate legal research, tax laws research, acting out as corporate secretary (in board meetings), appearances in both courts and other adjudicatory agencies (including the Securities and Exchange Commission), and in other capacities which require an ability to deal with the law.

At any rate, a corporate lawyer may assume responsibilities other than the legal affairs of the business of the corporation he is representing. These include such matters as determining policy and becoming involved in management. (*Italics supplied*)

In a big company, for example, one may have a feeling of being isolated from the action, or not understanding how one's work actually fits into the work of the organization. This can be frustrating to someone who needs to see the results of his work first hand. In short, a corporate lawyer is sometimes offered this fortune to be more closely involved in the running of the business.

Moreover, a corporate lawyer's services may sometimes be engaged by a multinational corporation (MNC). Some large MNCs provide one of the few opportunities available to corporate lawyers to enter the international law field. After all, international law is practiced in a relatively small number of companies and law firms. Because working in a foreign country is perceived by many as glamorous, this is an area coveted by corporate lawyers. In most cases, however, the overseas jobs go to experienced attorneys while the younger attorneys do their "international practice" in law libraries. (*Business Star*, "Corporate Law Practice," May 25, 1990, p. 4).

This brings us to the inevitable, i.e., the role of the lawyer in the realm of finance. To borrow the lines of Harvard-educated lawyer Bruce Wassertein, to wit: "A bad lawyer is one who fails to spot problems, a good lawyer is one who perceives the difficulties, and the excellent lawyer is one who surmounts them." (*Business Star*, "Corporate Finance Law," Jan. 11, 1989, p. 4)

Today, the study of corporate law practice direly needs a "shot in the arm," so to speak. No longer are we talking of the traditional law teaching method of confining the subject study to the Corporation Code and the Securities Code but an incursion as well into the intertwining modern management issues.

Such corporate legal management issues deal primarily with three (3) types of learning: (1) acquisition of insights into current advances which are of particular significance to the corporate counsel; (2) an introduction to usable disciplinary skills applicable to a corporate counsel's management responsibilities; and (3) a devotion to the organization and management of the legal function itself.

These three subject areas may be thought of as intersecting circles, with a shared area linking them. Otherwise known as "intersecting managerial jurisprudence," it forms a unifying theme for the corporate counsel's total learning.

Some current advances in behavior and policy sciences affect the counsel's role. For that matter, the corporate lawyer reviews the globalization process, including the resulting strategic repositioning that the firms he provides counsel for are required to make, and the need to think about a corporation's strategy at multiple levels. The salience of the nation-state is being reduced as firms deal both with global multinational entities and simultaneously with sub-national governmental units. Firms increasingly collaborate not only with public entities but with each other — often with those who are competitors in other arenas.

Also, the nature of the lawyer's participation in decision-making within the corporation is rapidly changing. The modern corporate lawyer has gained a new role as a stakeholder — in some cases participating in the organization and operations of governance through participation on boards and other decision-making roles. Often these new patterns develop alongside existing legal institutions and laws are perceived as barriers. These trends are complicated as corporations organize for global operations. (*Italics supplied*)

The practicing lawyer of today is familiar as well with governmental policies toward the promotion and

management of technology. New collaborative arrangements for promoting specific technologies or competitiveness more generally require approaches from industry that differ from older, more adversarial relationships and traditional forms of seeking to influence governmental policies. And there are lessons to be learned from other countries. In Europe, Esprit, Eureka and Race are examples of collaborative efforts between governmental and business Japan's MITI is world famous. (Italics supplied)

Following the concept of boundary spanning, the office of the Corporate Counsel comprises a distinct group within the managerial structure of all kinds of organizations. Effectiveness of both long-term and temporary groups within organizations has been found to be related to identifiable factors in the group-context interaction such as the groups actively revising their knowledge of the environment, coordinating work with outsiders, promoting team achievements within the organization. In general, such external activities are better predictors of team performance than internal group processes.

In a crisis situation, the legal managerial capabilities of the corporate lawyer vis-a-vis the managerial mettle of corporations are challenged. Current research is seeking ways both to anticipate effective managerial procedures and to understand relationships of financial liability and insurance considerations. (Underscoring supplied)

Regarding the skills to apply by the corporate counsel, three factors are apropos:

First System Dynamics. The field of systems dynamics has been found an effective tool for new managerial thinking regarding both planning and pressing immediate problems. An understanding of the role of feedback loops, inventory levels, and rates of flow, enable users to simulate all sorts of systematic problems — physical, economic, managerial, social, and psychological. New programming techniques now make the systems dynamics principles more accessible to managers — including corporate counsels. (Italics supplied)

Second Decision Analysis. This enables users to make better decisions involving complexity and uncertainty. In the context of a law department, it can be used to appraise the settlement value of litigation, aid in negotiation settlement, and minimize the cost and risk involved in managing a portfolio of cases. (Italics supplied)

Third Modeling for Negotiation Management. Computer-based models can be used directly by parties and mediators in all kinds of negotiations. All integrated set of such tools provide coherent and effective negotiation support, including hands-on on instruction in these techniques. A simulation case of an international joint venture may be used to illustrate the point.

[Be this as it may,] the organization and management of the legal function, concern three pointed areas of consideration, thus:

Preventive Lawyering. Planning by lawyers requires special skills that comprise a major part of the general counsel's responsibilities. They differ from those of remedial law. Preventive lawyering is concerned with minimizing the risks of legal trouble and maximizing legal rights for such legal entities at that time when transactional or similar facts are being considered and made.

Managerial Jurisprudence. This is the framework within which are undertaken those activities of the firm to which legal consequences attach. It needs to be directly supportive of this nation's evolving economic and organizational fabric as firms change to stay competitive in a global, interdependent environment. The practice and theory of "law" is not adequate today to facilitate the relationships needed in trying to make a global economy work.

Organization and Functioning of the Corporate Counsel's Office. The general counsel has emerged in the last decade as one of the most vibrant subsets of the legal profession. The corporate counsel bear responsibility for key aspects of the firm's strategic issues, including structuring its global operations, managing improved relationships with an increasingly diversified body of employees, managing expanded liability exposure,

creating new and varied interactions with public decision-makers, coping internally with more complex make or by decisions.

This whole exercise drives home the thesis that knowing corporate law is not enough to make one a good general corporate counsel nor to give him a full sense of how the legal system shapes corporate activities. And even if the corporate lawyer's aim is not to understand all of the law's effects on corporate activities, he must, at the very least, also gain a working knowledge of the management issues if only to be able to grasp not only the basic legal "constitution" or make-up of the modern corporation. (Business Star, "The Corporate Counsel," April 10, 1991, p. 4)..

The challenge for lawyers (both of the bar and the bench) is to have more than a passing knowledge of financial law affecting each aspect of their work. Yet, many would admit to ignorance of vast tracts of the financial law territory. What transpires next is a dilemma of professional security: Will the lawyer admit ignorance and risk opprobrium?; or will he feign understanding and risk exposure? (Business Star, "Corporate Finance law," Jan. 11, 1989, p. 4).

Respondent Christian Monsod was nominated by President Corazon C. Aquino to the position of Chairman of the COMELEC in a letter received by the Secretariat of the Commission on Appointments on April 25, 1991. Petitioner opposed the nomination because allegedly Monsod does not possess the required qualification of having been engaged in the practice of law for at least ten years.

On June 5, 1991, the Commission on Appointments confirmed the nomination of Monsod as Chairman of the COMELEC. On June 18, 1991, he took his oath of office. On the same day, he assumed office as Chairman of the COMELEC.

Challenging the validity of the confirmation by the Commission on Appointments of Monsod's nomination, petitioner as a citizen and taxpayer, filed the instant petition for Certiorari and Prohibition praying that said confirmation and the consequent appointment of Monsod as Chairman of the Commission on Elections be declared null and void.

Atty. Christian Monsod is a member of the Philippine Bar, having passed the bar examinations of 1960 with a grade of 86.55%. He has been a dues paying member of the Integrated Bar of the Philippines since its inception in 1972-73. He has also been paying his professional license fees as a lawyer for more than ten years. (p. 124, Rollo)

After graduating from the College of Law (U.P.) and having hurdled the bar, Atty. Monsod worked in the law office of his father. During his stint in the World Bank Group (1963-1970), Monsod worked as an operations officer for about two years in Costa Rica and Panama, which involved getting acquainted with the laws of member-countries, negotiating loans and coordinating legal, economic, and project work of the Bank. Upon returning to the Philippines in 1970, he worked with the Meralco Group, served as chief executive officer of an investment bank and subsequently of a business conglomerate, and since 1986, has rendered services to various companies as a legal and economic consultant or chief executive officer. As former Secretary-General (1986) and National Chairman (1987) of NAMFREL, Monsod's work involved being knowledgeable in election law. He appeared for NAMFREL in its accreditation hearings before the Comelec. In the field of advocacy, Monsod, in his personal capacity and as former Co-Chairman of the Bishops Businessmen's Conference for Human Development, has worked with the under privileged sectors, such as the farmer and urban poor groups, in initiating, lobbying for and engaging in affirmative action for the agrarian reform law and lately the urban land reform bill. Monsod also made use of his legal knowledge as a member of the Davide Commission, a quasi-judicial body, which conducted numerous hearings (1990) and as a member of the Constitutional Commission (1986-1987), and Chairman of its Committee on Accountability of Public Officers, for which he was cited by the President of the Commission, Justice Cecilia-Munoz--Palma for "innumerable amendments to

reconcile government functions with individual freedoms and public accountability and the party-list system for the House of Representative." (pp. 128-129 Rollo) (Italics supplied)

Just a word about the work of a negotiating team of which Atty. Monsod used to be a member.

In a loan agreement, for instance, a negotiating panel acts as a team, and which is adequately constituted to meet the various contingencies that arise during a negotiation. Besides top officials of the Borrower concerned, there are the legal officer (such as the legal counsel), the finance manager, and an operations officer (such as an official involved in negotiating the contracts) who comprise the members of the team. (Guillermo V. Soliven, "Loan Negotiating Strategies for Developing Country Borrowers," Staff Paper No. 2, Central Bank of the Philippines, Manila, 1982, p. 11). (Underscoring supplied)

After a fashion, the loan agreement is like a country's Constitution; it lays down the law as far as the loan transaction is concerned. Thus, the meat of any Loan Agreement can be compartmentalized into five (5) fundamental parts: (1) business terms; (2) borrower's representation; (3) conditions of closing; (4) covenants; and (5) events of default. (Ibid., p. 13).

In the same vein, lawyers play an important role in any debt restructuring program. For aside from performing the tasks of legislative drafting and legal advising, they score national development policies as key factors in maintaining their countries' sovereignty. (Condensed from the work paper, entitled "Wanted: Development Lawyers for Developing Nations," submitted by L. Michael Hager, regional legal adviser of the United States Agency for International Development, during the Session on Law for the Development of Nations at the Abidjan World Conference in Ivory Coast, sponsored by the World Peace Through Law Center on August 26-31, 1973). (Italics supplied)

Loan concessions and compromises, perhaps even more so than purely renegotiation policies, demand expertise in the law of contracts, in legislation and agreement drafting and in renegotiation. Necessarily, a sovereign lawyer may work with an international business specialist or an economist in the formulation of a model loan agreement. Debt restructuring contract agreements contain such a mixture of technical language that they should be carefully drafted and signed only with the advise of competent counsel in conjunction with the guidance of adequate technical support personnel. (See International Law Aspects of the Philippine External Debts, an unpublished dissertation, U.S.T. Graduate School of Law, 1987, p. 321). (Italics supplied)

A critical aspect of sovereign debt restructuring/contract construction is the set of terms and conditions which determines the contractual remedies for a failure to perform one or more elements of the contract. A good agreement must not only define the responsibilities of both parties, but must also state the recourse open to either party when the other fails to discharge an obligation. For a compleat debt restructuring represents a devotion to that principle which in the ultimate analysis is sine qua non for foreign loan agreements — an adherence to the rule of law in domestic and international affairs of whose kind U.S. Supreme Court Justice Oliver Wendell Holmes, Jr. once said; 'They carry no banners, they beat no drums; but where they are, men learn that bustle and bush are not the equal of quiet genius and serene mastery.' (See Ricardo J. Romulo, "The Role of Lawyers in Foreign Investments," Integrated Bar of the Philippine Journal, Vol. 15, Nos. 3 and 4, Third and Fourth Quarters, 1977, p. 265).

Interpreted in the light of the various definitions of the term "practice of law", particularly the modern concept of law practice, and taking into consideration the liberal construction intended by the framers of the Constitution, Atty. Monsod's past work experiences as a lawyer-economist, a lawyer-manager, a lawyer-entrepreneur of industry, a lawyer-negotiator of contracts, and a lawyer-legislator of both the rich and the poor - verily more than satisfy the constitutional requirement - that he has been engaged in the practice of law for at least ten years.

Besides in the leading case of *Luego v. Civil Service Commission*, 143 SCRA 327, the Court said:

"Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide." (italics supplied)

No less emphatic was the Court in the case of *Central Bank v. Civil Service Commission*, 171 SCRA 744) where it stated:

"It is well-settled that when the appointee is qualified, as in this case, and all the other legal requirements are satisfied, the Commission has no alternative but to attest to the appointment in accordance with the Civil Service Law. The Commission has no authority to revoke an appointment on the ground that another person is more qualified for a particular position. It also has no authority to direct the appointment of a substitute of its choice. To do so would be an encroachment on the discretion vested upon the appointing authority. An appointment is essentially within the discretionary power of whomsoever it is vested, subject to the only condition that the appointee should possess the qualifications required by law." (Italics supplied)

The appointing process in a regular appointment as in the case at bar, consists of four (4) stages: (1) nomination; (2) confirmation by the Commission on Appointments; (3) issuance of a commission (in the Philippines, upon submission by the Commission on Appointments of its certificate of confirmation, the President issues the permanent appointment; and (4) acceptance e.g., oath-taking, posting of bond, etc.... (*Lacson v. Romero*, No. L-3081, October 14, 1949; *Gonzales*, *Law on Public Officers*, p. 200)

The power of the Commission on Appointments to give its consent to the nomination of Monsod as Chairman of the Commission on Elections is mandated by Section 1(2) Sub-Article C, Article IX of the Constitution which provides:

"The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, three Members shall hold office for seven years, two Members for five years, and the last Members for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity."

Anent Justice Teodoro Padilla's separate opinion, suffice it to say that his definition of the practice of law is the traditional or stereotyped notion of law practice, as distinguished from the modern concept of the practice of law, which modern connotation is exactly what was intended by the eminent framers of the 1987 Constitution. Moreover, Justice Padilla's definition would require generally a habitual law practice, perhaps practised two or three times a week and would outlaw say, law practice once or twice a year for ten consecutive years. Clearly, this is far from the constitutional intent.

Upon the other hand, the separate opinion of Justice Isagani Cruz states that in my written opinion, I made use of a definition of law practice which really means nothing because the definition says that law practice "... is what people ordinarily mean by the practice of law." True I cited the definition but only by way of sarcasm as evident from my statement that the definition of law practice by "traditional areas of law practice is essentially tautologous" or defining a phrase by means of the phrase itself that is being defined.

Justice Cruz goes on to say in substance that since the law covers almost all situations, most individuals, in making use of the law, or in advising others on what the law means, are actually practicing law. In that sense, perhaps, but we should not lose sight of the fact that Mr. Monsod is a lawyer, a member of the Philippine Bar, who has been practicing law for over ten years. This is different from the acts of persons practicing law, without first becoming lawyers.

Justice Cruz also says that the Supreme Court can even disqualify an elected President of the Philippines, say, on the ground that he lacks one or more qualifications. This matter, I greatly doubt. For one thing, how can an action or petition be brought against the President? And even assuming that he is indeed disqualified, how can the action be entertained since he is the incumbent President?

We now proceed:

The Commission on the basis of evidence submitted during the public hearings on Monsod's confirmation, implicitly determined that he possessed the necessary qualifications as required by law. The judgment rendered by the Commission in the exercise of such an acknowledged power is beyond judicial interference except only upon a clear showing of a grave abuse of discretion amounting to lack or excess of jurisdiction. (Art. VIII, Sec. 1 Constitution). Thus, only where such grave abuse of discretion is clearly shown shall the Court interfere with the Commission's judgment. In the instant case, there is no occasion for the exercise of the Court's corrective power, since no abuse, much less a grave abuse of discretion, that would amount to lack or excess of jurisdiction and would warrant the issuance of the writs prayed, for has been clearly shown.

Additionally, consider the following:

(1)

If the Commission on Appointments rejects a nominee by the President, may the Supreme Court reverse the Commission, and thus in effect confirm the appointment? Clearly, the answer is in the negative.

(2)

In the same vein, may the Court reject the nominee, whom the Commission has confirmed? The answer is likewise clear.

(3)

If the United States Senate (which is the confirming body in the U.S. Congress) decides to confirm a Presidential nominee, it would be incredible that the U.S. Supreme Court would still reverse the U.S. Senate.

Finally, one significant legal maxim is:

"We must interpret not by the letter that killeth, but by the spirit that giveth life."

Take this hypothetical case of Samson and Delilah. Once, the procurator of Judea asked Delilah (who was Samson's beloved) for help in capturing Samson. Delilah agreed on condition that —

"No blade shall touch his skin; No blood shall flow from his veins."

When Samson (his long hair cut by Delilah) was captured, the procurator placed an iron rod burning white-hot two or three inches away from in front of Samson's eyes. This blinded the man. Upon hearing of what had happened to her beloved, Delilah was beside herself with anger, and fuming with righteous fury, accused the procurator of reneging on his word. The procurator calmly replied: "Did any blade touch his skin? Did any blood flow from his veins?" The procurator was clearly relying on the letter, not the spirit of the agreement.

IN VIEW OF THE FOREGOING, this petition is hereby DISMISSED.

SO ORDERED.

Fernan, C.J., Griño-Aquino, and Medialdea, JJ., concur.

Narvasa, J., see brief concurrence.

Melencio-Herrera, J., In the result, on the same bases as Justice Narvasa.

Gutierrez, Jr., Cruz, and Padilla, JJ., see dissent.

Feliciano, J., certify that he voted to dismiss the petition.

Bidin, J., join in the dissent of J. Gutierrez.

Sarmiento, J., on leave.

Regalado, J., No part due to extended personal association with respondent Monsod.

Davide, Jr., J., No part. I was among those who issued a testimonial in favor of Chairman Monsod which was submitted by him to CA.

CONCURRING OPINION**NARVASA, J.:**

I concur with the decision of the majority written by Mr. Justice Paras, albeit only in the result; it does not appear to me that there has been an adequate showing that the challenged determination by the Commission on Appointments — that the appointment of respondent Monsod as Chairman of the Commission on Elections should, on the basis of his stated qualifications and after due assessment thereof, be confirmed — was attended by error so gross as to amount to grave abuse of discretion and consequently merits nullification by this Court in accordance with the second paragraph of Section 1, Article VIII of the Constitution. I therefore vote to DENY the petition.

DISSENTING OPINION**GUTIERREZ, JR., J.:**

When this petition was filed, there was hope that engaging in the practice of law as a qualification for public office would be settled one way or another in fairly definitive terms. Unfortunately, this was not the result.

Of the fourteen (14) member Court, 5 are of the view that Mr. Christian Monsod engaged in the practice of law (with one of these 5 leaving his vote behind while on official leave but not expressing his clear stand on the matter); 4 categorically stating that he did not practice law; 2 voting in the result because there was no error so gross as to amount to grave abuse of discretion; one on official leave with no instructions left behind on how he viewed the issue; and 2 not taking part in the deliberations and the decision.

There are two key factors that make our task difficult. First is our reviewing the work of a constitutional Commission on Appointments whose duty is precisely to look into the qualifications of persons appointed to high office. Even if the Commission errs, we have no power to set aside error. We can look only into grave abuse of discretion or whimsicality and arbitrariness. Second is our belief that Mr. Monsod possesses superior qualifications in terms of executive ability, proficiency in management, educational background, experience in international banking and finance, and instant recognition by the public. His integrity and competence are not questioned by the petitioner. What is before us is compliance with a specific requirement written into the Constitution.

In spite of my high regard for Mr. Monsod, I cannot shirk my constitutional duty. He has never engaged in the practice of law for even one year. He is a member of the bar but to say that he has practiced law is stretching the

term beyond rational limits.

A person may have passed the bar examinations. But if he has not dedicated his life to the law, if he has not engaged in an activity where membership in the bar is a requirement I fail to see how he can claim to have been engaged in the practice of law.

Engaging in the practice of law is a qualification not only for COMELEC chairman but also for appointment to the Supreme Court and all lower courts. What kind of Judges or Justices will we have if their main occupation is selling real estate, managing a business corporation, serving in fact-finding committees, working in media, or operating a farm with no active involvement in the law, whether in Government or private practice, except that in one joyful moment in the distant past, they happened to pass the bar examinations?

The Constitution uses the phrase "engaged in the practice of law for at least ten years." The deliberate choice of words shows that the practice envisioned is active and regular, not isolated, occasional, accidental, intermittent, incidental, seasonal, or extemporaneous. To be "engaged" in an activity for ten years requires committed participation in something which is the result of one's decisive choice. It means that one is occupied and involved in the enterprise; one is obliged or pledged to carry it out with intent and attention during the ten-year period.

I agree with the petitioner that based on the bio--data submitted by respondent Monsod to the Commission on Appointments, the latter has not been engaged in the practice of law for at least ten years. In fact, it appears that Mr. Monsod has never practiced law except for an alleged one year period after passing the bar examinations when he worked in his father's law firm. Even then his law practice must have been extremely limited because he was also working for M. A. and Ph. D. degrees in Economics at the University of Pennsylvania during that period. How could he practice law in the United States while not a member of the Bar there?

The professional life of the respondent follows:

"1.15.1 Respondent Monsod's activities since his passing the Bar examinations in 1961 consist of the following:

1. 1961-1963: M. A. in Economics (Ph.D. candidate), University of Pennsylvania
2. 1963-1970: World Bank Group — Economist, Industry Department; Operations, Latin American Department; Division Chief, South Asia and Middle East, International Finance Corporation
3. 1970-1973: Meralco Group Executive of various companies, i.e., Meralco Securities Corporation, Philippine Petroleum Corporation, Philippine Electric Corporation
4. 1973-1976: Yujuico Group — President, Fil-Capital Development Corporation and affiliated companies
5. 1976-1978: Financiera Manila — Chief Executive Officer
6. 1978-1986: Guevent Group of Companies — Chief Executive Officer
7. 1986-1987: Philippine Constitutional Commission — Member
8. 1989-1991: The Fact-Finding Commission on the December 1989 Coup Attempt — Member
9. Presently: Chairman of the Board and Chief Executive Officer of the following companies:
 - a. ACE Container Philippines, Inc.
 - b. Dataprep, Philippines
 - c. Philippine SUNsystems Products, Inc.
 - d. Semirara Coal Corporation
 - e. CBL Timber Corporation

Member of the Board of the Following:

- a. Engineering Construction Corporation of the Philippines
- b. First Philippine Energy Corporation
- c. First Philippine Holdings Corporation
- d. First Philippine Industrial Corporation
- e. Graphic Atelier
- f. Manila Electric Company
- g. Philippine Commercial Capital, Inc.
- h. Philippine Electric Corporation
- i. Tarlac Reforestation and Environment Enterprises
- j. Tolong Aquaculture Corporation
- k. Visayan Aquaculture Corporation
- l. Guimaras Aquaculture Corporation" (Rollo, pp. 21-22)

There is nothing in the above bio-data which even remotely indicates that respondent Monsod has given the law enough attention or a certain degree of commitment and participation as would support in all sincerity and candor the claim of having engaged in its practice for at least ten years. Instead of working as a lawyer, he has lawyers working for him. Instead of giving legal advice or legal services, he was the one receiving that advice and those services as an executive but not as a lawyer.

The deliberations before the Commission on Appointments show an effort to equate "engaged in the practice of law" with the use of legal knowledge in various fields of endeavor such as commerce, industry, civic work, blue ribbon investigations, agrarian reform, etc. where such knowledge would be helpful.

I regret that I cannot join in playing fast and loose with a term, which even an ordinary layman accepts as having a familiar and customary well-defined meaning. Every resident of this country who has reached the age of discernment has to know, follow, or apply the law at various times in his life. Legal knowledge is useful if not necessary for the business executive, legislator, mayor, barangay captain, teacher, policeman, farmer, fisherman, market vendor, and student to name only a few. And yet, can these people honestly assert that as such, they are engaged in the practice of law?

The Constitution requires having been "engaged in the practice of law for at least ten years." It is not satisfied with having been "a member of the Philippine bar for at least ten years."

Some American courts have defined the practice of law, as follows:

"The practice of law involves not only appearance in court in connection with litigation but also services rendered out of court, and it includes the giving of advice or the rendering of any services requiring the use of legal skill or knowledge, such as preparing a will, contract or other instrument, the legal effect of which, under the facts and conditions involved, must be carefully determined. *People ex rel. Chicago Bar Ass'n v. Tinkoff*, 399 Ill. 282, 77 N.E.2d 693; *People ex rel. Illinois State Bar Ass'n v. People's Stock Yards State Bank*, 344 Ill. 462, 176 N.E. 901, and cases cited.

It would be difficult, if not impossible to lay down a formula or definition of what constitutes the practice of law. "Practicing law" has been defined as 'Practicing as an attorney or counselor at law according to the laws and customs of our courts, is the giving of advice or rendition of any sort of service by any persons, firm or corporation when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill.' Without adopting that definition, we referred to it as being substantially correct in *People ex rel. Illinois State Bar Ass'n v. People's Stock Yards State Bank*, 344 Ill. 462, 176 N.E. 901." (*People v. Schafer*, 87 N.E.2d 773, 776)

For one's actions to come within the purview of practice of law they should not only be activities peculiar to the work of a lawyer, they should also be performed, habitually, frequently or customarily, to wit:

xxx xxx xxx

"Respondent's answers to questions propounded to him were rather evasive. He was asked whether or not he ever prepared contracts for the parties in real-estate transactions where he was not the procuring agent. He answered: 'Very seldom.' In answer to the question as to how many times he had prepared contracts for the parties during the twenty-nine years of his business, he said: 'I have no idea.' When asked if it would be more than half a dozen times his answer was 'I suppose.' Asked if he did not recall making the statement to several parties that he had prepared contracts in a large number of instances, he answered: 'I don't recall exactly what was said.' When asked if he did not remember saying that he had made a practice of preparing deeds, mortgages and contracts and charging a fee to the parties therefor in instances where he was not the broker in the deal, he answered: 'Well, I don't believe so, that is not a practice.' Pressed further for an answer as to his practice in preparing contracts and deeds for parties where he was not the broker, he finally answered: 'I have done about everything that is on the books as far as real estate is concerned.'

xxx xxx xxx

Respondent takes the position that because he is a real-estate broker he has a lawful right to do any legal work in connection with real-estate transactions, especially in drawing of real-estate contracts, deeds, mortgages, notes and the like. There is no doubt but that he has engaged in these practices over the years and has charged for his services in that connection. x x x." (People v. Schafer, 87 N.E.2d 773)

xxx xxx xxx

"x x x. An attorney, in the most general sense, is a person designated or employed by another to act in his stead; an agent; more especially, one of a class of persons authorized to appear and act for suitors or defendants in legal proceedings. Strictly, these professional persons are attorneys at law, and non-professional agents are properly styled 'attorneys in fact;' but the single word is much used as meaning an attorney at law. A person may be an attorney in fact for another, without being an attorney at law.' Abb. Law Dict. 'Attorney.' 'A public attorney, or attorney at law,' says Webster, 'is an officer of a court of law, legally qualified to prosecute and defend actions in such court on the retainer of clients.' 'The principal duties of an attorney are (1) to be true to the court and to his client; (2) to manage the business of his client with care, skill, and integrity; (3) to keep his client informed as to the state of his business; (4) to keep his secrets confided to him as such. * * * His rights are to be justly compensated for his services.' Bouv. Law Dict. tit. 'Attorney.' The transitive verb 'practice,' as defined by Webster, means 'to do or perform frequently, customarily, or habitually; to perform by a succession of acts, as, to practice gaming; * * * to carry on in practice, or repeated action; to apply, as a theory, to real life; to exercise, as a profession, trade, art, etc.; as, to practice law or medicine,' etc. x x x." (State v. Bryan, S.E. 522, 523; Italics supplied)

In this jurisdiction, we have ruled that the practice of law denotes frequency or a succession of acts. Thus, we stated in the case of People v. Villanueva (14 SCRA 109 [1965]):

xxx xxx xxx

"x x x Practice is more than an isolated appearance, for it consists in frequent or customary actions, a succession of acts of the same kind. In other words, it is frequent habitual exercise (State v. Cotner, 127, p. 1, 87 Kan. 864, 42 LRA, M.S. 768). Practice of law to fall within the prohibition of statute has been interpreted as customarily or habitually holding one's self out to the public, as a lawyer and demanding payment for such services. x x x." (at p. 112)

It is to be noted that the Commission on Appointments itself recognizes habituality as a required component of the

meaning of practice of law in a Memorandum prepared and issued by it, to wit:

"1. Habituality. The term 'practice of law' implies customarily or habitually holding one's self out to the public as a lawyer (People v. Villanueva, 14 SCRA 109 citing State v. Bryan, 4 S.E. 522, 98 N.C. 644) such as when one sends a circular announcing the establishment of a law office for the general practice of law (U.S. v. Noy Bosque, 8 Phil. 146), or when one takes the oath of office as a lawyer before a notary public, and files a manifestation with the Supreme Court informing it of his intention to practice law in all courts in the country (People v. De Luna, 102 Phil. 968).

Practice is more than an isolated appearance, for it consists in frequent or customary action, a succession of acts of the same kind. In other words, it is a habitual exercise (People v. Villanueva, 14 SCRA 109 citing State v. Cotner, 127, p. 1, 87 Kan, 864)." (Rollo, p. 115)

xxx xxx xxx

While the career as a businessman of respondent Monsod may have profited from his legal knowledge, the use of such legal knowledge is incidental and consists of isolated activities which do not fall under the denomination of practice of law. Admission to the practice of law was not required for membership in the Constitutional Commission or in the Fact-Finding Commission on the 1989 Coup Attempt. Any specific legal activities which may have been assigned to Mr. Monsod while a member may be likened to isolated transactions of foreign corporations in the Philippines which do not categorize the foreign corporations as doing business in the Philippines. As in the practice of law, doing business also should be active and continuous. Isolated business transactions or occasional, incidental and casual transactions are not within the context of doing business. This was our ruling in the case of Antam Consolidated, Inc. v. Court of Appeals, (143 SCRA 288 [1986]).

Respondent Monsod, corporate executive, civic leader, and member of the Constitutional Commission may possess the background, competence, integrity, and dedication, to qualify for such high offices as President, Vice-President, Senator, Congressman or Governor but the Constitution in prescribing the specific qualification of having engaged in the practice of law for at least ten (10) years for the position of COMELEC Chairman has ordered that he may not be confirmed for that office. The Constitution charges the public respondents no less than this Court to obey its mandate.

I, therefore, believe that the Commission on Appointments committed grave abuse of discretion in confirming the nomination of respondent Monsod as Chairman of the COMELEC.

I vote to GRANT the petition.

DISSENTING OPINION

CRUZ, J.:

I am sincerely impressed by the ponencia of my brother Paras but find I must dissent just the same. There are certain points on which I must differ with him while of course respecting his viewpoint.

To begin with, I do not think we are inhibited from examining the qualifications of the respondent simply because his nomination has been confirmed by the Commission on Appointments. In my view, this is not a political question that we are barred from resolving. Determination of the appointee's credentials is made on the basis of the established facts, not the discretion of that body. Even if it were, the exercise of that discretion would still be subject to our review.

In *Luego*, which is cited in the ponencia, what was involved was the discretion of the appointing authority to choose between two claimants to the same office who both possessed the required qualifications. It was that kind

of discretion that we said could not be reviewed.

If a person elected by no less than the sovereign people may be ousted by this Court for lack of the required qualifications, I see no reason why we cannot disqualify an appointee simply because he has passed the Commission on Appointments.

Even the President of the Philippines may be declared ineligible by this Court in an appropriate proceeding notwithstanding that he has been found acceptable by no less than the enfranchised citizenry. The reason is that what we would be examining is not the wisdom of his election but whether or not he was qualified to be elected in the first place.

Coming now to the qualifications of the private respondent, I fear that the ponencia may have been too sweeping in its definition of the phrase "practice of law" as to render the qualification practically toothless. From the numerous activities accepted as embraced in the term, I have the uncomfortable feeling that one does not even have to be a lawyer to be engaged in the practice of law as long as his activities involve the application of some law, however peripherally. The stock broker and the insurance adjuster and the realtor could come under the definition as they deal with or give advice on matters that are likely "to become involved in litigation."

The lawyer is considered engaged in the practice of law even if his main occupation is another business and he interprets and applies some law only as an incident of such business. That covers every company organized under the Corporation Code and regulated by the SEC under P.D. 902-A. Considering the ramifications of the modern society, there is hardly any activity that is not affected by some law or government regulation the businessman must know about and observe. In fact, again going by the definition, a lawyer does not even have to be part of a business concern to be considered a practitioner. He can be so deemed when, on his own, he rents a house or buys a car or consults a doctor as these acts involve his knowledge and application of the laws regulating such transactions. If he operates a public utility vehicle as his main source of livelihood, he would still be deemed engaged in the practice of law because he must obey the Public Service Act and the rules and regulations of the Energy Regulatory Board.

The ponencia quotes an American decision defining the practice of law as "the performance of any acts ... in or out of court, commonly understood to be the practice of law," which tells us absolutely nothing. The decision goes on to say that "because lawyers perform almost every function known in the commercial and governmental realm, such a definition would obviously be too global to be workable."

The effect of the definition given in the ponencia is to consider virtually every lawyer to be engaged in the practice of law even if he does not earn his living, or at least part of it, as a lawyer. It is enough that his activities are incidentally (even if only remotely) connected with some law, ordinance, or regulation. The possible exception is the lawyer whose income is derived from teaching ballroom dancing or escorting wrinkled ladies with pubescent pretensions.

The respondent's credentials are impressive, to be sure, but they do not persuade me that he has been engaged in the practice of law for ten years as required by the Constitution. It is conceded that he has been engaged in business and finance in which areas he has distinguished himself, but as an executive and economist and not as a practicing lawyer. The plain fact is that he has occupied the various positions listed in his resume by virtue of his experience and prestige as a businessman and not as an attorney-at-law whose principal attention is focused on the law. Even if it be argued that he was acting as a lawyer when he lobbied in Congress for agrarian and urban reform, served in the NAMFREL and the Constitutional Commission (together with non-lawyers like farmers and priests) and was a member of the Davide Commission, he has not proved that his activities in these capacities extended over the prescribed 10-year period of actual practice of the law. He is doubtless eminently qualified for

many other positions worthy of his abundant talents but not as Chairman of the Commission on Elections.

I have much admiration for respondent Monsod, no less than for Mr. Justice Paras, but I must regretfully vote to grant the petition.

DISSENTING OPINION

PADILLA, J.:

The records of this case will show that when the Court first deliberated on the Petition at bar, I voted not only to require the respondents to comment on the Petition, but I was the sole vote for the issuance of a temporary restraining order to enjoin respondent Monsod from assuming the position of COMELEC Chairman, while the Court deliberated on his constitutional qualification for the office. My purpose in voting for a TRO was to prevent the inconvenience and even embarrassment to all parties concerned were the Court to finally decide for respondent Monsod's disqualification. Moreover, a reading of the Petition then in relation to established jurisprudence already showed *prima facie* that respondent Monsod did not possess the needed qualification, that is, he had not engaged in the practice of law for at least ten (10) years prior to his appointment as COMELEC Chairman.

After considering carefully respondent Monsod's comment, I am even more convinced that the constitutional requirement of "practice of law for at least ten (10) years" has not been met.

The procedural barriers interposed by respondents deserve scant consideration because, ultimately, the core issue to be resolved in this petition is the proper construal of the constitutional provision requiring a majority of the membership of COMELEC, including the Chairman thereof to "have been engaged in the practice of law for at least ten (10) years," (Art. IX(C), Section 1(1), 1987 Constitution). Questions involving the construction of constitutional provisions are best left to judicial resolution. As declared in *Angara v. Electoral Commission*, (63 Phil. 139) "upon the judicial department is thrown the solemn and inescapable obligation of interpreting the Constitution and defining constitutional boundaries."

The Constitution has imposed clear and specific standards for a COMELEC Chairman. Among these are that he must have been "engaged in the practice of law for at least ten (10) years." It is the bounden duty of this Court to ensure that such standard is met and complied with.

What constitutes practice of law? As commonly understood, "practice" refers to the actual performance or application of knowledge as distinguished from mere possession of knowledge; it connotes an active, habitual, repeated or customary action.^[1] To "practice" law, or any profession for that matter, means, to exercise or pursue an employment or profession actively, habitually, repeatedly or customarily.

Therefore, a doctor of medicine who is employed and is habitually performing the tasks of a nursing aide, cannot be said to be in the "practice of medicine." A certified public accountant who works as a clerk, cannot be said to practice his profession as an accountant. In the same way, a lawyer who is employed as a business executive or a corporate manager, other than as head or attorney of a Legal Department of a corporation or a governmental agency, cannot be said to be in the practice of law.

As aptly held by this Court in the case of *People vs. Villanueva*:^[2]

"Practice is more than an isolated appearance for it consists in frequent or customary actions, a succession of acts of the same kind. In other words, it is frequent habitual exercise (*State vs. Cotner*, 127, p. 1, 87 Kan. 864, 42 LRA, M.S. 768). Practice of law to fall within the prohibition of statute has been interpreted as customarily or

habitually holding one's self out to the public as a lawyer and demanding payment for such services (State vs. Bryan, 4 S.E. 522, 98 N.C. 644, 647). x x x" (italics supplied).

It is worth mentioning that the respondent Commission on Appointments in a Memorandum it prepared, enumerated several factors determinative of whether a particular activity constitutes "practice of law." It states:

"1. Habituality. The term 'practice of law' implies customarily or habitually holding one's self out to the public as a lawyer (People vs. Villanueva, 14 SCRA 109 citing State v. Boyen, 4 S.E. 522, 98 N.C. 644) such as when one sends a circular announcing the establishment of a law office for the general practice of law (U.S. v. Ney Bosque, 8 Phil. 146), or when one takes the oath of office as a lawyer before a notary public, and files a manifestation with the Supreme Court informing it of his intention to practice law in all courts in the country (People v. De Luna, 102 Phil. 968).

Practice is more than an isolated appearance, for it consists in frequent or customary action, a succession of acts of the same kind. In other words, it is a habitual exercise (People v. Villanueva, 14 SCRA 109 citing State v. Cotner, 127, p. 1, 87 Kan, 864).

2. Compensation. Practice of law implies that one must have presented himself to be in the active and continued practice of the legal profession and that his professional services are available to the public for compensation, as a service of his livelihood or in consideration of his said services. (People v. Villanueva, supra). Hence, charging for services such as preparation of documents involving the use of legal knowledge and skill is within the term 'practice of law' (Ernani Pano, Bar Reviewer in Legal and Judicial Ethics, 1988 ed., p. 8 citing, People v. People's Stock-yards State Bank, 176 N.B. 901) and, one who renders an opinion as to the proper interpretation of a statute, and receives pay for it, is to that extent, practicing law (Martin, supra, p. 806 citing Mendelaun v. Gilbert and Barket Mfg. Co., 290 N.Y.S. 462) If compensation is expected, 'all advice to clients and all action taken for them in matters connected with the law; are practicing law. (Elwood Fitchette et al., v. Arthur C. Taylor, 94A-L.R. 356-359)

3. Application of law, legal principle, practice, or procedure which calls for legal knowledge, training and experience is within the term 'practice of law'. (Martin, supra)

4. Attorney-client relationship. Engaging in the practice of law presupposes the existence of lawyer-client relationship. Hence, where a lawyer undertakes an activity which requires knowledge of law but involves no attorney-client relationship, such as teaching law or writing law books or articles, he cannot be said to be engaged in the practice of his profession or a lawyer (Agpalo, Legal Ethics, 1989 ed., p. 30)."[3]

The above-enumerated factors would, I believe, be useful aids in determining whether or not respondent Monsod meets the constitutional qualification of practice of law for at least ten (10) years at the time of his appointment as COMELEC Chairman.

The following relevant questions may be asked:

1. Did respondent Monsod perform any of the tasks which are peculiar to the practice of law?
2. Did respondent perform such tasks customarily or habitually?
3. Assuming that he performed any of such tasks habitually, did he do so HABITUALLY FOR AT LEAST TEN (10) YEARS prior to his appointment as COMELEC Chairman?

Given the employment or job history of respondent Monsod as appears from the records, I am persuaded that if ever he did perform any of the tasks which constitute the practice of law, he did not do so HABITUALLY for at least ten (10) years prior to his appointment as COMELEC Chairman.

While it may be granted that he performed tasks and activities which could be latitudinarianly considered

activities peculiar to the practice of law, like the drafting of legal documents and the rendering of legal opinion or advice, such were isolated transactions or activities which do not qualify his past endeavors as “practice of law.” To become engaged in the practice of law, there must be a continuity, or a succession of acts. As observed by the Solicitor General in *People vs. Villanueva*:^[4]

“Essentially, the word private practice of law implies that one must have presented himself to be in the active and continued practice of the legal profession and that his professional services are available to the public for a compensation, as a source of his livelihood or in consideration of his said services.”

ACCORDINGLY, my vote is to GRANT the petition and to declare respondent Monsod as not qualified for the position of COMELEC Chairman for not having engaged in the practice of law for at least ten (10) years prior to his appointment to such position.

[1] Webster’s 3rd New International Dictionary

[2] 14 SCRA 109

[3] Commission on Appointments’ Memorandum dated 25 June 1991 RE: WHAT CONSTITUTES PRACTICE OF LAW, pp. 6-7

[4] 14 SCRA 109

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