

FRANCIS H. JARDELEZA PETITIONER, VS. CHIEF JUSTICE MARIA LOURDES P. A. SERENO, THE JUDICIAL AND BAR COUNCIL AND EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., RESPONDENTS.*G.R. No. 213181. August 19, 2014*

Ponente: MENDOZA, J.

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Once again, the Court is faced with a controversy involving the acts of an independent body, which is considered as a constitutional innovation, the Judicial and Bar Council (JBC). It is not the first time that the Court is called upon to settle legal questions surrounding the JBC's exercise of its constitutional mandate. In *De Castro v. JBC*,^[1] the Court laid to rest issues such as the duty of the JBC to recommend prospective nominees for the position of Chief Justice vis-à-vis the appointing power of the President, the period within which the same may be exercised, and the ban on midnight appointments as set forth in the Constitution. In *Chavez v. JBC*,^[2] the Court provided an extensive discourse on constitutional intent as to the JBC's composition and membership.

This time, however, the selection and nomination process actually undertaken by the JBC is being challenged for being constitutionally infirm. The heart of the debate lies not only on the very soundness and validity of the application of JBC rules but also the extent of its discretionary power. More significantly, this case of first impression impugns the end-result of its acts - the shortlist from which the President appoints a deserving addition to the Highest Tribunal of the land.

To add yet another feature of novelty to this case, a member of the Court, no less than the Chief Justice herself, was being impleaded as party respondent.

The Facts

The present case finds its genesis from the compulsory retirement of Associate Justice Roberto Abad (Associate Justice Abad) last May 22, 2014. Before his retirement, on March 6, 2014, in accordance with its rules,^[3] the JBC announced the opening for application or recommendation for the said vacated position.

On March 14, 2014, the JBC received a letter from Dean Danilo Concepcion of the University of the Philippines nominating petitioner Francis H. Jardeleza (Jardeleza), incumbent Solicitor General of the Republic, for the said position. Upon acceptance of the nomination, Jardeleza was included in the names of candidates, as well as in the schedule of public interviews. On May 29, 2014, Jardeleza was interviewed by the JBC.

It appears from the averments in the petition that on June 16 and 17, 2014, Jardeleza received telephone calls from former Court of Appeals Associate Justice and incumbent JBC member, Aurora Santiago Lagman (Justice Lagman), who informed him that during the meetings held on June 5 and 16, 2014, Chief Justice and JBC ex-officio Chairperson, Maria Lourdes P.A. Sereno (Chief Justice Sereno), manifested that she would be invoking Section 2, Rule 10 of JBC-009^[4] against him. Jardeleza was then directed to "make himself available" before the JBC on June 30, 2014, during which he would be informed of the objections to his integrity.

Consequently, Jardeleza filed a letter-petition (letter-petition)[5] praying that the Court, in the exercise of its constitutional power of supervision over the JBC, issue an order: 1) directing the JBC to give him at least five (5) working days written notice of any hearing of the JBC to which he would be summoned; and the said notice to contain the sworn specifications of the charges against him by his oppositors, the sworn statements of supporting witnesses, if any, and copies of documents in support of the charges; and notice and sworn statements shall be made part of the public record of the JBC; 2) allowing him to cross-examine his oppositors and supporting witnesses, if any, and the cross-examination to be conducted in public, under the same conditions that attend the public interviews held for all applicants; 3) directing the JBC to reset the hearing scheduled on June 30, 2014 to another date; and 4) directing the JBC to disallow Chief Justice Sereno from participating in the voting on June 30, 2014 or at any adjournment thereof where such vote would be taken for the nominees for the position vacated by Associate Justice Abad.

During the June 30, 2014 meeting of the JBC, sans Jardeleza, incumbent Associate Justice Antonio T. Carpio (Associate Justice Carpio) appeared as a resource person to shed light on a classified legal memorandum (legal memorandum) that would clarify the objection to Jardeleza's integrity as posed by Chief Justice Sereno. According to the JBC, Chief Justice Sereno questioned Jardeleza's ability to discharge the duties of his office as shown in a confidential legal memorandum over his handling of an international arbitration case for the government.

Later, Jardeleza was directed to one of the Court's ante-rooms where Department of Justice Secretary Leila M. De Lima (Secretary De Lima) informed him that Associate Justice Carpio appeared before the JBC and disclosed confidential information which, to Chief Justice Sereno, characterized his integrity as dubious. After the briefing, Jardeleza was summoned by the JBC at around 2:00 o'clock in the afternoon.

Jardeleza alleged that he was asked by Chief Justice Sereno if he wanted to defend himself against the integrity issues raised against him. He answered that he would defend himself provided that due process would be observed. Jardeleza specifically demanded that Chief Justice Sereno execute a sworn statement specifying her objections and that he be afforded the right to cross-examine her in a public hearing. He requested that the same directive should also be imposed on Associate Justice Carpio. As claimed by the JBC, Representative Niel G. Tupas Jr. also manifested that he wanted to hear for himself Jardeleza's explanation on the matter. Jardeleza, however, refused as he would not be lulled into waiving his rights. Jardeleza then put into record a written statement[6] expressing his views on the situation and requested the JBC to defer its meeting considering that the Court en banc would meet the next day to act on his pending letter-petition. At this juncture, Jardeleza was excused.

Later in the afternoon of the same day, and apparently denying Jardeleza's request for deferment of the proceedings, the JBC continued its deliberations and proceeded to vote for the nominees to be included in the shortlist. Thereafter, the JBC released the subject shortlist of four (4) nominees which included: Apolinario D. Bruselas, Jr. with six (6) votes, Jose C. Reyes, Jr. with six (6) votes, Maria Gracia M. Pulido Tan with five (5) votes, and Reynaldo B. Daway with four (4) votes. [7]

As mentioned in the petition, a newspaper article was later published in the online portal of the Philippine Daily Inquirer, stating that the Court's Spokesman, Atty. Theodore Te, revealed that there were actually five (5) nominees who made it to the JBC shortlist, but one (1) nominee could not be included because of the invocation of Rule 10, Section 2 of the JBC rules.

In its July 8, 2014 Resolution, the Court noted Jardeleza's letter-petition in view of the transmittal of the JBC list of nominees to the Office of the President, "without prejudice to any remedy available in law and the rules that

petitioner may still wish to pursue.”[8] The said resolution was accompanied by an extensive Dissenting Opinion penned by Associate Justice Arturo D. Brion,[9] expressing his respectful disagreement as to the position taken by the majority.

The Petition

Perceptibly based on the aforementioned resolution’s declaration as to his availment of a remedy in law, Jardeleza filed the present petition for certiorari and mandamus under Rule 65 of the Rules of Court with prayer for the issuance of a Temporary Restraining Order (TRO), seeking to compel the JBC to include him in the list of nominees for Supreme Court Associate Justice vice Associate Justice Abad, on the grounds that the JBC and Chief Justice Sereno acted in grave abuse of discretion amounting to lack or excess of jurisdiction in excluding him, despite having garnered a sufficient number of votes to qualify for the position.

Notably, Jardeleza’s petition decries that despite the obvious urgency of his earlier letter-petition and its concomitant filing on June 25, 2014, the same was raffled only on July 1, 2014 or a day after the controversial JBC meeting. By the time that his letter-petition was scheduled for deliberation by the Court en banc on July 8, 2014, the disputed shortlist had already been transmitted to the Office of the President. He attributed this belated action on his letter-petition to Chief Justice Sereno, whose action on such matters, especially those impressed with urgency, was discretionary.

An in-depth perusal of Jardeleza’s petition would reveal that his resort to judicial intervention hinges on the alleged illegality of his exclusion from the shortlist due to: 1) the deprivation of his constitutional right to due process; and 2) the JBC’s erroneous application, if not direct violation, of its own rules. Suffice it to say, Jardeleza directly ascribes the supposed violation of his constitutional rights to the acts of Chief Justice Sereno in raising objections against his integrity and the manner by which the JBC addressed this challenge to his application, resulting in his arbitrary exclusion from the list of nominees.

Jardeleza’s Position

For a better understanding of the above postulates proffered in the petition, the Court hereunder succinctly summarizes Jardeleza’s arguments, as follows:

A. Chief Justice Sereno and the JBC violated Jardeleza’s right to due process in the events leading up to and during the vote on the shortlist last June 30, 2014. When accusations against his integrity were made twice, ex parte, by Chief Justice Sereno, without informing him of the nature and cause thereof and without affording him an opportunity to be heard, Jardeleza was deprived of his right to due process. In turn, the JBC violated his right to due process when he was simply ordered to make himself available on the June 30, 2014 meeting and was told that the objections to his integrity would be made known to him on the same day. Apart from mere verbal notice (by way of a telephone call) of the invocation of Section 2, Rule 10 of JBC-009 against his application and not on the accusations against him per se, he was deprived of an opportunity to mount a proper defense against it. Not only did the JBC fail to ventilate questions on his integrity during his public interview, he was also divested of his rights as an applicant under Sections 3 and 4, Rule 4, JBC-009, to wit:

Section 3. Testimony of parties. – The Council may receive written opposition to an applicant on the ground of his moral fitness and, at its discretion, the Council may receive the testimony of the oppositor at a hearing conducted for the purpose, with due notice to the applicant who shall be allowed to cross-examine the oppositor and to offer countervailing evidence.

Section 4. Anonymous Complaints. – Anonymous complaints against an applicant shall not be given due course, unless there appears on its face a probable cause sufficient to engender belief that the allegations may be true. In the latter case, the Council may direct a discreet investigation or require the applicant to comment thereon in writing or during the interview.

His lack of knowledge as to the identity of his accusers (except for yet again, the verbal information conveyed to him that Associate Justice Carpio testified against him) and as to the nature of the very accusations against him caused him to suffer from the arbitrary action by the JBC and Chief Justice Sereno. The latter gravely abused her discretion when she acted as prosecutor, witness and judge, thereby violating the very essence of fair play and the Constitution itself. In his words: “the sui generis nature of JBC proceedings does not authorize the Chief Justice to assume these roles, nor does it dispense with the need to honor petitioner’s right to due process.”[10]

B. The JBC committed grave abuse of discretion in excluding Jardeleza from the shortlist of nominees, in violation of its own rules. The “unanimity requirement” provided under Section 2, Rule 10 of JBC-009 does not find application when a member of the JBC raises an objection to an applicant’s integrity. Here, the lone objector constituted a part of the membership of the body set to vote. The lone objector could be completely capable of taking hostage the entire voting process by the mere expediency of raising an objection. Chief Justice Sereno’s interpretation of the rule would allow a situation where all that a member has to do to veto other votes, including majority votes, would be to object to the qualification of a candidate, without need for factual basis.

C. Having secured the sufficient number of votes, it was ministerial on the part of the JBC to include Jardeleza in the subject shortlist. Section 1, Rule 10 of JBC-009 provides that a nomination for appointment to a judicial position requires the affirmative vote of at least a majority of all members of the JBC. The JBC cannot disregard its own rules. Considering that Jardeleza was able to secure four (4) out of six (6) votes, the only conclusion is that a majority of the members of the JBC found him to be qualified for the position of Associate Justice.

D. The unlawful exclusion of the petitioner from the subject shortlist impairs the President’s constitutional power to appoint. Jardeleza’s exclusion from the shortlist has unlawfully narrowed the President’s choices. Simply put, the President would be constrained to choose from among four (4) nominees, when five (5) applicants rightfully qualified for the position. This limits the President to appoint a member of the Court from a list generated through a process tainted with patent constitutional violations and disregard for rules of justice and fair play. Until these constitutional infirmities are remedied, the petitioner has the right to prevent the appointment of an Associate Justice vice Associate Justice Abad.

Comment of the JBC

On August 11, 2014, the JBC filed its comment contending that Jardeleza’s petition lacked procedural and substantive bases that would warrant favorable action by the Court. For the JBC, certiorari is only available against a tribunal, a board or an officer exercising judicial or quasi-judicial functions.[11] The JBC, in its exercise of its mandate to recommend appointees to the Judiciary, does not exercise any of these functions. In a pending case,[12] Jardeleza himself, as one of the lawyers for the government, argued in this wise: Certiorari cannot issue against the JBC in the implementation of its policies.

In the same vein, the remedy of mandamus is incorrect. Mandamus does not lie to compel a discretionary act. For it to prosper, a petition for mandamus must, among other things, show that the petitioner has a clear legal right to the act demanded. In Jardeleza’s case, there is no legal right to be included in the list of nominees for judicial vacancies. Possession of the constitutional and statutory qualifications for appointment to the Judiciary may not be used to legally demand that one’s name be included in the list of candidates for a judicial vacancy. One’s inclusion in the shortlist is strictly within the discretion of the JBC.

Anent the substantive issues, the JBC mainly denied that Jardeleza was deprived of due process. The JBC reiterated that Justice Lagman, on behalf of the JBC en banc, called Jardeleza and informed him that Chief Justice Sereno would be invoking Section 2, Rule 10 of JBC-009 due to a question on his integrity based on the way he handled a very important case for the government. Jardeleza and Justice Lagman spoke briefly about the case and

his general explanation on how he handled the same. Secretary De Lima likewise informed him about the content of the impending objection against his application. On these occasions, Jardeleza agreed to explain himself. Come the June 30, 2014 meeting, however, Jardeleza refused to shed light on the allegations against him, as he chose to deliver a statement, which, in essence, requested that his accuser and her witnesses file sworn statements so that he would know of the allegations against him, that he be allowed to cross-examine the witnesses; and that the procedure be done on record and in public.

In other words, Jardeleza was given ample opportunity to be heard and to enlighten each member of the JBC on the issues raised against him prior to the voting process. His request for a sworn statement and opportunity to cross-examine is not supported by a demandable right. The JBC is not a fact-finding body. Neither is it a court nor a quasi-judicial agency. The members are not concerned with the determination of his guilt or innocence of the accusations against him.

Besides, Sections 3 and 4, Rule 10, JBC-009 are merely directory as shown by the use of the word “may.” Even the conduct of a hearing to determine the veracity of an opposition is discretionary on the JBC. Ordinarily, if there are other ways of ascertaining the truth or falsity of an allegation or opposition, the JBC would not call a hearing in order to avoid undue delay of the selection process. Each member of the JBC relies on his or her own appreciation of the circumstances and qualifications of applicants.

The JBC then proceeded to defend adherence to its standing rules. As a general rule, an applicant is included in the shortlist when he or she obtains an affirmative vote of at least a majority of all the members of the JBC. When Section 2, Rule 10 of JBC-009, however, is invoked because an applicant’s integrity is challenged, a unanimous vote is required. Thus, when Chief Justice Sereno invoked the said provision, Jardeleza needed the affirmative vote of all the JBC members to be included in the shortlist. In the process, Chief Justice Sereno’s vote against Jardeleza was not counted. Even then, he needed the votes of the five (5) remaining members. He only got four (4) affirmative votes. As a result, he was not included in the shortlist. Applicant Reynaldo B. Daway, who got four (4) affirmative votes, was included in the shortlist because his integrity was not challenged. As to him, the “majority rule” was considered applicable.

Lastly, the JBC rued that Jardeleza sued the respondents in his capacity as Solicitor General. Despite claiming a prefatory appearance in propria persona, all pleadings filed with the Court were signed in his official capacity. In effect, he sued the respondents to pursue a purely private interest while retaining the office of the Solicitor General. By suing the very parties he was tasked by law to defend, Jardeleza knowingly placed himself in a situation where his personal interests collided against his public duties, in clear violation of the Code of Professional Responsibility and Code of Professional Ethics. Moreover, the respondents are all public officials being sued in their official capacity. By retaining his title as Solicitor General, and suing in the said capacity, Jardeleza filed a suit against his own clients, being the legal defender of the government and its officers. This runs contrary to the fiduciary relationship shared by a lawyer and his client.

In opposition to Jardeleza’s prayer for the issuance of a TRO, the JBC called to mind the constitutional period within which a vacancy in the Court must be filled. As things now stand, the President has until August 20, 2014 to exercise his appointment power which cannot be restrained by a TRO or an injunctive suit.

Comment of the Executive Secretary

In his Comment, Executive Secretary Paquito N. Ochoa Jr. (Executive Secretary) raised the possible unconstitutionality of Section 2, Rule 10 of JBC-009, particularly the imposition of a higher voting threshold in cases where the integrity of an applicant is challenged. It is his position that the subject JBC rule impairs the body’s collegial character, which essentially operates on the basis of majority rule. The application of Section 2,

Rule 10 of JBC-009 gives rise to a situation where all that a member needs to do, in order to disqualify an applicant who may well have already obtained a majority vote, is to object to his integrity. In effect, a member who invokes the said provision is given a veto power that undermines the equal and full participation of the other members in the nomination process. A lone objector may then override the will of the majority, rendering illusory, the collegial nature of the JBC and the very purpose for which it was created—to shield the appointment process from political maneuvering. Further, Section 2, Rule 10 of JBC-009 may be violative of due process for it does not allow an applicant any meaningful opportunity to refute the challenges to his integrity. While other provisions of the JBC rules provide mechanisms enabling an applicant to comment on an opposition filed against him, the subject rule does not afford the same opportunity. In this case, Jardeleza's allegations as to the events which transpired on June 30, 2014 obviously show that he was neither informed of the accusations against him nor given the chance to muster a defense thereto.

The Executive Secretary then offered a supposition: granting that the subject provision is held to be constitutional, the “unanimity rule” would only be operative when the objector is not a member of the JBC. It is only in this scenario where the voting of the body would not be rendered inconsequential. In the event that a JBC member raised the objection, what should have been applied is the general rule of a majority vote, where any JBC member retains their respective reservations to an application with a negative vote. Corollary thereto, the unconstitutionality of the said rule would necessitate the inclusion of Jardeleza in the shortlist submitted to the President.

Other pleadings

On August 12, 2014, Jardeleza was given the chance to refute the allegations of the JBC in its Comment. He submitted his Reply thereto on August 15, 2014. A few hours thereafter, or barely ten minutes prior to the closing of business, the Court received the Supplemental Comment-Reply of the JBC, this time with the attached minutes of the proceedings that led to the filing of the petition, and a detailed “Statement of the Chief Justice on the Integrity Objection.”^[13] Obviously, Jardeleza's Reply consisted only of his arguments against the JBC's original Comment, as it was filed prior to the filing of the Supplemental Comment-Reply.

At the late stage of the case, two motions to admit comments-in-intervention/oppositions-in-intervention were filed. One was by Atty. Purificacion S. Bartolome-Bernabe, purportedly the President of the Integrated Bar of the Philippines-Bulacan Chapter. This pleading echoed the position of the JBC.^[14]

The other one was filed by Atty. Reynaldo A. Cortes, purportedly a former President of the IBP Baguio-Benguet Chapter and former Governor of the IBP-Northern Luzon. It was coupled with a complaint for disbarment against Jardeleza primarily for violations of the Code of Professional Responsibility for representing conflicting interests.^[15]

Both motions for intervention were denied considering that time was of the essence and their motions were merely reiterative of the positions of the JBC and were perceived to be dilatory. The complaint for disbarment, however, was re-docketed as a separate administrative case.

The Issues

Amidst a myriad of issues submitted by the parties, most of which are interrelated such that the resolution of one issue would necessarily affect the conclusion as to the others, the Court opts to narrow down the questions to the very source of the discord - the correct application of Section 2, Rule 10 JBC-009 and its effects, if any, on the substantive rights of applicants.

The Court is not unmindful of the fact that a facial scrutiny of the petition does not directly raise the

unconstitutionality of the subject JBC rule. Instead, it bewails the unconstitutional effects of its application. It is only from the comment of the Executive Secretary where the possible unconstitutionality of the rule was brought to the fore. Despite this milieu, a practical approach dictates that the Court must confront the source of the bleeding from which the gaping wound presented to the Court suffers.

The issues for resolution are:

I.

WHETHER OR NOT THE COURT CAN ASSUME JURISDICTION AND GIVE DUE COURSE TO THE SUBJECT PETITION FOR CERTIORARI AND MANDAMUS (WITH APPLICATION FOR A TEMPORARY RESTRAINING ORDER).

II

WHETHER OR NOT THE ISSUES RAISED AGAINST JARDELEZA BEFIT “QUESTIONS OR CHALLENGES ON INTEGRITY” AS CONTEMPLATED UNDER SECTION 2, RULE 10 OF JBC-009.

II.

WHETHER OR NOT THE RIGHT TO DUE PROCESS IS AVAILABLE IN THE COURSE OF JBC PROCEEDINGS IN CASES WHERE AN OBJECTION OR OPPOSITION TO AN APPLICATION IS RAISED.

III.

WHETHER OR NOT PETITIONER JARDELEZA MAY BE INCLUDED IN THE SHORTLIST OF NOMINEES SUBMITTED TO THE PRESIDENT.

The Court’s Ruling

I – Procedural Issue: The Court has constitutional bases to assume jurisdiction over the case

A - The Court’s Power of Supervision over the JBC

Section 8, Article VIII of the 1987 Constitution provides for the creation of the JBC. The Court was given supervisory authority over it. Section 8 reads:

Section 8.

A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector. [Emphasis supplied]

As a meaningful guidepost, jurisprudence provides the definition and scope of supervision. It is the power of oversight, or the authority to see that subordinate officers perform their duties. It ensures that the laws and the rules governing the conduct of a government entity are observed and complied with. Supervising officials see to it that rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.[16]

Based on this, the supervisory authority of the Court over the JBC covers the overseeing of compliance with its

rules. In this case, Jardeleza's principal allegations in his petition merit the exercise of this supervisory authority.

B- Availability of the Remedy of Mandamus

The Court agrees with the JBC that a writ of mandamus is not available. "Mandamus lies to compel the performance, when refused, of a ministerial duty, but not to compel the performance of a discretionary duty. Mandamus will not issue to control or review the exercise of discretion of a public officer where the law imposes upon said public officer the right and duty to exercise his judgment in reference to any matter in which he is required to act. It is his judgment that is to be exercised and not that of the court.[17] There is no question that the JBC's duty to nominate is discretionary and it may not be compelled to do something.

C- Availability of the Remedy of Certiorari

Respondent JBC opposed the petition for certiorari on the ground that it does not exercise judicial or quasi-judicial functions. Under Section 1 of Rule 65, a writ of certiorari is directed against a tribunal exercising judicial or quasi-judicial function. "Judicial functions are exercised by a body or officer clothed with authority to determine what the law is and what the legal rights of the parties are with respect to the matter in controversy. Quasi-judicial function is a term that applies to the action or discretion of public administrative officers or bodies given the authority to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action using discretion of a judicial nature." [18] It asserts that in the performance of its function of recommending appointees for the judiciary, the JBC does not exercise judicial or quasi-judicial functions. Hence, the resort to such remedy to question its actions is improper.

In this case, Jardeleza cries that although he earned a qualifying number of votes in the JBC, it was negated by the invocation of the "unanimity rule" on integrity in violation of his right to due process guaranteed not only by the Constitution but by the Council's own rules. For said reason, the Court is of the position that it can exercise the expanded judicial power of review vested upon it by the 1987 Constitution. Thus:

Article VIII.

Section 1. The judicial power is vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

It has been judicially settled that a petition for certiorari is a proper remedy to question the act of any branch or instrumentality of the government on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.[19]

In a case like this, where constitutional bearings are too blatant to ignore, the Court does not find passivity as an alternative. The impasse must be overcome.

II – Substantial Issues

Examining the Unanimity Rule of the JBC in cases where an applicant's integrity is challenged

The purpose of the JBC's existence is indubitably rooted in the categorical constitutional declaration that "[a]

member of the judiciary must be a person of proven competence, integrity, probity, and independence.” To ensure the fulfillment of these standards in every member of the Judiciary, the JBC has been tasked to screen aspiring judges and justices, among others, making certain that the nominees submitted to the President are all qualified and suitably best for appointment. In this way, the appointing process itself is shielded from the possibility of extending judicial appointment to the undeserving and mediocre and, more importantly, to the ineligible or disqualified.

In the performance of this sacred duty, the JBC itself admits, as stated in the “whereas clauses” of JBC-009, that qualifications such as “competence, integrity, probity and independence are not easily determinable as they are developed and nurtured through the years.” Additionally, “it is not possible or advisable to lay down iron-clad rules to determine the fitness of those who aspire to become a Justice, Judge, Ombudsman or Deputy Ombudsman.” Given this realistic situation, there is a need “to promote stability and uniformity in JBC’s guiding precepts and principles.” A set of uniform criteria had to be established in the ascertainment of “whether one meets the minimum constitutional qualifications and possesses qualities of mind and heart expected of him” and his office. Likewise for the sake of transparency of its proceedings, the JBC had put these criteria in writing, now in the form of JBC-009. True enough, guidelines have been set in the determination of competence,”[20] “probity and independence,”[21] “soundness of physical and mental condition,”[22] and “integrity.”[23]

As disclosed by the guidelines and lists of recognized evidence of qualification laid down in JBC-009, “integrity” is closely related to, or if not, approximately equated to an applicant’s good reputation for honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards. That is why proof of an applicant’s reputation may be shown in certifications or testimonials from reputable government officials and non-governmental organizations and clearances from the courts, National Bureau of Investigation, and the police, among others. In fact, the JBC may even conduct a discreet background check and receive feedback from the public on the integrity, reputation and character of the applicant, the merits of which shall be verified and checked. As a qualification, the term is taken to refer to a virtue, such that, “integrity is the quality of person’s character.”[24]

The foregoing premise then begets the question: Does Rule 2, Section 10 of JBC-009, in imposing the “unanimity rule,” contemplate a doubt on the moral character of an applicant?

Section 2, Rule 10 of JBC-009 provides:

SEC. 2. Votes required when integrity of a qualified applicant is challenged. - In every case where the integrity of an applicant who is not otherwise disqualified for nomination is raised or challenged, the affirmative vote of all the Members of the Council must be obtained for the favorable consideration of his nomination.

A simple reading of the above provision undoubtedly elicits the rule that a higher voting requirement is absolute in cases where the integrity of an applicant is questioned. Simply put, when an integrity question arises, the voting requirement for his or her inclusion as a nominee to a judicial post becomes “unanimous” instead of the “majority vote” required in the preceding section.[25] Considering that JBC-009 employs the term “integrity” as an essential qualification for appointment, and its doubtful existence in a person merits a higher hurdle to surpass, that is, the unanimous vote of all the members of the JBC, the Court is of the safe conclusion that “integrity” as used in the rules must be interpreted uniformly. Hence, Section 2, Rule 10 of JBC-009 envisions only a situation where an applicant’s moral fitness is challenged. It follows then that the “unanimity rule” only comes into operation when the moral character of a person is put in issue. It finds no application where the question is essentially unrelated to an applicant’s moral uprightness.

Examining the “questions of

integrity” made against Jardeleza

The Court will now examine the propriety of applying Section 2, Rule 10 of JBC-009 to Jardeleza’s case.

The minutes of the JBC meetings, attached to the Supplemental Comment-Reply, reveal that during the June 30, 2014 meeting, not only the question on his actuations in the handling of a case was called for explanation by the Chief Justice, but two other grounds as well tending to show his lack of integrity: a supposed extra-marital affair in the past and alleged acts of insider trading.[26]

Against this factual backdrop, the Court notes that the initial or original invocation of Section 2, Rule 10 of JBC-009 was grounded on Jardeleza’s “inability to discharge the duties of his office” as shown in a legal memorandum related to Jardeleza’s manner of representing the government in a legal dispute. The records bear that the “unanimity rule” was initially invoked by Chief Justice Sereno during the JBC meeting held on June 5, 2014, where she expressed her position that Jardeleza did not possess the integrity required to be a member of the Court.[27] In the same meeting, the Chief Justice shared with the other JBC members the details of Jardeleza’s chosen manner of framing the government’s position in a case and how this could have been detrimental to the national interest.

In the JBC’s original comment, the details of the Chief Justice’s claim against Jardeleza’s integrity were couched in general terms. The particulars thereof were only supplied to the Court in the JBC’s Supplemental Comment-Reply. Apparently, the JBC acceded to Jardeleza’s demand to make the accusations against him public. At the outset, the JBC declined to raise the fine points of the integrity question in its original Comment due to its significant bearing on the country’s foreign relations and national security. At any rate, the Court restrains itself from delving into the details thereof in this disposition. The confidential nature of the document cited therein, which requires the observance of utmost prudence, preclude a discussion that may possibly affect the country’s position in a pending dispute.

Be that as it may, the Court has to resolve the standing questions: Does the original invocation of Section 2, Rule 10 of JBC-009 involve a question on Jardeleza’s integrity? Does his adoption of a specific legal strategy in the handling of a case bring forth a relevant and logical challenge against his moral character? Does the “unanimity rule” apply in cases where the main point of contention is the professional judgment sans charges or implications of immoral or corrupt behavior?

The Court answers these questions in the negative.

While Chief Justice Sereno claims that the invocation of Section 2, Rule 10 of JBC-009 was not borne out of a mere variance of legal opinion but by an “act of disloyalty” committed by Jardeleza in the handling of a case, the fact remains that the basis for her invocation of the rule was the “disagreement” in legal strategy as expressed by a group of international lawyers. The approach taken by Jardeleza in that case was opposed to that preferred by the legal team. For said reason, criticism was hurled against his “integrity.” The invocation of the “unanimity rule” on integrity traces its roots to the exercise of his discretion as a lawyer and nothing else. No connection was established linking his choice of a legal strategy to a treacherous intent to trounce upon the country’s interests or to betray the Constitution.

Verily, disagreement in legal opinion is but a normal, if not an essential form of, interaction among members of the legal community. A lawyer has complete discretion on what legal strategy to employ in a case entrusted to him[28] provided that he lives up to his duty to serve his client with competence and diligence, and that he exert his best efforts to protect the interests of his client within the bounds of the law. Consonantly, a lawyer is not an insurer of victory for clients he represents. An infallible grasp of legal principles and technique by a lawyer is a

utopian ideal. Stripped of a clear showing of gross neglect, iniquity, or immoral purpose, a strategy of a legal mind remains a legal tactic acceptable to some and deplorable to others. It has no direct bearing on his moral choices.

As shown in the minutes, the other JBC members expressed their reservations on whether the ground invoked by Chief Justice Sereno could be classified as a “question of integrity” under Section 2, Rule 10 of JBC-009.[29] These reservations were evidently sourced from the fact that there was no clear indication that the tactic was a “brainchild” of Jardeleza, as it might have been a collective idea by the legal team which initially sought a different manner of presenting the country’s arguments, and there was no showing either of a corrupt purpose on his part.[30] Even Chief Justice Sereno was not certain that Jardeleza’s acts were urged by politicking or lured by extraneous promises.[31] Besides, the President, who has the final say on the conduct of the country’s advocacy in the case, has given no signs that Jardeleza’s action constituted disloyalty or a betrayal of the country’s trust and interest. While this point does not entail that only the President may challenge Jardeleza’s doubtful integrity, it is commonsensical to assume that he is in the best position to suspect a treacherous agenda. The records are bereft of any information that indicates this suspicion. In fact, the Comment of the Executive Secretary expressly prayed for Jardeleza’s inclusion in the disputed shortlist.

The Court notes the zeal shown by the Chief Justice regarding international cases, given her participation in the PIATCO case and the Belgian Dredging case. Her efforts in the determination of Jardeleza’s professional background, while commendable, have not produced a patent demonstration of a connection between the act complained of and his integrity as a person. Nonetheless, the Court cannot consider her invocation of Section 2, Rule 10 of JBC-009 as conformably within the contemplation of the rule. To fall under Section 2, Rule 10 of JBC-009, there must be a showing that the act complained of is, at the least, linked to the moral character of the person and not to his judgment as a professional. What this disposition perceives, therefore, is the inapplicability of Section 2, Rule 10 of JBC-009 to the original ground of its invocation.

As previously mentioned, Chief Justice Sereno raised the issues of Jardeleza’s alleged extra-marital affair and acts of insider-trading for the first time only during the June 30, 2014 meeting of the JBC. As can be gleaned from the minutes of the June 30, 2014 meeting, the inclusion of these issues had its origin from newspaper reports that the Chief Justice might raise issues of “immorality” against Jardeleza.[32] The Chief Justice then deduced that the “immorality” issue referred to by the media might have been the incidents that could have transpired when Jardeleza was still the General Counsel of San Miguel Corporation. She stated that inasmuch as the JBC had the duty to “take every possible step to verify the qualification of the applicants,” it might as well be clarified.[33]

Do these issues fall within the purview of “questions on integrity” under Section 2, Rule 10 of JBC-009? The Court nods in assent. These are valid issues.

This acquiescence is consistent with the Court’s discussion *supra*. Unlike the first ground which centered on Jardeleza’s stance on the tactical approach in pursuing the case for the government, the claims of an illicit relationship and acts of insider trading bear a candid relation to his moral character. Jurisprudence[34] is replete with cases where a lawyer’s deliberate participation in extra-marital affairs was considered as a disgraceful stain on one’s ethical and moral principles. The bottom line is that a lawyer who engages in extra-marital affairs is deemed to have failed to adhere to the exacting standards of morality and decency which every member of the Judiciary is expected to observe. In fact, even relationships which have never gone physical or intimate could still be subject to charges of immorality, when a lawyer, who is married, admits to having a relationship which was more than professional, more than acquaintanceship, more than friendly.[35] As the Court has held: Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity and dissoluteness; or is willful, flagrant, or shameless conduct showing moral

indifference to opinions of respectable members of the community and an inconsiderate attitude toward good order and public welfare.[36] Moral character is not a subjective term but one that corresponds to objective reality.[37] To have a good moral character, a person must have the personal characteristic of being good. It is not enough that he or she has a good reputation, that is, the opinion generally entertained about a person or the estimate in which he or she is held by the public in the place where she is known.[38] Hence, lawyers are at all times subject to the watchful public eye and community approbation.[39]

The element of “willingness” to linger in indelicate relationships imputes a weakness in one’s values, self-control and on the whole, sense of honor, not only because it is a bold disregard of the sanctity of marriage and of the law, but because it erodes the public’s confidence in the Judiciary. This is no longer a matter of an honest lapse in judgment but a dissolute exhibition of disrespect toward sacred vows taken before God and the law.

On the other hand, insider trading is an offense that assaults the integrity of our vital securities market.[40] Manipulative devices and deceptive practices, including insider trading, throw a monkey wrench right into the heart of the securities industry. When someone trades in the market with unfair advantage in the form of highly valuable secret inside information, all other participants are defrauded. All of the mechanisms become worthless. Given enough of stock market scandals coupled with the related loss of faith in the market, such abuses could presage a severe drain of capital. And investors would eventually feel more secure with their money invested elsewhere.[41] In its barest essence, insider trading involves the trading of securities based on knowledge of material information not disclosed to the public at the time. Clearly, an allegation of insider trading involves the propensity of a person to engage in fraudulent activities that may speak of his moral character.

These two issues can be properly categorized as “questions on integrity” under Section 2, Rule 10 of JBC-009. They fall within the ambit of “questions on integrity.” Hence, the “unanimity rule” may come into operation as the subject provision is worded.

The Availability of Due Process in the Proceedings of the JBC

In advocacy of his position, Jardeleza argues that: 1] he should have been informed of the accusations against him in writing; 2] he was not furnished the basis of the accusations, that is, “a very confidential legal memorandum that clarifies the integrity objection”; 3] instead of heeding his request for an opportunity to defend himself, the JBC considered his refusal to explain, during the June 30, 2014 meeting, as a waiver of his right to answer the unspecified allegations; 4] the voting of the JBC was railroad; and 5] the alleged “discretionary” nature of Sections 3 and 4 of JBC-009 is negated by the subsequent effectivity of JBC-010, Section 1(2) of which provides for a 10-day period from the publication of the list of candidates within which any complaint or opposition against a candidate may be filed with the JBC Secretary; 6] Section 2 of JBC-010 requires complaints and oppositions to be in writing and under oath, copies of which shall be furnished the candidate in order for him to file his comment within five (5) days from receipt thereof; and 7] Sections 3 to 6 of JBC-010 prescribe a logical, reasonable and sequential series of steps in securing a candidate’s right to due process.

The JBC counters these by insisting that it is not obliged to afford Jardeleza the right to a hearing in the fulfillment of its duty to recommend. The JBC, as a body, is not required by law to hold hearings on the qualifications of the nominees. The process by which an objection is made based on Section 2, Rule 10 of JBC-009 is not judicial, quasi-judicial, or fact-finding, for it does not aim to determine guilt or innocence akin to a criminal or administrative offense but to ascertain the fitness of an applicant vis-à-vis the requirements for the position. Being *sui generis*, the proceedings of the JBC do not confer the rights insisted upon by Jardeleza. He may not exact the application of rules of procedure which are, at the most, discretionary or optional. Finally,

Jardeleza refused to shed light on the objections against him. During the June 30, 2014 meeting, he did not address the issues, but instead chose to tread on his view that the Chief Justice had unjustifiably become his accuser, prosecutor and judge.

The crux of the issue is on the availability of the right to due process in JBC proceedings. After a tedious review of the parties' respective arguments, the Court concludes that the right to due process is available and thereby demandable as a matter of right.

The Court does not brush aside the unique and special nature of JBC proceedings. Indeed, they are distinct from criminal proceedings where the finding of guilt or innocence of the accused is *sine qua non*. The JBC's constitutional duty to recommend qualified nominees to the President cannot be compared to the duty of the courts of law to determine the commission of an offense and ascribe the same to an accused, consistent with established rules on evidence. Even the quantum of evidence required in criminal cases is far from the discretion accorded to the JBC.

The Court, however, could not accept, lock, stock and barrel, the argument that an applicant's access to the rights afforded under the due process clause is discretionary on the part of the JBC. While the facets of criminal^[42] and administrative^[43] due process are not strictly applicable to JBC proceedings, their peculiarity is insufficient to justify the conclusion that due process is not demandable.

In JBC proceedings, an aspiring judge or justice justifies his qualifications for the office when he presents proof of his scholastic records, work experience and laudable citations. His goal is to establish that he is qualified for the office applied for. The JBC then takes every possible step to verify an applicant's track record for the purpose of determining whether or not he is qualified for nomination. It ascertains the factors which entitle an applicant to become a part of the roster from which the President appoints.

The fact that a proceeding is *sui generis* and is impressed with discretion, however, does not automatically denigrate an applicant's entitlement to due process. It is well-established in jurisprudence that disciplinary proceedings against lawyers are *sui generis* in that they are neither purely civil nor purely criminal; they involve investigations by the Court into the conduct of one of its officers, not the trial of an action or a suit. ^[44] Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who, by their misconduct, have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can be no occasion to speak of a complainant or a prosecutor.^[45] On the whole, disciplinary proceedings are actually aimed to verify and finally determine, if a lawyer charged is still qualified to benefit from the rights and privileges that membership in the legal profession evoke.

Notwithstanding being "a class of its own," the right to be heard and to explain one's self is availing. The Court subscribes to the view that in cases where an objection to an applicant's qualifications is raised, the observance of due process neither negates nor renders illusory the fulfillment of the duty of JBC to recommend. This holding is not an encroachment on its discretion in the nomination process. Actually, its adherence to the precepts of due process supports and enriches the exercise of its discretion. When an applicant, who vehemently denies the truth of the objections, is afforded the chance to protest, the JBC is presented with a clearer understanding of the situation it faces, thereby guarding the body from making an unsound and capricious assessment of information brought before it. The JBC is not expected to strictly apply the rules of evidence in its assessment of an objection against an applicant. Just the same, to hear the side of the person challenged complies with the dictates of fairness for the only test that an exercise of discretion must surmount is that of soundness.

A more pragmatic take on the matter of due process in JBC proceedings also compels the Court to examine its current rules. The pleadings of the parties mentioned two: 1] JBC-009 and 2] JBC-010. The former provides the following provisions pertinent to this case:

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

SECTION 2. Background check. - The Council may order a discreet background check on the integrity, reputation and character of the applicant, and receive feedback thereon from the public, which it shall check or verify to validate the merits thereof.

SECTION 3. Testimony of parties.- The Council may receive written opposition to an applicant on ground of his moral fitness and, at its discretion, the Council may receive the testimony of the oppositor at a hearing conducted for the purpose, with due notice to the applicant who shall be allowed to cross-examine the oppositor and to offer countervailing evidence.

SECTION 4. Anonymous complaints. - Anonymous complaints against an applicant shall not be given due course, unless there appears on its face a probable cause sufficient to engender belief that the allegations may be true. In the latter case, the Council may either direct a discreet investigation or require the applicant to comment thereon in writing or during the interview. [Emphases Supplied]

While the “unanimity rule” invoked against him is found in JBC-009, Jardeleza urges the Court to hold that the subsequent rule, JBC-010,[46] squarely applies to his case. Entitled as a “Rule to Further Promote Public Awareness of and Accessibility to the Proceedings of the Judicial and Bar Council,” JBC-010 recognizes the need for transparency and public awareness of JBC proceedings. In pursuance thereof, JBC-010 was crafted in this wise:

SECTION 1. The Judicial and Bar Council shall deliberate to determine who of the candidates meet prima facie the qualifications for the position under consideration. For this purpose, it shall prepare a long list of candidates who prima facie appear to have all the qualifications.

The Secretary of the Council shall then cause to be published in two (2) newspapers of general circulation a notice of the long list of candidates in alphabetical order.

The notice shall inform the public that any complaint or opposition against a candidate may be filed with the Secretary within ten (10) days thereof.

SECTION 2. The complaint or opposition shall be in writing, under oath and in ten (10) legible copies, together with its supporting annexes. It shall strictly relate to the qualifications of the candidate or lack thereof, as provided for in the Constitution, statutes, and the Rules of the Judicial and Bar Council, as well as resolutions or regulations promulgated by it.

The Secretary of the Council shall furnish the candidate a copy of the complaint or opposition against him. The candidate shall have five (5) days from receipt thereof within which to file his comment to the complaint or opposition, if he so desires.

SECTION 3. The Judicial and Bar Council shall fix a date when it shall meet in executive session to consider the qualification of the long list of candidates and the complaint or opposition against them, if any. The Council may, on its own, conduct a discreet investigation of the background of the candidates.

On the basis of its evaluation of the qualification of the candidates, the Council shall prepare the shorter list of

candidates whom it desires to interview for its further consideration.

SECTION 4. The Secretary of the Council shall again cause to be published the dates of the interview of candidates in the shorter list in two (2) newspapers of general circulation. It shall likewise be posted in the websites of the Supreme Court and the Judicial and Bar Council.

The candidates, as well as their oppositors, shall be separately notified of the date and place of the interview.

SECTION 5. The interviews shall be conducted in public. During the interview, only the members of the Council can ask questions to the candidate. Among other things, the candidate can be made to explain the complaint or opposition against him.

SECTION 6. After the interviews, the Judicial and Bar Council shall again meet in executive session for the final deliberation on the short list of candidates which shall be sent to the Office of the President as a basis for the exercise of the Presidential power of appointment. [Emphases supplied]

Anent the interpretation of these existing rules, the JBC contends that Sections 3 and 4, Rule 10 of JBC-009 are merely directory in nature as can be gleaned from the use of the word “may.” Thus, the conduct of a hearing under Rule 4 of JBC-009 is permissive and/or discretionary on the part of the JBC. Even the conduct of a hearing to determine the veracity of an opposition is discretionary for there are ways, besides a hearing, to ascertain the truth or falsity of allegations. Succinctly, this argument suggests that the JBC has the discretion to hold or not to hold a hearing when an objection to an applicant’s integrity is raised and that it may resort to other means to accomplish its objective. Nevertheless, JBC adds, “what is mandatory, however, is that if the JBC, in its discretion, receives a testimony of an oppositor in a hearing, due notice shall be given to the applicant and that shall be allowed to cross-examine the oppositor.”[47]

Again, the Court neither intends to strip the JBC of its discretion to recommend nominees nor proposes that the JBC conduct a full-blown trial when objections to an application are submitted. Still, it is unsound to say that, all together, the observance of due process is a part of JBC’s discretion when an opposition to an application is made of record. While it may so rely on “other means” such as character clearances, testimonials, and discreet investigation to aid it in forming a judgment of an applicant’s qualifications, the Court cannot accept a situation where JBC is given a full rein on the application of a fundamental right whenever a person’s integrity is put to question. In such cases, an attack on the person of the applicant necessitates his right to explain himself.

The JBC’s own rules convince the Court to arrive at this conclusion. The subsequent issuance of JBC-010 unmistakably projects the JBC’s deference to the grave import of the right of the applicant to be informed and corollary thereto, the right to be heard. The provisions of JBC-010, per se, provide that: any complaint or opposition against a candidate may be filed with the Secretary within ten (10) days thereof; the complaint or opposition shall be in writing, under oath and in ten (10) legible copies; the Secretary of the Council shall furnish the candidate a copy of the complaint or opposition against him; the candidate shall have five (5) days from receipt thereof within which to file his comment to the complaint or opposition, if he so desires; and the candidate can be made to explain the complaint or opposition against him.

The Court may not close its eyes to the existence of JBC-010 which, under the rules of statutory construction, bears great weight in that: 1] it covers “any” complaint or opposition; 2] it employs the mandatory term, “shall”; and 3] most importantly, it speaks of the very essence of due process. While JBC-010 does not articulate a procedure that entails a trial-type hearing, it affords an applicant, who faces “any complaint or opposition,” the right to answer the accusations against him. This constitutes the minimum requirements of due process.

Application to Jardeleza’s Case

Nearing the ultimate conclusion of this case, the Court is behooved to rule on whether Jardeleza was deprived of his right to due process in the events leading up to, and during, the vote on the shortlist last June 30, 2014.

The JBC gives great weight and substance to the fact that it gave Jardeleza the opportunity to answer the allegations against him. It underscores the fact that Jardeleza was asked to attend the June 30, 2014 meeting so that he could shed light on the issues thrown at him. During the said meeting, Chief Justice Sereno informed him that in connection with his candidacy for the position of Associate Justice of the Supreme Court, the Council would like to propound questions on the following issues raised against him: 1] his actuations in handling an international arbitration case not compatible with public interest;^[48] 2] reports on his extra-marital affair in SMC; and 3] alleged insider trading which led to the “show cause” order from the Philippine Stock Exchange.^[49]

As Jardeleza himself admitted, he declined to answer or to explain his side, as he would not want to be “lulled into waiving his rights.” Instead, he manifested that his statement be put on record and informed the Council of the then pendency of his letter-petition with the Court en banc. When Chief Justice Sereno informed Jardeleza that the Council would want to hear from him on the three (3) issues against him, Jardeleza reasoned out that this was precisely the issue. He found it irregular that he was not being given the opportunity to be heard per the JBC rules. He asserted that a candidate must be given the opportunity to respond to the charges against him. He urged the Chief Justice to step down from her pedestal and translate the objections in writing. Towards the end of the meeting, the Chief Justice said that both Jardeleza’s written and oral statements would be made part of the record. After Jardeleza was excused from the conference, Justice Lagman suggested that the voting be deferred, but the Chief Justice ruled that the Council had already completed the process required for the voting to proceed.

After careful calibration of the case, the Court has reached the determination that the application of the “unanimity rule” on integrity resulted in Jardeleza’s deprivation of his right to due process.

As threshed out beforehand, due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself.^[50] Even as Jardeleza was verbally informed of the invocation of Section 2, Rule 10 of JBC-009 against him and was later asked to explain himself during the meeting, these circumstances still cannot expunge an immense perplexity that lingers in the mind of the Court. What is to become of the procedure laid down in JBC-010 if the same would be treated with indifference and disregard? To repeat, as its wording provides, any complaint or opposition against a candidate may be filed with the Secretary within ten (10) days from the publication of the notice and a list of candidates. Surely, this notice is all the more conspicuous to JBC members. Granting *ex argumenti*, that the 10-day period^[51] is only applicable to the public, excluding the JBC members themselves, this does not discount the fact that the invocation of the first ground in the June 5, 2014 meeting would have raised procedural issues. To be fair, several members of the Council expressed their concern and desire to hear out Jardeleza but the application of JBC-010 did not form part of the agenda then. It was only during the next meeting on June 16, 2014, that the Council agreed to invite Jardeleza, by telephone, to a meeting that would be held on the same day when a resource person would shed light on the matter.

Assuming again that the classified nature of the ground impelled the Council to resort to oral notice instead of furnishing Jardeleza a written opposition, why did the JBC not take into account its authority to summon Jardeleza in confidence at an earlier time? Is not the Council empowered to “take every possible step to verify the qualification of the applicants?” It would not be amiss to state, at this point, that the confidential legal memorandum used in the invocation of the “unanimity rule” was actually addressed to Jardeleza, in his capacity as Solicitor General. Safe to assume is his knowledge of the privileged nature thereof and the consequences of its

indiscriminate release to the public. Had he been privately informed of the allegations against him based on the document and had he been ordered to respond thereto in the same manner, Jardeleza's right to be informed and to explain himself would have been satisfied.

What precisely set off the protest of lack of due process was the circumstance of requiring Jardeleza to appear before the Council and to instantaneously provide those who are willing to listen an intelligent defense. Was he given the opportunity to do so? The answer is yes, in the context of his physical presence during the meeting. Was he given a reasonable chance to muster a defense? No, because he was merely asked to appear in a meeting where he would be, right then and there, subjected to an inquiry. It would all be too well to remember that the allegations of his extra-marital affair and acts of insider trading sprung up only during the June 30, 2014 meeting. While the said issues became the object of the JBC discussion on June 16, 2014, Jardeleza was not given the idea that he should prepare to affirm or deny his past behavior. These circumstances preclude the very idea of due process in which the right to explain oneself is given, not to ensnare by surprise, but to provide the person a reasonable opportunity and sufficient time to intelligently muster his response. Otherwise, the occasion becomes an idle and futile exercise.

Needless to state, Jardeleza's grievance is not an imagined slight but a real rebuff of his right to be informed of the charges against him and his right to answer the same with vigorous contention and active participation in the proceedings which would ultimately decide his aspiration to become a magistrate of this Court.

Consequences

To write finis to this controversy and in view of the realistic and practical fruition of the Court's findings, the Court now declares its position on whether or not Jardeleza may be included in the shortlist, just in time when the period to appoint a member of the Court is about to end.

The conclusion of the Court is hinged on the following pivotal points:

- There was a misapplication of the "unanimity rule" under Section 2, Rule 10 of JBC-009 as to Jardeleza's legal strategy in handling a case for the government.
- While Jardeleza's alleged extra-marital affair and acts of insider trading fall within the contemplation of a "question on integrity" and would have warranted the application of the "unanimity rule," he was not afforded due process in its application.
- The JBC, as the sole body empowered to evaluate applications for judicial posts, exercises full discretion on its power to recommend nominees to the President. The sui generis character of JBC proceedings, however, is not a blanket authority to disregard the due process under JBC-010.
- Jardeleza was deprived of his right to due process when, contrary to the JBC rules, he was neither formally informed of the questions on his integrity nor was provided a reasonable opportunity to prepare his defense.

With the foregoing, the Court is compelled to rule that Jardeleza should have been included in the shortlist submitted to the President for the vacated position of Associate Justice Abad. This consequence arose not from the unconstitutionality of Section 2, Rule 10 of JBC-009, per se, but from the violation by the JBC of its own rules of procedure and the basic tenets of due process. By no means does the Court intend to strike down the "unanimity rule" as it reflects the JBC's policy and, therefore, wisdom in its selection of nominees. Even so, the Court refuses to turn a blind eye on the palpable defects in its implementation and the ensuing treatment that Jardeleza received before the Council. True, Jardeleza has no vested right to a nomination, but this does not prescind from the fact that the JBC failed to observe the minimum requirements of due process.

In criminal and administrative cases, the violation of a party's right to due process raises a serious jurisdictional

issue which cannot be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction.^[52] This rule may well be applied to the current situation for an opposing view submits to an undue relaxation of the Bill of Rights. To this, the Court shall not concede. As the branch of government tasked to guarantee that the protection of due process is available to an individual in proper cases, the Court finds the subject shortlist as tainted with a vice that it is assigned to guard against. Indeed, the invocation of Section 2, Rule 10 of JBC-009 must be deemed to have never come into operation in light of its erroneous application on the original ground against Jardeleza's integrity. At the risk of being repetitive, the Court upholds the JBC's discretion in the selection of nominees, but its application of the "unanimity rule" must be applied in conjunction with Section 2, Rule 10 of JBC-010 being invoked by Jardeleza. Having been able to secure four (4) out of six (6) votes, the only conclusion left to propound is that a majority of the members of the JBC, nonetheless, found Jardeleza to be qualified for the position of Associate Justice and this grants him a rightful spot in the shortlist submitted to the President.

Need to Revisit JBC's

Internal Rules

In the Court's study of the petition, the comments and the applicable rules of the JBC, the Court is of the view that the rules leave much to be desired and should be reviewed and revised. It appears that the provision on the "unanimity rule" is vague and unfair and, therefore, can be misused or abused resulting in the deprivation of an applicant's right to due process.

Primarily, the invocation of the "unanimity rule" on integrity is effectively a veto power over the collective will of a majority. This should be clarified. Any assertion by a member after voting seems to be unfair because it effectively gives him or her a veto power over the collective votes of the other members in view of the unanimous requirement. While an oppositor-member can recuse himself or herself, still the probability of annulling the majority vote of the Council is quite high.

Second, integrity as a ground has not been defined. While the initial impression is that it refers to the moral fiber of a candidate, it can be, as it has been, used to mean other things. In fact, the minutes of the JBC meetings in this case reflect the lack of consensus among the members as to its precise definition. Not having been defined or described, it is vague, nebulous and confusing. It must be distinctly specified and delineated.

Third, it should explicitly provide who can invoke it as a ground against a candidate. Should it be invoked only by an outsider as construed by the respondent Executive Secretary or also by a member?

Fourth, while the JBC vetting proceedings is "sui generis" and need not be formal or trial type, they must meet the minimum requirements of due process. As always, an applicant should be given a reasonable opportunity and time to be heard on the charges against him or her, if there are any.

At any rate, it is up to the JBC to fine-tune the rules considering the peculiar nature of its function. It need not be stressed that the rules to be adopted should be fair, reasonable, unambiguous and consistent with the minimum requirements of due process.

One final note.

The Court disclaims that Jardeleza's inclusion in the shortlist is an endorsement of his appointment as a member of the Court. In deference to the Constitution and his wisdom in the exercise of his appointing power, the President remains the ultimate judge of a candidate's worthiness.

WHEREFORE, the petition is GRANTED. Accordingly, it is hereby declared that Solicitor General Francis H.

Jardeleza is deemed INCLUDED in the shortlist submitted to the President for consideration as an Associate Justice of the Supreme Court vice Associate Justice Roberto A. Abad.

The Court further DIRECTS that the Judicial and Bar Council REVIEW, and ADOPT, rules relevant to the observance of due process in its proceedings, particularly JBC-009 and JBC-010, subject to the approval of the Court.

This Decision is immediately EXECUTORY. Immediately notify the Office of the President of this Decision.

SO ORDERED.

Perez, and Reyes, JJ., concur.

Sereno, CJ., and Carpio, JJ., no part.

Villarama, Jr., J., on official leave.

Velasco, Jr., (Acting Chairperson), J., joins the dissent of J. Leonen.

Leonardo-De Castro, J., please see my separate opinion concurring with the ponencia of Justice Mendoza and the separate opinion of Justice Brion.

Brion, J., pls. see separate concurring opinion.

Peralta, J., see separate opinon in incorporating explanation of vote.

Bersamin, J., also join the separate opinion of J. De castro & J. Brion.

Del Castillo, J., I dissen on sole grground the decision may affect independence of JBC.

Perlas-Bernabe, J., joins the dissent of J. Leonen.

Leonen, J., I dissent, see separate opinion.

[1] G.R. No. 191002, April 20, 2010, 676 SCRA 579.

[2] G.R. No. 202242, July 17, 2012, 618 SCRA 639.

[3] JBC-009, Rules of the Judicial and Bar Council, promulgated on September 23, 2002.

[4] Section 2. Votes required when integrity of a qualified applicant is challenged. – In every case when the integrity of an applicant who is not otherwise disqualified for nomination is raised or challenged, the affirmative vote of all the members of the Council must be obtained for the favourable consideration of his nomination.

[5] Docketed as A.M. No. 14-07-01-SC-JBC, Re: Jardeleza For the Position of Associate Justice Vacated By Justice Roberto A. Abad, rollo, pp. 79-88.

[6] Id. at 33-36.

[7] Id.at 37-38.

[8] Id. at 95.

[9] Id. at 97-106.

[10] Id. at 12.

[11] Section 1, Rule 65, Rules of Court.

[12] Villanueva v. Judicial and Bar Council, docketed as G.R. No. 211833 (still pending).

[13] Rollo, pp. 170-217.

[14] Id. at 128-169.

[15] Id. at 220-233.

[16] *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 235 SCRA 135, 142.

[17] *Paloma v. Mora*, 507 Phil. 697 (2005).

[18] *Chamber of Real Estate And Builders' Associations, Inc. (CREBA) v. Energy Regulatory Commission (ERC) And Manila Electric Company (MERALCO)*, G.R. No. 174697, July 8, 2010, 624 SCRA 556.

[19] *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014.

[20] Rule 3 SEC 1. Guidelines in determining competence. - In determining the competence of the applicant or recommendee for appointment, the Council shall consider his educational preparation, experience, performance and other accomplishments including the completion of the prejudicature program of the Philippine Judicial Academy; provided, however, that in places where the number of applicants or recommendees is insufficient and the prolonged vacancy in the court concerned will prejudice the administration of justice, strict compliance with the requirement of completion of the prejudicature program shall be deemed directory." (Effective Dec. 1, 2003)

SEC. 2. Educational preparation. - The Council shall evaluate the applicant's (a) scholastic record up to completion of the degree in law and other baccalaureate and post-graduate degrees obtained; (b) bar examination performance; (c) civil service eligibilities and grades in other government examinations; (d) academic awards, scholarships or grants received/obtained; and (e) membership in local or international honor societies or professional organizations.

SEC. 3. Experience. - The experience of the applicant in the following shall be considered:

(a) Government service, which includes that in the Judiciary (Court of Appeals, Sandiganbayan, and courts of the first and second levels); the Executive Department (Office of the President proper and the agencies attached thereto and the Cabinet); the Legislative Department (elective or appointive positions); Constitutional Commissions or Offices; Local Government Units (elective and appointive positions); and quasi-judicial bodies.

(b) Private Practice, which may either be general practice, especially in courts of justice, as proven by, among other documents, certifications from Members of the Judiciary and the IBP and the affidavits of reputable persons; or specialized practice, as proven by, among other documents, certifications from the IBP and appropriate government agencies or professional organizations, as well as teaching or administrative experience in the academe; and

(c) Others, such as service in international organizations or with foreign governments or other agencies.

SEC. 4. Performance. - (a) The applicant who is in government service shall submit his performance ratings, which shall include a verified statement as to such performance for the past three years.

(b) For incumbent Members of the Judiciary who seek a promotional or lateral appointment, performance may be based on landmark decisions penned; court records as to status of docket; reports of the Office of the Court Administrator; verified feedback from the IBP; and a verified statement as to his performance for the past three years, which shall include his caseload, his average monthly output in all actions and proceedings, the number of cases deemed submitted and the date they were deemed submitted, and the number of his decisions during the immediately preceding two-year period appealed to a higher court and the percentage of affirmance thereof.

SEC. 5. Other accomplishments. - The Council shall likewise consider other accomplishments of the applicant,

such as authorship of law books, treatises, articles and other legal writings, whether published or not; and leadership in professional, civic or other organizations.

[21] Rule 5 SECTION 1. Evidence of probity and independence.- Any evidence relevant to the candidate's probity and independence such as, but not limited to, decisions he has rendered if he is an incumbent member of the judiciary or reflective of the soundness of his judgment, courage, rectitude, cold neutrality and strength of character shall be considered.

SEC. 2. Testimonials of probity and independence. - The Council may likewise consider validated testimonies of the applicant's probity and independence from reputable officials and impartial organizations.

[22] Rule 6 SECTION 1. Good health. - Good physical health and sound mental/psychological and emotional condition of the applicant play a critical role in his capacity and capability to perform the delicate task of administering justice. The applicant or the recommending party shall submit together with his application or the recommendation a sworn medical certificate or the results of an executive medical examination issued or conducted, as the case may be, within two months prior to the filing of the application or recommendation. At its discretion, the Council may require the applicant to submit himself to another medical and physical examination if it still has some doubts on the findings contained in the medical certificate or the results of the executive medical examination.

SEC. 2. Psychological/psychiatric tests. - The applicant shall submit to psychological/psychiatric tests to be conducted by the Supreme Court Medical Clinic or by a psychologist and/or psychiatrist duly accredited by the Council.

[23] Rule 4 SECTION 1. Evidence of integrity. - The Council shall take every possible step to verify the applicant's record of and reputation for honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards. For this purpose, the applicant shall submit to the Council certifications or testimonials thereof from reputable government officials and non-governmental organizations, and clearances from the courts, National Bureau of Investigation, police, and from such other agencies as the Council may require.

SEC. 2. Background check. - The Council may order a discreet background check on the integrity, reputation and character of the applicant, and receive feedback thereon from the public, which it shall check or verify to validate the merits thereof.

SEC. 3. Testimony of parties.- The Council may receive written opposition to an applicant on ground of his moral fitness and, at its discretion, the Council may receive the testimony of the oppositor at a hearing conducted for the purpose, with due notice to the applicant who shall be allowed to cross-examine the oppositor and to offer countervailing evidence.

SEC. 4. Anonymous complaints. - Anonymous complaints against an applicant shall not be given due course, unless there appears on its face a probable cause sufficient to engender belief that the allegations may be true. In the latter case, the Council may either direct a discreet investigation or require the applicant to comment thereon in writing or during the interview.

SEC. 5. Disqualification. - The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman or Deputy Ombudsman:

1. Those with pending criminal or regular administrative cases;
2. Those with pending criminal cases in foreign courts or tribunals; and

3. Those who have been convicted in any criminal case; or in an administrative case, where the penalty imposed is at least a fine of more than P10,000, unless he has been granted judicial clemency.

SEC. 6. Other instances of disqualification.- Incumbent judges, officials or personnel of the Judiciary who are facing administrative complaints under informal preliminary investigation (IPI) by the Office of the Court Administrator may likewise be disqualified from being nominated if, in the determination of the Council, the charges are serious or grave as to affect the fitness of the applicant for nomination.

For purposes of this Section and of the preceding Section 5 insofar as pending regular administrative cases are concerned, the Secretary of the Council shall, from time to time, furnish the Office of the Court Administrator the name of an applicant upon receipt of the application/recommendation and completion of the required papers; and within ten days from receipt thereof the Court Administrator shall report in writing to the Council whether or not the applicant is facing a regular administrative case or an IPI case and the status thereof. In regard to the IPI case, the Court Administrator shall attach to his report copies of the complaint and the comment of the respondent.

[24] Stanford Encyclopedia of Philosophy; <http://plato.stanford.edu/entries/integrity/> last accessed August 18, 2014

[25] Section 1. Votes required for inclusion as nominee. - No applicant shall be considered for nomination for appointment to a judicial position unless he shall obtain the affirmative vote of at least a majority of all the Members of the Council.

[26] Minutes, June 30, 2014; rollo, pp. 207-216, 211.

[27] Minutes, June 5, 2014; id. at 197-201.

[28] *Mattus v. Villaseca*, A.C. No. 7922, October 1, 2013, 706 SCRA 477.

[29] Minutes, June 5, 2014; rollo, p. 199

[30] Minutes, June 5, 2014; id. at 199.

[31] Minutes, June 16, 2014; id. at 203.

[32] Minutes, June 30, 2014.

[33] Rollo, p. 209.

[34] *Guevarra v. Atty. Eala*, 555 Phil. 713 (2007); and *Samaniego v. Atty. Ferrer*, 578 Phil. 1 (2008).

[35] *Geroy v. Hon. Calderon*, 593 Phil. 585, 597 (2008).

[36] *Judge Florencia D. Sealana-Abbu v. Doreza Laurenciana-Huraño and Pauleen Subido*, 558 Phil. 24 (2007).

[37] *Tolentino v. Atty. Norberto Mendoza*, A.C. No. 5151. October 19, 2004, 440 SCRA 519.

[38] *Garrido v. Atty. Garrido*, A.C. No. 6593,: <http://sc.judiciary.gov.ph/jurisprudence/2010/february2010/6593.htm>; last visited August 15, 2014.

[39] *Maria Victoria Ventura v. Atty. Danilo Samson*, A.C. No. 9608, November 27, 2012, 686 SCRA 430.

[40] *Justice Tinga, Concurring Opinion, Securities and Exchange Commission v. Interport Resources Corporation*, G.R. No. 135808, October 6, 2008, 588 Phil. 651 (2008).

[41] *Securities and Exchange Commission v. Interport Resources Corporation*, G.R. No. 135808, October 6, 2008, citing *Colin Chapman, How the Stock Market Works* (1988 ed.), pp. 151-152.

[42] Article 3 of the 1987 Constitution guarantees the rights of the accused, including the right to be presumed innocent until proven guilty, the right to enjoy due process under the law, and the right to a speedy, public trial. Those accused must be informed of the charges against them and must be given access to competent, independent counsel, and the opportunity to post bail, except in instances where there is strong evidence that the crime could result in the maximum punishment of life imprisonment. Habeas corpus protection is extended to all except in cases of invasion or rebellion. During a trial, the accused are entitled to be present at every proceeding, to compel witnesses, to testify and cross-examine them and to testify or be exempt as a witness. Finally, all are guaranteed freedom from double jeopardy and, if convicted, the right to appeal.

[43] The right to a hearing which includes the right of the party interested or affected to present his own case and submit evidence in support thereof.

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.

(3) While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, a place when directly attached.

(4) Not only must there be some evidence to support a finding or conclusion but the evidence must be "substantial." Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

(6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision.

(7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it. (*Ang Tibay v. CIR*, 69 Phil. 635 (1940)).

[44] *Fe A. Ylaya v. Atty. Glenn Carlos Gacott*, A.C. No. 6475, January 30, 2013, 689 SCRA 453, citing *Pena v. Aparicio*, 522 Phil. 512 (2007).

[45] *Id.*

[46] Which took effect on October 1, 2002.

[47] JBC Original Comment; rollo, pp. 59.

[48] Paraphrased from the JBC meetings in order to uphold confidentiality.

[49] Minutes, June 30, 2014 meeting; rollo, p. 211.

[50] *Ledesma v. Court of Appeals*, 565 Phil. 731 (2007).

[51] The official list of candidates was published in *The Philippine Star* on April 26, 2014. The 10-day period ended on May 6, 2014.

[52] *PO2 Ruel C. Montoya v. Police Director Reynaldo P. Varilla and Atty. Rufino Jeffrey I. Manere*, 595 Phil.

507 (2008), citing *State Prosecutors v. Muro*, Adm. Matter No. RTJ-92-876, 19 September 1994, 236 SCRA 505, 522-523.

CONCURRING OPINION

LEONARDO-DE CASTRO, J.:

At the outset, it should be made very clear that this petition for certiorari and mandamus with application for a temporary restraining order should be decided in disregard of the personalities involved and stripped of the perceived politics that surround it. There is one primordial matter that should concern the Court in this instance and that is the concept of procedural fairness dictated by the due process requirement mandated by the Constitution, as viewed within the context of the special nature and functions of the Judicial and Bar Council (JBC). It is with this framework in mind that I concur with the ponencia and offer my thoughts on this case through this separate opinion.

PRELIMINARY ISSUES

While I may agree with the JBC's proposition that mandamus cannot be availed of to compel the performance of a discretionary act, it is already settled that a petition for certiorari is nonetheless a proper remedy to question, on the ground of grave abuse of discretion, the act of any branch or instrumentality of government, regardless of the nature of its functions. The most recent articulation of this doctrine can be found in *Araullo v. Aquino III*,^[1] where we held:

[T]he remedies of certiorari and prohibition are necessarily broader in scope and reach, and the writ of certiorari or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, [Article VIII of the Constitution].

Thus, in my view, there is no procedural bar for this Court to take cognizance of this case as a proper subject of certiorari proceedings.

I am also convinced from my perusal of the pleadings that petitioner has come to this Court in his personal capacity and not as Solicitor General on a cause of action that accrued to him outside his employment as the government's counsel. When petitioner appeared before the JBC to be considered for nomination to the vacancy in this Court, he was not representing the JBC in a legal matter but was appearing simply as a candidate for a judicial position. There appears to be no danger that petitioner would come by any information regarding this case to the prejudice of respondents nor would he be in a position to breach any fiduciary duty in relation to the present matter considering that respondents have chosen not to be represented by the Office of the Solicitor General and are instead represented by legal officers employed in their respective offices.

SUBSTANTIVE ISSUES

Petitioner was denied his constitutional right to due process.

I am willing to grant that the JBC's functions are not judicial such that a formal, trial-type of hearing would be not be required in the discharge of its duties. However, even in administrative or non-formal types of proceedings,

there are minimum requirements that must be met to protect the due process rights of the persons subjected to an investigation, or in this case, an inquiry into their qualifications for judicial office.

We have held that “in administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process.”[2] The Court has also previously stated that “the observance of fairness in the conduct of any investigation is at the very heart of procedural due process.” [3]

In his Concurring Opinion in *Perez v. Philippine Telegraph and Telephone Company*,^[4] our esteemed colleague Associate Justice Arturo D. Brion traced the historical development of “procedural fairness” in common law, to wit:

At its most basic, procedural due process is about fairness in the mode of procedure to be followed. It is not a novel concept, but one that traces its roots in the common law principle of natural justice.

Natural justice connotes the requirement that administrative tribunals, when reaching a decision, must do so with procedural fairness. If they err, the superior courts will step in to quash the decision by certiorari or prevent the error by a writ of prohibition. The requirement was initially applied in a purely judicial context, but was subsequently extended to executive regulatory fact-finding, as the administrative powers of the English justices of the peace were transferred to administrative bodies that were required to adopt some of the procedures reminiscent of those used in a courtroom. Natural justice was comprised of two main sub-rules: *audi alteram partem* - that a person must know the case against him and be given an opportunity to answer it; and *nemo iudex in sua causa debet esse* - the rule against bias. Still much later, the natural justice principle gave rise to the duty to be fair to cover governmental decisions which cannot be characterized as judicial or quasi-judicial in nature. (Emphases supplied; citations omitted.)

To summarize, what procedural due process demands is that: (a) a person should have adequate notice of the charge against him; (b) he is given a reasonable opportunity to answer said charge; and (c) the proceedings to be conducted shall be free from bias. These are the criteria against which we shall test the procedure that the JBC applied to petitioner in the course of his candidacy to a vacancy in this Court.

In line with Section 4, Rule 1^[5] of JBC-009 or the Rules of the Judicial and Bar Council, the JBC published on March 8, 2014 an announcement regarding the opening, for application or recommendation, of the position of Associate Justice of the Supreme Court in anticipation of the compulsory retirement of the Honorable Roberto A. Abad on May 22, 2014.^[6] The deadline for submission of applications or recommendations was set for March 18, 2014.

As mandated by the Constitution, a Member of the Supreme Court must be a natural-born Filipino, at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.^[7] In addition to these basic qualifications, all members of the Judiciary must be persons of proven competence, integrity, probity, and independence.^[8]

In order to ensure that a candidate to a judicial position has the foregoing qualifications, the JBC set forth the evidence that it may receive for each type of qualification. Rule 3 of JBC-009 deals with how the JBC shall determine the competence of applicants in terms of education, experience and performance. Rule 4 of JBC-009 involves guidelines on evaluating an applicant’s integrity. Rule 5 and Rule 6 of JBC-009 provide for proof that may be considered for demonstrating an applicant’s probity/independence and his or her soundness of physical, mental, and emotional condition.

Under Section 1, Rule 7 of JBC-009, the JBC en banc or any panel of its members shall conduct personal interviews of candidates for positions in the Judiciary and certain positions in the Office of the Ombudsman. In

the case of positions in the Supreme Court, the Court of Appeals, the Sandiganbayan, and the Ombudsman, the interviews shall be conducted in public.

In order to promote transparency and public awareness of JBC proceedings in relation to its function of recommending appointees to the Judiciary and to the positions of Ombudsman and Deputy Ombudsman and pursuant to Section 1, Rule 7 of JBC-009, the JBC issued JBC-10 which contain the procedure for submission and evaluation of complaints or oppositions against a candidate, to wit:

SECTION 1. The Judicial and Bar Council shall deliberate to determine who of the candidates meet prima facie the qualifications for the position under consideration. For this purpose, it shall prepare a long list of candidates who prima facie appear to have all the qualifications. The Secretary of the Council shall then cause to be published in two (2) newspapers of general circulation a notice of the long list of candidates in alphabetical order.

The notice shall inform the public that any complaint or opposition against a candidate may be filed with the Secretary within ten (10) days thereof.

SEC. 2. The complaint or opposition shall be in writing, under oath and in ten (10) legible copies, together with its supporting annexes. It shall strictly relate to the qualifications of the candidate or lack thereof, as provided for in the Constitution, statutes, and the Rules of the Judicial and Bar Council, as well as resolutions or regulations promulgated by it.

The Secretary of the Council shall furnish the candidate a copy of the complaint or opposition against him. The candidate shall have five (5) days from receipt thereof within which to file his comment to the complaint or opposition, if he so desires.

SEC. 3. The Judicial and Bar Council shall fix a date when it shall meet in executive session to consider the qualification of the long list of candidates and the complaint or opposition against them, if any. The Council may, on its own, conduct a discreet investigation of the background of the candidates.

On the basis of its evaluation of the qualification of the candidates, the Council shall prepare the shorter list of candidates whom it desires to interview for its further consideration.

SEC. 4. The Secretary of the Council shall again cause to be published the dates of the interview of candidates in the shorter list in two (2) newspapers of general circulation. It shall likewise be posted in the websites of the Supreme Court and the Judicial and Bar Council.

The candidates, as well as their oppositors, shall be separately notified of the date and place of the interview.

SEC. 5. The interviews shall be conducted in public. During the interview, only the members of the Council can ask questions to the candidate. Among other things, the candidate can be made to explain the complaint or opposition against him.

The proceedings shall be in writing. Cameras and tape recorders, however, not to be allowed inside the room.

No live TV and radio coverage of the proceedings shall be permitted.[9]

SEC. 6. After the interviews, the Judicial and Bar Council shall again meet in executive session for the final deliberation on the short list of candidates which shall be sent to the Office of the President as a basis for the exercise of the Presidential power of appointment. (Emphases supplied.)

Returning to the factual milieu of the case at bar, the JBC published on April 26, 2014 another announcement regarding its conduct of public interviews of candidates for the aforementioned position on May 29 and 30, 2014.[10] Among those named as candidates to be interviewed was herein petitioner. In the same announcement,

the JBC stated that “[t]he public may submit to the JBC sworn complaint, report, or opposition (in ten legible copies) against any of the aforesaid candidates not later than 6 May 2014.” The public interviews of the candidates pushed through on the dates stated in the published announcement. During petitioner’s public interview, no opposition or complaint was raised against him.

After the submission of applications/recommendations, publication of the list of candidates, filing of written and sworn oppositions to candidates’ bid for nomination, submission of candidates’ comments on oppositions to their candidacy, and the conduct of public interviews, the JBC is supposed to deliberate on the short list to be submitted to the President as stated in its own rules.

However, after the above-mentioned established JBC procedures were accomplished, when the JBC met on June 5 and 16, 2014 to deliberate on the short list the Chief Justice manifested to the other members of the JBC that she was invoking Section 2, Rule 10 of JBC-009 against petitioner as the Chief Justice believed that petitioner did not have the required integrity to be a Member of the Court. On June 16 and 17, 2014, former Court of Appeals Associate Justice Aurora Lagman, a JBC Regular Member, telephoned petitioner and informed him of the Chief Justice’s invocation of Section 2, Rule 10 of JBC-009 against him. Petitioner was further requested to “make himself available” on June 30, 2014 to appear before the JBC.

On June 24, 2014, petitioner sent a letter^[11] to the Court praying that the Court: (1) direct the JBC to give him at least five working days written notice of any hearing and such notice should contain the sworn specifications of the charges, sworn statements of supporting witnesses, if any, and copies of supporting documents; (2) allow petitioner to publicly cross-examine his oppositor and supporting witnesses under the same conditions as the public interviews for all applicants; (3) direct the JBC to reset the hearing scheduled for June 30, 2014; and (4) direct the JBC to disallow the Chief Justice from participating in the voting from the nominees for the position vacated by Associate Justice Roberto A. Abad. This letter was docketed as A.M. No. 14-07-01-SC-JBC. However, as discussed in the Dissenting Opinion of Justice Brion in that case, said letter was belatedly raffled on July 1, 2014 or after the June 30, 2014 JBC “hearing” and the majority of the Court resolved to merely note the letter for having become moot and academic without prejudice to any remedy petitioner may pursue.

According to the JBC Comment, this was what transpired on June 30, 2014:

On 30 June 2014, Senior Associate Justice Antonio T. Carpio appeared as a resource person to shed light on the very confidential legal memorandum that clarifies and concretizes the integrity objection that the Chief Justice raised against petitioner, which was likewise distributed. Chief Justice Sereno emphasized that the inability to discharge the duty of the Solicitor General according to the applicable legal standards on a matter of highest importance and especially in light of the contents of the legal memorandum indicates that he does not possess the required integrity. At about 2:00 p.m. of 30 June 2014, petitioner appeared before the JBC En Banc in an Executive Session. Chief Justice Sereno told petitioner about the integrity issues raised against him and asked for his comments. The Chief Justice told him that she would give a very detailed description of the cause and nature of the objection against him, including facts. Petitioner reiterated his prayer in the aforementioned letter-petition and asked the JBC to defer its meeting, since he was expecting the Supreme Court en banc, which would be meeting the next day, to act on his letter-petition. Specifically, he demanded that the Chief Justice execute a sworn statement of her objections and that he must have the right to cross-examine her in a public hearing. He indicated that the same should also be required of Senior Associate Justice Antonio T. Carpio. Congressman Niel G. Tupas indicated that he wanted to hear for himself petitioner’s explanation but petitioner refused. He further stated that he would not be lulled into waiving his rights. He then put into record a Statement appealing that the JBC “stay their hand” that day and let the full Supreme Court address the issue of what process [is] due him.

In the afternoon of the same day, the JBC continued its deliberations and proceeded to vote for the nominees

vice Supreme Court Associate Justice Abad. x x x.[12]

The short list of nominees released by the JBC on June 30, 2014 included Court of Appeals Justices Apolinario D. Bruselas, Jr. and Jose C. Reyes (both with six votes), Commission on Audit Chair Maria Gracia M. Pulido-Tan (five votes), and Regional Trial Court Judge Reynaldo B. Daway (four votes). In its Comment, the JBC admitted that petitioner garnered four votes but was not shortlisted due to the Chief Justice's invocation of Section 2, Rule 10, JBC-009 against him.[13]

In its Comment, the JBC argues that the language of Sections 3 and 4, Rule 4 of JBC-009 was merely directory such that it was not mandatory for the JBC to give an applicant written copies of the opposition or to hold a hearing where the applicant will be allowed to cross-examine witnesses.

There is merit in petitioner's contention that the directory language of certain provisions of JBC-009 relied upon by respondent JBC should be deemed superseded by the JBC's subsequent issuance of JBC-10.

JBC-10 requires that names of the candidates be published and the public is informed of the deadline to file written and sworn oppositions to the candidates so named for consideration. Under JBC-10, it is mandatory that any opposition on whatever ground, including integrity questions, must be in writing and under oath. The candidate is given a copy of the opposition and a period of five days within which to respond, if he so wishes. There are deadlines for the filing of oppositions and the answers thereto for it is apparent on the face of JBC-10 that all submissions must be done before the interview which is a second opportunity for a candidate to address all complaints or oppositions against him in a public proceeding which shall be recorded in writing.

It is not difficult to glean why JBC-10 requires the complaint or opposition to be in writing. A written complaint/opposition not only informs the candidate of the charges against him but more importantly, it limits the issues that he needs to answer to those stated in the complaint/opposition. This prior delimitation of issues is crucial to due process such that, at the public interview or any subsequent hearing to be conducted, the candidate will not be surprised by any new matter for which he has not been given an adequate opportunity to prepare his defense. The complaint must also be under oath not only to protect the candidate from untruthful charges but also to avoid wasting the JBC's time investigating and evaluating frivolous complaints. It is presumed that only those who have meritorious complaints will file sworn statements as the threat of opening themselves to a charge of perjury would be sufficient deterrent to nuisance filings.

In the present case, petitioner was not given a copy of any written statement of the charges against him. The JBC stated in its Comment on page 2 that when Justice Lagman called petitioner on June 16 and 17, what was relayed to petitioner was the intention of the Chief Justice to invoke Section 2, Rule 10 of JBC-009 against him and the request to make himself available to appear before the JBC on June 30, 2014. In the same Comment, the JBC would clarify that earlier statement by stating that during those phone calls petitioner was informed that the integrity issue against him involved "the way he handled a very important specific case for the Republic" and that he and Justice Lagman "briefly spoke about the case." There was also the allegation that Department of Justice Secretary Leila de Lima separately informed petitioner of the content of the Chief Justice's objection. However, since these notices were verbal, there is nothing on record that will show that there was a detailed specification of the charges against petitioner during those conversations or that the opposition of the Chief Justice was sufficiently communicated to petitioner. Formally notifying a candidate in writing of the charges against him works for the protection of the Council as well. It is the best way for the JBC to prove that indeed there had been adequate notice to a candidate of the opposition against him.

Notably, in the JBC's Supplemental Comment-Reply filed only on August 15, 2014, there was an admission that the verbal advice given to petitioner through Justice Lagman and Secretary De Lima referred only to the "highly

important case” that was subject of the Chief Justice’s integrity challenge raised during the June 5 and 16 deliberations. However, in the interim, the Chief Justice allegedly came by information regarding a “morality issue” and an issue involving stocks which she also only verbally informed petitioner of at the session held on June 30. This is yet another violation of petitioner’s right to due process, specifically the right to a prior delimitation of the charges against him so that he can ably prepare for his defense.

To be sure, there is no legal or logical reason to exempt an oppositor who also happens to be a member of the JBC from the requirement of setting forth his or her opposition to a candidate in writing and under oath within the time limit given to the general public and to give such candidate a fair period to respond to the opposition in writing or during his public interview as provided for in JBC-10. A candidate for a judicial position does not lose his constitutionally guaranteed right to due process simply because the oppositor to his candidacy is the Chair or a member of the JBC. Moreover, if the JBC sees fit to exempt one of its own from the application of its published rules of procedure, it becomes susceptible to an accusation of abuse of power or arbitrary exercise of discretion.

On June 30, 2014, the JBC heard the testimony of Senior Associate Justice Antonio T. Carpio as a “resource person” in support of the Chief Justice’s objection to the petitioner’s integrity. It would appear from the pleadings that Justice Carpio’s testimony was heard in executive session where presumably only the JBC members were present. The petitioner was excluded from the session and not allowed to participate. Afterwards, petitioner was called to appear before the JBC also in an executive session or closed-door proceeding. It was only at that time that the Chief Justice personally and verbally advised petitioner what her general objections were and asked petitioner to comment. When the petitioner declined to comment, only then did the Chief Justice verbally express that she will provide detailed facts to substantiate her objection. Expectedly, petitioner declined to participate in that session considering that he was precisely questioning before this Court through his letter in A.M. No. 14-07-01-SC the propriety of that proceeding which suddenly deviated from the standard procedure observed by the JBC. He did not want to be deemed to have waived his objection to the proceeding by his active participation therein.

We come to the question of whether petitioner was given a fair and reasonable opportunity to be heard on June 30, 2014. To my mind, being told verbally on the date of the session itself what the exact charges are against him does not satisfy the demands of procedural fairness. The oppositor would have a distinct advantage as she has the opportunity to prepare arguments and supporting evidence on each and every charge she intends to make before the session date. The candidate would be effectively prevented from bringing with him documents or witnesses that may refute these charges since he would be given detailed notice of them for the first time only at the session.

Worse, it appears that petitioner was denied notice of and/or access to the evidence used against him.

A highly confidential legal memorandum that purportedly “concretizes” the integrity charge against petitioner was distributed to JBC members. This Court was also furnished this document through the JBC’s Comment as Annex J. I am hard put to find in the said document any fault attributed to the petitioner and whether it is at all proper to disclose this document. Did the authors and intended recipients of this highly privileged memorandum who are on a lawyer-client relationship consent to its disclosure and use as evidence in a JBC matter?

Setting aside for the moment my reservations regarding the disclosure of Annex J, I wish to point out that the issue here is not whether the oppositor presented so-called evidence on the charges made but whether the candidate was informed that this was the piece of evidence to be presented against him before the session on June 30 and whether he was given sufficient time to meet the oppositor’s evidence with his own countervailing proof. Even assuming this was a document that petitioner might have encountered in the course of his present employment, it did not mean that he can produce the documents and witnesses needed for his defense at a

moment's notice.

In paragraph 4, page 2 of his Reply, petitioner alleged that on June 30 he was not furnished a copy of Annex J which he came to learn was distributed to the JBC Members on said date. In paragraph 36, page 7 of the Supplemental Comment-Reply, the JBC attempts to refute this statement by claiming that indeed petitioner was served a copy of Annex J and it has the affidavit of service to prove it. However, the affidavit of service clearly stated that petitioner was served a copy of Annex J as part of the JBC's Comment only on August 12, 2014. The material time to have provided petitioner with Annex J was before the June 30 session so that he can meet it with his own evidence at the said proceeding. Instead of refuting petitioner's claim of lack of notice, the JBC has confirmed it.

Moving on to another point, it is true that it is discretionary on the part of the JBC to hear testimony on a complaint against a candidate but having decided to hear such testimony, procedural due process demands that the candidate at least be present to hear the substance of that testimony and for that testimony to be made part of the record. While it is not mandatory that the candidate be given the right to cross-examine a witness (that is, a witness other than the oppositor since Section 3, Rule 4 of JBC-009 expressly grants the candidate the right to cross-examine an oppositor), there must be an official and accurate account of that witness's testimony which should be disclosed to the candidate. This disclosure should likewise be made prior to the opportunity to be heard that will be accorded to the candidate, in this case prior to the session on June 30.

Notably, there are minutes of the June 5, June 16, and June 30, 2014 JBC meetings/sessions attached to the Supplemental Comment-Reply. However, the belated submission of these minutes does not clarify anything but rather raise more questions. The date of the certifications gives the impression that these minutes were only prepared on August 15, 2014. This would most likely explain why these minutes were not attached to the JBC Comment filed on August 12, 2014. Unfortunately, disclosing these minutes only after the hearing set for petitioner's defense serves no purpose, since the accusations against the petitioner were articulated by the oppositor Chief Justice and her witness ex parte during the closed-door meeting of the JBC. The phone calls and verbal notices from Justice Lagman and Secretary De Lima could not have fully apprised petitioner of the objections raised by the Chief Justice, which were specified in writing only in the about thirteen-page Subsection II of the JBC Supplemental Comment-Reply submitted to this Court on August 15, 2014. It was impossible that either Justice Lagman or Secretary De Lima could have repeated these charges completely and accurately during their conversations with petitioner prior to the June 30 session.

In fine, it is not enough that a candidate is given an opportunity to be heard. It must be a real opportunity to defend one's self and not one that is merely illusory.

There is something deeply unsettling with this unprecedented procedure adopted by the JBC in petitioner's case which was due to the unexpected invocation of Section 2, Rule 10 apparently for the first time in the history of the JBC. From the verbal notice of a vague, unspecific challenge against petitioner's integrity to the conduct of closed-door executive sessions for a purpose other than deliberations on the short list, these are not authorized by the JBC rules and they even violate the avowed policy of JBC-009 and JBC-10 to promote transparency and uniformity of procedure in the JBC's discharge of its functions.

I believe it was important for the JBC to have timely and accurately prepared the minutes of the JBC executive sessions where the charges against petitioner were proffered, provided them to petitioner and scheduled the hearing for his defense only after his receipt of these minutes, in order that the JBC might arguably be deemed to have substantially complied with procedural due process. As petitioner correctly points out in his Reply, having official and trustworthy written records of the proceedings of the JBC is likewise indispensable in the event that a

JBC matter is brought up to this Court for review.

If the subject matter of the opposition against a candidate involves information of a highly confidential nature and divulging the privileged matter could not be avoided, would that justify dispensing with written notices, submissions and accurate records of the proceedings? The answer should be a resounding no. An individual's constitutional right to due process cannot be sacrificed in the name of confidentiality. The JBC should still require a written complaint and allow the candidate reasonable time to submit a written answer if he so wishes or allow him to be heard orally at a hearing for which accurate records should be kept but all submissions and records of the proceedings shall be treated with the utmost confidentiality.

Section 2, Rule 10 of JBC-009 does not contemplate that the oppositor could be a member of the JBC for that would amount to an egregious conflict of interest.

As early as the dissenting opinion of Justice Brion in A.M. No. 14-07-01-SC-JBC, he had already discussed the absurdity of interpreting Section 2, Rule 10 of JBC-009 as allowing any one JBC Member the power to disqualify an applicant by his or her mere objection since in that instance unanimity can never be attained.

The inherent unfairness of the situation is not sufficiently addressed by the JBC Chair or Member-oppositor inhibiting not from the entire selection process but only from voting on the eligibility for appointment of the particular candidate who is the subject of his or her objection. The act of a JBC Member-oppositor in invoking Section 2, Rule 10 obviously prejudices the candidate objected to since a higher vote is required for such candidate to be shortlisted. Less obviously, the same act benefits all the other candidates vis-a-vis the candidate objected to since the other candidates who are not defending against an integrity challenge have a larger pool of JBC Members from which their votes can come and they need only a simple majority to be included in the short list. If the application of Section 2, Rule 10 is not a collegial decision of the JBC, it may be used by the Chair or any of its Members to prejudice or favor a particular candidate.

It is in this regard that the JBC proceedings now in question before this Court is glaringly violative of the rule against bias or one of its Latin formulations "nemo debet esse iudex in propria causa" (literally, that no man ought to be a judge in his own cause)[14] as pointed out in Justice Brion's Concurring Opinion.

The JBC seems oblivious to the conflict of interest situation that arises when the oppositor under Section 2, Rule 10 is a member of the JBC. The JBC was created under the Constitution as an independent body[15] tasked with the delicate function of vetting the qualifications of applicants to judicial positions, among others. Although I agree with the JBC that this function cannot exactly be termed judicial or quasi-judicial, I take exception to the proposition that the Council is not engaged in fact-finding or that it need not determine the truth or falsity of an opposition against a candidate. If that is so, why does it even require objectors to swear to their opposition and submit supporting evidence? In this regard, JBC members do function similarly to impartial investigators or fact-finders who are supposed to make an unbiased recommendation on the fitness of a candidate for judicial office to the President based on a determination of relevant facts.

How could a JBC Member discharge the function of neutral fact-finder if he or she is an oppositor for one of the candidates, especially when the intention is to subject that candidate to the requirement of unanimous JBC vote unlike the others who only need a majority vote for inclusion in the short list? Indeed, no impartial investigator would take it upon himself or herself to complain about the manner that a candidate purportedly handled a "very important" case for the government (which incidentally is still pending resolution before the proper tribunal) when none of the persons who were intimately involved in that case have seen fit to formally oppose the

candidate's bid for nomination. Once a JBC member presents himself or herself as an oppositor, he or she takes on the role of an advocate who has an interest in the outcome of the voting for the vacancy that the candidate subject of the objection is being considered for.

With due respect to the Chief Justice, her role as an advocate is manifest in Subsection II of the Supplemental Comment-Reply, which was expressed to be solely attributable to her. Subsection II is a detailed and passionate discussion of her original integrity objection to petitioner during the June 30 session with a few additional charges in the mix, which was made known only through the JBC Supplemental Comment-Reply filed on August 15, 2014. May I also respectfully point out that her setting forth in writing now her very specific objections to petitioner shows that there really was nothing to prevent her from doing the same during the appropriate time which was during the call for written oppositions from the public. If only she had taken the time to prepare this written opposition even as late as June 24 when petitioner had requested in a letter for her to do so and given him a reasonable five-day period to answer, this matter could have been judiciously resolved well ahead of the constitutional deadline for the President to appoint.

An oppositor from the JBC should inhibit
from the entire selection proceedings
for the vacancy for which the opposed
candidate is being considered.

We should likewise contemplate the practical implications of allowing a JBC Member be an oppositor under Section 2, Rule 10 of JBC-009 and only inhibiting in the voting for the candidate he or she objected to. As a matter of practice, when the JBC submits the short list to the President the candidates are ranked by the number of votes that they gathered during the deliberation. This ranking is meant to indicate the strength of the JBC's recommendation for each candidate in relation to the others on the list. The JBC contends that, when petitioner's integrity was challenged and the JBC Member-oppositor inhibited from the voting on his candidacy, he should have gotten the affirmative vote of all five remaining JBC Members eligible to vote on his candidacy. Now, suppose he did get the unanimous vote of the non-objectors. In theory, that would be a perfect score. Should he be considered to have tied for first with the two candidates who got six out of six votes? Would he tie for second with the one who got five out of six votes or should he be ranked ahead of that person but behind those who got a unanimous six votes?

In all of these considerations, aside from preserving the impartiality and objectivity of the selection process, I have come to the conclusion that a JBC Member cannot be at the same time an oppositor under Section 2, Rule 10 of JBC-009. In fact, the clear language of the said section which requires that a candidate secure the vote of "all" the Members of the JBC, does not contemplate that an objection on a question of integrity be raised by the JBC Chair or Member. Otherwise, there is no need for voting. The oppositor's vote is already lost. Nonetheless, if the JBC Chair or Member is inclined to be an oppositor, so that a candidate be subjected to the extraordinary requirement of perfect votes from the JBC, the said JBC Chair or Member must choose whether he or she wants to participate in the independent vetting of all candidates or to serve as an advocate against someone's candidacy. Moreover, if the JBC Chair or Member decides to pursue his or her opposition of a candidate on the ground of integrity, then that JBC Chair or Member should (1) comply with the procedural rules applicable to all oppositors, and also (2) inhibit from participating in the JBC proceedings and from voting for all candidates for that particular vacancy. The JBC Chair or Member should be considered an ordinary oppositor and should not be given the special concession, not granted to other oppositors, of being able to lobby against the disfavored candidate even up to the deliberations and the voting on the short list.

In this manner, the JBC can fully comply with the third requisite for procedural due process, that of freedom from

bias in the proceedings undertaken. A blanket inhibition by the JBC Chair or Member-Oppositor for the particular vacancy levels the playing field for everyone. Whether there is an integrity issue against a candidate or not, all candidates will vie for the same pool of votes. It likewise solves the problem of ranking since a unanimous vote for a candidate with an integrity challenge means exactly the same as a unanimous vote for a candidate without an integrity challenge.

Any new procedure to be implemented
in relation to Section 2, Rule 10 of
JBC-009 must be embodied in written
rules and published in order to
be valid and bind third parties.

When the JBC first issued rules of procedure via JBC-009, its intent was to set down in writing the criteria or guidelines that will govern its discharge of its constitutional mandate to recommend for appointment candidates to highly sensitive positions in government, with due regard to constitutional and statutory requirements and ensuring transparency, stability, and uniformity in its proceedings. The avowed policies of the JBC were further strengthened with the issuance of JBC-10 specifying in mandatory language the procedure to be undertaken by the Council. By issuing both sets of rules, it was the JBC itself that set the limits for the proper exercise of its functions. We have held that administrative regulation adopted pursuant to law has the force and effect of law.[16] Parties dealing with the JBC have a reasonable expectation that it would follow its own published rules.

It is elementary as well that administrative regulations and issuances affecting the rights of third parties require publication to be valid. Publication is a necessary component of procedural due process to give as wide publicity as possible so that all persons having an interest in the proceedings may be notified thereof.[17]

If the JBC wishes to adopt a procedure for an integrity objection under Section 2, Rule 10 of JBC-009 that is different from JBC-10, such a procedure should: (1) faithfully adhere to the collegial nature of the JBC; (2) comply with the basic requirements of adequate notice of the objection, ample opportunity to be heard, and freedom from bias of the proceedings; and (3) be embodied in written rules duly published in order to bind third persons. Measured against these standards, the procedure adopted by the JBC in petitioner's case fails the test of validity.

Verily, this is a classic example of changing the rules in the middle of a game, a stratagem that is antithetical to the most elementary principles of fair play. The invocation of Section 2, Rule 10 of JBC-009 against petitioner being ineffectual and considering his having obtained a majority vote in favor of his nomination, petitioner should be deemed included in the short list in accordance with the proper application of the published and duly existing rules of the JBC.

There is nothing in the records of
this case to support the integrity
challenge against petitioner.

The issue that is determinative of this case is whether or not the proceedings before the JBC violated petitioner's constitutional right to due process. However, since the Chief Justice, through the JBC Supplemental Comment-Reply, and the Dissenting Opinion insist on arguing the merits of the former's integrity challenge against petitioner, despite the danger of compromising national interest with indiscriminate public discussions of internal matters in the Executive department, I wish to make the following observations:

A close scrutiny of Annex J and the entire records of this case will show the utter lack of evidentiary basis to

support the objection on the ground of lack of integrity raised against the petitioner.

Peeling away the esoteric academic discussions on the international law case subject matter of Annex J and the innuendos regarding possible motives for the alleged minority legal opinion of petitioner, there is no proof on record that petitioner committed an act of impropriety in the handling of said case as Solicitor General or that he was pursuing selfish interests or the interests of another party in the discharge of his duties.

That petitioner was “disloyal” to the Republic is not a fact; it is but an opinion or conclusion, which should have been supported with facts, that is, documentary evidence and sworn testimonies or affidavits from witnesses with personal knowledge of the matter involved. The Chief Justice could not possibly have personal knowledge of the internal deliberations and discussions in the Executive department regarding the aforesaid international case because if she does then I would fear the erosion of the separation of powers in our government. Secretary De Lima, who is part of the Cabinet, would even state that she was not clear when and how the strategy complained of by the Chief Justice happened and if this was the petitioner’s idea.[18] More importantly, Secretary De Lima did not question petitioner’s integrity and voted for his inclusion in the short list. Neither is there anything on record to independently corroborate the morality issue or the stock transaction issue which were allegedly reported to the Chief Justice.

Every law student knows that matters attested to by a person with no personal knowledge of the same shall be deemed hearsay which has no probative value.[19] The Court held in *Jose v. Angeles*[20]:

Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced. The exclusion of hearsay evidence is anchored on three reasons: (1) absence of cross-examination; (2) absence of demeanor evidence; and (3) absence of oath. Basic under the rules of evidence is that a witness can only testify on facts within his or her personal knowledge. This personal knowledge is a substantive prerequisite in accepting testimonial evidence establishing the truth of a disputed fact. Corollarily, a document offered as proof of its contents has to be authenticated in the manner provided in the rules, that is, by the person with personal knowledge of the facts stated in the document. (Citations omitted.)

Hearsay, whomever the source, is still hearsay.

I fully agree with Justice Brion that although the JBC rules allow the JBC to undertake a discreet background check, if such an investigation yields a matter that may be subject of an opposition then such opposition should be in writing. Reliance on informal complaints reaching the ears of JBC Members cannot be deemed sufficient compliance with due process, especially when the nature of the complaint may trigger an application of Section 2, Rule 10 of JBC-009 that would set one candidate apart from the others in terms of the required vote to be included in the short list. Hard-earned reputations may likewise be summarily destroyed by a public announcement that a candidate for judicial office who otherwise garnered a majority vote was excluded from the short list by the JBC on the ground of lack of integrity. As an independent, constitutional screening body that is held in high regard by the public, the JBC should base its determination that a candidate does not have the requisite integrity to hold judicial office on something more than speculation, rumor or unverified report.

RECOMMENDATION REGARDING

REVIEW OF THE JBC RULES

Should the JBC in the aftermath of this controversy find it appropriate to review its rules of procedure, I have a recommendation with respect to the interpretation and application of Section 2, Rule 10 of JBC-009.

The JBC must define what constitutes an integrity question.

After a careful perusal of the copies of the JBC minutes attached to the Supplemental Comment-Reply, I observe that there is no consensus among the members of the JBC what an integrity issue entails and whether an integrity issue even exists in the case of petitioner. I reproduce here the relevant excerpts of the minutes of the JBC sessions attached to the Supplemental Comment-Reply:

From the minutes of the June 5, 2014 JBC Executive Session:

Senator Pimentel inquired on the definition of integrity as contemplated in Section 2 of Rule 10. He asked: Does the incident have to involve “money”? Does the applicant have to be involved in an incident where he received a consideration as a public official? He stated that it may be [a] good idea to put on record what integrity issues under Rule 10 may include.

Congressman Tupas x x x Unless it can be shown that he received something in return x x x or if it can be said that “corrupt ito, kumuha siya ng pera,” he has reservations that the provisions in the Rules on integrity would apply.[21]

From the minutes of the June 16, 2014 JBC Executive Session:

Secretary De Lima opined that the grounds in assailing integrity under Rule 10, Section 2 are not very clear. However, based on what has been discussed so far, she is not sure if there is a dearth of integrity as far as Sol. Gen. Jardeleza is concerned.[22]

It bears stressing here that the qualifications of competence, integrity, and probity/independence are covered by different rules under JBC-009. Only an integrity issue will trigger the higher vote requirement to secure a nomination. However, the JBC’s rules do not offer any definition of an integrity issue other than to obliquely refer to it as pertaining to “moral fitness.”[23] Consider the definition in Black’s Law Dictionary of the term:

Integrity. As used in statutes prescribing the qualifications of public officers, trustees, etc., this term means soundness of moral principle and character, as shown by one person dealing with others in the making and performance of contracts, and fidelity and honesty in the discharge of trusts; it is synonymous with “probity,” “honesty” and “uprightness.” (Underscoring supplied.)

The overlapping of the conceptions of the terms integrity and probity is a matter that has grave implications in the implementation of Section 2, Rule 10 of JBC-009. The uncertainty and confusion that tainted the JBC’s discussions during the executive sessions on petitioner’s case behoove the JBC to definitively specify in its rules what will constitute an integrity challenge.

The JBC minutes also bear out that many of the issues touched upon in the ponencia and the concurring opinions already occurred to the Council’s members. To illustrate:

From the minutes of the June 16, 2014 JBC Executive Session:

At this juncture, Congressman Tupas suggested a review of the JBC Rules on integrity and went on to read the provision in Rule 10, Section 2 thereof:

“Sec. 2[.] Votes required when integrity of a qualified applicant is challenged. – In every case where the integrity of an applicant who is not otherwise disqualified for nomination is raised or challenged, the affirmative vote of all the Members of the Council must be obtained for the favorable consideration of his nomination.

Congressman Tupas stressed since this is the first time that the Rule will be invoked, there is need to carefully examine the Rules. For instance, how many votes must a candidate garner when the affirmative vote of all Members of the Council is required under Rule 10, Sec. 2. There is also the matter of who can raise or challenge the integrity of an applicant: must it be raised by a Member, or can a non-Member raise or challenge under the

Rule. At what stage may the challenge on the integrity of an applicant be raised? Should there not be a need for a prior complaint or objection?

Secretary De Lima commented that the Rules do not say whether the challenge must be made by an insider or an outsider. (Emphases supplied.)

Yet despite the fact that the Council members failed to come to any agreement regarding these contentious issues, not the least of which was the definition of an integrity challenge, and without establishing definite parameters on how Section 2, Rule 10 of JBC-009 should be applied, the majority of the JBC Members were spurred into applying Section 2, Rule 10 to petitioner purely because it was invoked by the JBC Chair.

Two-step voting is necessary to preserve the collegial character of the JBC.

After an integrity challenge has been made in compliance with the procedural requirements under JBC-10, the JBC should take a preliminary vote on whether such challenge to a candidate truly involved a question of integrity based on each Council member's appreciation of the material facts and they must determine if the issue is substantial enough to require application of Section 2, Rule 10 of JBC-009. The JBC should not rely on the oppositor's characterization of his own objection as an integrity question as what happened in this case. The JBC should categorically decide by majority vote on the existence of a substantial integrity issue which will warrant the application of Section 2, Rule 10 to a particular candidate. Only then should the JBC vote on the nominations of the candidates to determine who will be shortlisted. Before the second voting, it should be clear to the JBC how many votes each candidate should garner to be nominated.

In view of the highly prejudicial effect of an integrity challenge to a candidate, my proposed two-step voting procedure will ensure that a majority vote is first reached on the existence of the integrity issue before the JBC will require a unanimous vote on the fitness of a specific candidate for nomination. During the second voting, each JBC Member is put on notice that if he or she does not vote for that candidate's nomination it will mean exclusion of that candidate from the short list for lack of a unanimous vote. The second vote will clearly evince the intent of the non-voting member(s) to so exclude a candidate. Through this procedure, the JBC can avoid the pernicious situation of a minority being able to prejudice a candidate's application on their mere manifestation that they are invoking Section 2, Rule 10 on an integrity question.

ON THE PRAYER FOR A TEMPORARY RESTRAINING ORDER

On this matter, suffice it to say, that I concur with the JBC that the President's exercise of his power to fill a vacancy in this Court within the deadline is a constitutional mandate that may not be enjoined by any court. In any event, petitioner's prayer for a temporary restraining order would be rendered moot and academic by the Court's disposition of this case on the merits, whether favorably or unfavorably.

CONCLUSION

It is settled in our jurisprudence that:

As a concept, "grave abuse of discretion" defies exact definition; generally, it refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction"; the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough; it must be grave. We have held, too,

that the use of wrong or irrelevant considerations in deciding an issue is sufficient to taint a decision-maker's action with grave abuse of discretion.[24] (Citations omitted.)

Since the application of Section 2, Rule 10 of JBC-009 to petitioner violated his constitutionally guaranteed right to due process and the petitioner having garnered a majority vote of the JBC Members, I vote to partially grant the petition and to declare that the petitioner be deemed included in the short list submitted by respondent JBC to the President. Considering the time element involved and to obviate any further delay that may render moot the Court's favorable action on this case, I also vote to declare our decision immediately executory.

[1] G.R. Nos. 209287, 209135, 209136, 209155, 209164, 209260, 209442, 209517 and 209569, July 1, 2014.

[2] *Rivas v. Sison*, 498 Phil. 148, 154 (2005).

[3] *Vivo v. Philippine Amusement and Gaming Corporation*, G.R. No. 187854, November 12, 2013.

[4] 602 Phil. 522, 545 (2009).

[5] SEC. 4. Call for applications. - (a) The occurrence of any vacancy in the Supreme Court or in the Office of the Ombudsman opens, ipso facto, the vacant position for filling and acceptance of applicants therefor.

(b) With the effective, efficient and expeditious administration of justice always in mind, the Council shall open for applicants other vacancies in the Judiciary taking into account the advice of the Supreme Court and of the condition of the dockets of the positions involved.

[6] Annex A, JBC Comment.

[7] 1987 Constitution, Article VIII, Section 7(1).

[8] *Id.*, Section 7(3).

[9] It may be recalled that the most recent public interviews of candidates for the position of Chief Justice were allowed to be covered live by media, notwithstanding this rule.

[10] Annex D, JBC Comment.

[11] Annex B of the Petition.

[12] JBC Comment, pp. 2-3.

[13] *Id.* at 11.

[14] See *Black's Law Dictionary*.

[15] *Chavez v. Judicial and Bar Council*, G.R. No. 202242, July 17, 2012, 676 SCRA 579.

[16] *National Artist for Literature Virgilio Almario v. Executive Secretary*, G.R. No. 189028, July 16, 2013, 701 SCRA 269, 312.

[17] *Arroyo v. Department of Justice*, G.R. Nos. 199082, 199085 and 199118, September 18, 2012, 681 SCRA 181, 228.

[18] See JBC Minutes of the June 5, 2014 Executive Session, pp. 2 and 3.

[19] See, for example, *PNOC Shipping and Transport Corporation v. Court of Appeals*, 358 Phil. 38, 56 (1998).

[20] G.R. No. 187899, October 23, 2013.

[21] Minutes of the June 5, 2014 JBC Executive Session, p. 3.

[22] Minutes of the June 16, 2014 JBC Executive Session, p. 2.

[23] See Section 3, Rule 4 of JBC-009.

[24] *Mitra v. Commission on Elections*, G.R. No. 191938, July 2, 2010, 622 SCRA 744, 766.

SEPARATE CONCURRING OPINION

BRION, J.:

Prefatory Statement

I write this Separate Concurring Opinion to express my CONCURRENCE with the ponencia of my esteemed colleague – Justice Jose Catral Mendoza – and to reflect my own views on this case of first impression.

This case is the first test, since the establishment in 1987 of the Judicial and Bar Council (the JBC), of its even-handedness and the extent of the discretion granted to it in determining the shortlist of nominees for a vacant position in the judiciary. These questions are posed in the context of allegations of procedural infirmities that violated an applicant's right to due process, as well as claims of partiality in the selection process.

In resolving these questions, we must inevitably also look at the extent of the Court's supervisory authority over the JBC, as well as the Court's expanded jurisdiction under the Constitution to determine grave abuse of discretion on the part of the JBC, a governmental body.

Notably, our decision in this case touches on matters of national interest, among them, the President's appointment power that must remain unfettered and to its fullest, to the extent allowed by the Constitution. Otherwise stated, to the extent that the JBC departs from the guidelines it has itself set and commits grave abuse of discretion in undertaking its selection, the President's exercise of his appointing authority is fettered and less than full.

Any grave abuse of discretion by the JBC likewise affects the Supreme Court which then will not have the benefit of the best and the brightest that the President will choose. Additionally, any abuse of discretion is of great interest to the Court as its representative to that body is its Chief Justice whose actions in the JBC selection should be no less than sterling in keeping with the nature of her position and the trust that the nation places on the Chief Justice and the Court.

Last but not the least, any selection attended to by unethical and unprincipled behavior will have to be of interest to the nation as it means the triumph of evil and immorality that the whole nation now wishes to eradicate as a necessary means to achieve its cherished goals.

I. The Antecedents

On June 24, 2014, the petitioner Solicitor General Francis Jardeleza (petitioner, Jardeleza or petitioner Jardeleza) filed a letter-petition before the Supreme Court (the June 24, 2014 letter), alleging acts and incidents that deprived him of due process during the selection of nominees for the Supreme Court position that Associate Justice Roberto A. Abad vacated on May 22, 2014.

In this June 24, 2014 letter, petitioner Jardeleza alleged that:

- Chief Justice Maria Lourdes P. A. Sereno (CJ Sereno) made accusations against his integrity twice, ex parte,

without informing him of the nature and cause of the accusation and without giving him the opportunity to be heard;

- The JBC violated its own rules, specifically, Rule 4 of JBC-009 and Section 2, Rule 10 of JBC 009, in considering his fitness for the position of Associate Justice of the Supreme Court;[1]

- As reported in the Manila Times, CJ Sereno even denied the Members of the Court, through misrepresentation, of the right under the Rules of the JBC to make their recommendations to the JBC.[2]

The Court en banc, on July 8, 2014 and after deliberation and voting, simply NOTED Jardeleza's letter (July 8, 2014 Resolution) since the reliefs it prayed for, according to the Court's majority, have become moot after the Judicial and Bar Council (JBC) transmitted its list of nominees to the President. The Resolution at the same time stated that it is "without prejudice to any remedy, available in law and the rules that the Solicitor General Jardeleza may still wish to pursue."

I dissented from the Court's approach in considering the letter-petition and from its ruling, and was joined in this Dissent by three colleagues – Justices Teresita J. Leonardo -De Castro, Lucas P. Bersamin and Jose Catral Mendoza. In this same Dissent, I likewise noted the peculiar timing of the receipt of the letter-petition and the resulting delay in its consideration. The presidential time limitation in exercising the power of appointment was among the issues raised during the deliberations and was a consideration in the recommendations I then made to the Court.

More than the delay and shorn of legalese, the Court simply but effectively dismissed the June 24, 2014 letter-petition. It effectively said: we read your letter but what you said was not good enough as the JBC had already acted and you were too late; if you think you still have other reasons to question the JBC actions, then you are free to air them but time limitations in the President's appointing process are your concerns.

In blunt Tagalog, the Court simply said: "tapos na ang JBC, bahala ka na sa buhay mo!" In this manner, the Court's majority dismissively handled and brushed aside a matter of utmost importance to the President, to the Court itself and to the country.

The Court should not have only seriously considered Jardeleza's letter (in light of the seriousness of its allegations and the matter involved) by giving it full ventilation and the opportunities that a fair hearing embodies; the Court, too, should have handled the letter-petition expeditiously given the President's limited time to act.[3]

In my Dissent, I stressed that the Court should have undertaken an expeditious and strictly confidential inquiry regarding Jardeleza's allegations, with all interested parties given the opportunity to file their respective comments and memoranda.

I urged the Court to undertake this action with two things in mind: first, the Court – by virtue of its supervisory authority over the JBC and its expanded jurisdiction under the 1987 Constitution — has the duty to determine whether grave abuse of discretion occurred in the selection process, particularly since the JBC allegedly violated Jardeleza's due process rights; and second, given the sensitive nature of the circumstances narrated in the letter-petition, as well as the 90-day deadline for the appointment of the next associate justice, questions regarding the integrity of the selection process should be addressed directly and promptly.

To my mind, the timing of the filing of the letter-petition gave the Court an opportunity to swiftly exercise its supervisory duty over the JBC, and immediately determine whether violations of the JBC's rules and the applicant's due process rights intervened. It was my belief that inaction, or any delay on the part of the Court in acting on the letter-petition, could possibly result in disastrous and far-ranging consequences: it could indirectly

curtail the President's appointing power, taint the JBC's otherwise pristine reputation, affect this Court's future composition, and prejudice an otherwise qualified applicant.

Given these considerations, I believe then, and still do now, that the letter-petition had not been mooted by the JBC's transmittal of the shortlist of nominees to the President. In addition, the issues that the letter-petition presented are capable of repetition yet evading review: allegations of unfettered and grave abuse of discretion on the part of the JBC are capable of being repeated every time the JBC selects nominees for a vacant judicial position. These infirmities could evade review because of the time limitations for filling up vacant judicial positions. Not all of the JBC's proceedings, too, are open to the public.

I am filing this Separate Concurring Opinion as the repercussions that I earlier sought to prevent through the approach I suggested in my Dissenting Opinion, appears to have now crystallized, as the comments and pleadings filed by the parties show. I strongly believe that the Court should now take action immediately, if only to contain the repercussions of its previous inaction.

I strongly believe, too, based on the circumstances and reasons discussed below, that CJ Sereno manipulated the JBC processes to exclude Jardeleza as a nominee. The manipulation was a purposive campaign to discredit and deal Jardeleza a mortal blow at the JBC level to remove him as a contender at the presidential level of the appointing process.

[Of particular note in this regard is this Court's own experience when it failed to vote for its recommendees for the position vacated by retired Associate Justice Roberto A. Abad, because of a letter dated May 29, 2014 from the Chief Justice representing to the Court that "several Justices" requested that the Court do away with the voting for Court recommendees, as provided in Section 1, Rule 8 of JBC-009. When subsequently confronted on who these Justices were, the Chief Justice failed to name anyone. As a result, applicants who could have been recommended by the Court (Jardeleza, among them), missed their chance to be nominees.]

The Court should not stand idly by when irregularities of this nature happen, particularly when the irregularity was committed by one of its own. The Court should not likewise stay mute when a presidential power, granted under the Constitution that the Court safeguards, is at risk of being diminished. The essence of the constitutional separation of powers and checks and balances – sacred in our democratic system of government – would be disturbed when untoward developments like these, intervene.

In fairness to the JBC, while it did not appear to have fully resisted the moves of its Chairperson, it is a collegial body like the Court and it might not have known the critical Court-side developments material in reaching my conclusions.

A. The Jardeleza Petition

Dutifully responding to the Court's Resolution, Jardeleza filed a petition for certiorari and mandamus against CJ Sereno, the JBC, and Executive Secretary Paquito N. Ochoa Jr. (Sec. Ochoa) on July 18, 2014. He posited that the JBC selection process suffered from procedural infirmities that violated his due process rights and ultimately led to his non-inclusion in the JBC shortlist of nominees despite the majority votes he garnered.

Jardeleza filed the petition in propria persona or in his own personal behalf.[4] He sued the JBC because it is the body that acted on the submission of the list of recommended nominees to the President, and singled out CJ Sereno because she "schemed to have petitioner excluded from the shortlist." [5] Respondent Ochoa, on the other hand, was impleaded "in his capacity as the President's alter ego." [6]

[Notably, Senior Associate Justice Antonio T. Carpio, who appeared before the JBC on the integrity issue

disputed in this case, is properly not a party as he merely “appeared as a resource person” at the JBC’s or at CJ Sereno’s invitation.[7]]

On July 22, 2014, the Court acted on the petition by requiring the respondents JBC and CJ Sereno (who was sued separately from the JBC) to comment within 10 days, from notice.

For some reason, this Court Resolution was served on the parties only on July 31, 2014 (the tenth day after the En Banc meeting) in the case of CJ Sereno and the JBC, and on August 1, 2014 (the 11[th] day after the En Banc meeting) in the case of Sec. Ochoa.[8] This happened despite the President’s August 20, 2014 deadline in appointing a new associate justice in place of retired Associate Justice Roberto A. Abad. Thus, effectively, 19 days before the President’s August 20, 2014 deadline, the petition was only in its “comment” stage.

This seemingly harmless incident is pointed out as one of the several indicators showing that from the very beginning, the Court – whose agenda and administrative functioning the Chief Justice controls – did not appear to be in a hurry to process the Jardeleza petition.

A.1. The Jardeleza Allegations.

Jardeleza alleged in his petition that the following events transpired, leading to the violation of his due process rights.

On March 20, 2014, the JBC released the list of 15 applicants, himself included, to the Supreme Court position vacated by Justice Roberto A. Abad. This was not the first application he filed before the JBC.[9]

On May 29, 2014, the JBC interviewed him. No one raised any comment, complaint or observation in this public interview.[10]

On June 16 and 17, 2014, he received phone calls from JBC Member, former Justice Aurora S. Lagman (J. Lagman), speaking on behalf of the JBC. She informed him that during the JBC meeting of June 16, 2014, the respondent CJ Sereno directed that he make himself available to appear before the JBC on June 30, 2014; and that CJ Sereno, in the JBC meeting of June 5 and 16, 2014, had questioned his integrity, invoking Section 2, Rule 10 of JBC-009.[11]

Justice Lagman significantly added that the Chief Justice would inform him of her objections to his integrity at the June 30, 2014 JBC meeting.[12]

Believing that the acts of CJ Sereno were in violation of JBC-009 (Rules of the Judicial and Bar Council), Jardeleza at that point, filed his June 24, 2014 letter-petition addressed to the Court, asking the Court to direct the JBC, among others, to implement the relevant provisions of its rules.

On June 30, 2014, the petitioner appeared before the JBC as directed. He was led to one of the ante-rooms at 11:00 a.m. By 12:30 noon, lunch was delivered to him. Sometime before 1:00 pm, Department of Justice (DOJ) Secretary Leila M. De Lima informed him that Associate Justice Antonio T. Carpio had just appeared before the JBC and testified against him. Secretary De Lima then asked if Jardeleza still wanted to continue with his nomination, to which the petitioner answered yes.[13]

Just before 2:00 pm, the JBC summoned the petitioner and CJ Sereno asked him if he wanted to defend himself. The petitioner answered that he would defend himself if given due process as prayed for in his June 24, 2014 letter-petition. The petitioner then put into record his formal statement and asked that the JBC defer its meeting as the Supreme Court would meet the next day. He added that he would not be lulled into waiving his rights. Thereafter, he was dismissed. The entire procedure only took approximately 10 minutes.[14]

[Court records indicate that the Office of the Clerk of Court received the June 24, 2010 letter-petition in the afternoon of June 25, 2014, or 5 days before the JBC's June 30, 2014 meeting.

It was raffled for assignment to a Member-in-Charge only on July 1, 2014 or on the 6[th] day after its receipt by the Court. The raffle also took place 30 minutes before the En Banc meeting of that day, i.e., a day after the June 30, 2014 JBC meeting.[15]

This is another of several indicators of the Court's foot-dragging plainly showing that Jardeleza's letter-petition was not meant to be considered or passed upon by the Court en banc before the June 30, 2014 JBC meeting.]

Later that afternoon (June 30, 2014), the JBC transmitted a shortlist of nominees to the Office of the President. Jardeleza found out, through a press statement made by the Supreme Court Public Information Office (through Atty. Theodore Te), that he had garnered sufficient votes to be included in the shortlist, but was not included in the list because of questions regarding his integrity.[16]

Jardeleza subsequently filed the present petition for certiorari and mandamus before the Court. The petition prayed that the Court: (1) declare that Chief Justice Maria Lourdes P. A. Sereno and the JBC acted with a grave abuse of discretion in excluding him in the shortlist of nominees; (2) direct the JBC to include his name in the shortlist of nominees for the position that former Associate Justice Abad vacated; and (3) issue a temporary restraining order against the appointment of a new associate justice pending the determination of the merits of the case.

As explained and pointed out above, the Court required the respondents to comment on the petition in its Resolution of July 22, 2014.[17]

B. Executive Secretary Ochoa's Comment

The respondent Sec. Ochoa filed his Comment on August 8, 2014. Secretary Ochoa agreed with Jardeleza's claim that he (Jardeleza) should be included in the shortlist of nominees for the Supreme Court position of former Associate Justice Abad. According to Sec. Ochoa, Section 2, Rule 10 of JBC-009, which was used to justify Jardeleza's exclusion from the shortlist, is unconstitutional and should thus not be given effect.

Sec. Ochoa argued that Section 2, Rule 10 of JBC-009 is unconstitutional for the following reasons: first, it violates the JBC's collegial character, which decides on the basis of a majority, not the affirmative vote of all its members;[18] and second, it violates the due process clause, because it deprives a judicial applicant any meaningful opportunity to refute the claims against him.[19]

Even assuming Section 2, Rule 10 of JBC-009 to be constitutional, Sec. Ochoa pointed out that it takes effect only when the objector is not a member of the JBC, for only then can the required unanimous vote be attained. Thus, it should not have been applied under the facts of the case, as it was a member of the JBC that raised the objection against Jardeleza.[20]

C. The JBC's Comment

Late in the afternoon of August 11, 2014 (to be exact, at 4:49 pm or past the dismissal time of SC employees), the JBC filed its Comment with the Court.

[The Member-in-Charge received his copy of the JBC Comment at approximately 9:30 am of August 12, 2014 or 30 minutes before the opening of the Court en banc's session. This is another questionable circumstance as the Member-in-Charge was expected to present the developments of the case before the En Banc.]

CJ Sereno did not participate in the Comment which was filed only on behalf of "Respondent Judicial and Bar

Council.”

C.1. The JBC Allegations.

The JBC defended its actions during the selection process, and presented the following arguments:

First, Jardeleza availed of wrong remedies in challenging the JBC’s actions. Certiorari is directed towards acts of a board or tribunal exercising quasi-judicial functions. The JBC does not exercise judicial or quasi-judicial functions; hence, certiorari is an improper remedy. Neither should mandamus lie to compel the JBC’s discretionary act to select and recommend nominees for vacant judicial positions.[21]

Second, the JBC gave Jardeleza the opportunity to be heard; he was accorded due process when some of its members informed him that there were allegations against his integrity that he should explain at the JBC meeting scheduled for June 30, 2014. It was Jardeleza who opted not to avail of this right, as he instead asked that his accuser and his/her witnesses file sworn statements for him to know the allegations against him; give him adequate time to prepare for his defense; allow him the opportunity to cross-examine the witnesses; and that the procedure be done on record and in public, among other things.[22]

Third. The JBC is not a quasi-judicial or judicial agency or fact-finding agency. Hence, Jardeleza’s requests were unnecessary; its members are not determining his guilt or innocence, only his fitness to become a nominee.

Under Sections 3 and 4, Rule 4 of JBC-009, conducting a hearing, receiving testimony of oppositors, and giving due notice to the candidate regarding the hearing, are all discretionary options for the JBC when it conducts discreet investigations on candidates’ competence.[23]

Fourth. Section 2, Rule 10 of JBC-009 is applicable even when the person questioning the integrity of the candidate is a member of the JBC. In that situation, the objecting JBC member would be excluded from voting for or against the candidate.[24]

Lastly, Jardeleza did not divorce himself from the position he holds in government while pursuing his June 24, 2014 letter-petition and the present petition. Since he acted as Solicitor General when he sued the JBC, a governmental body, he committed acts constituting conflict of interests between him and the government, and thus violated the Code of Professional Conduct.[25]

Significantly, the Comment did not at all touch on the basis or the cause of Jardeleza’s disqualification (except to mention it in passing), but asked for permission to file a supplement to its Comment.

D. Proceedings after the Initial Comments.

In the Court’s deliberation of August 12, 2014, the Court gave the adverse parties the opportunity to reply to give him the opportunity to controvert the new matters that the JBC asserted in its Comment. The Court likewise gave the JBC the opportunity to file a Supplemental Comment.[26]

By the nature of the adversarial exchange, the Court authorized the JBC to expound on the matters already alleged in the Comment, not to introduce new matters that Jardeleza, because of the time constraints, could no longer controvert.

D.1. Jardeleza’s Reply and the JBC Supplemental Comment

Jardeleza again filed his Reply in propria persona,[27] in the manner he filed his petition. An examination of his submission shows that he simply responded by addressing the points addressed in the JBC’s Comment by explaining his side of the matters raised. It related to his version of events of June 16 and 17, 2014; his contacts with J. Lagman; and his legal arguments about JBC-009 and 010. I shall discuss the details of this Reply,

particularly the legal arguments, at its proper places below.

In addition, Jardeleza's Reply asserted that the allegations against his integrity have been rendered superfluous by the voting of the JBC members – four of whom voted to include him in the shortlist despite the allegations against his integrity, and by the submission of the shortlist to the President.[28]

The JBC Supplemental Comment, for its part, carried several notable characteristics.

A first characteristic is its reliance for support on the Minutes of the June 5, 16 and 30, 2014 meetings, which Minutes were attached.[29] These Minutes, however, are far from the usual Minutes that are taken in the meetings of collegial bodies.

They do not appear to have been approved by the JBC members and in fact were not signed except by Atty. Cayosa through a certification. They likewise support a Supplemental Comment that, like the Comment, alleged facts that were not verified. Moreover, these were signed by a counsel who did not appear to have first-hand knowledge and information about the facts alleged. In short, neither the Supplemental Comment nor the Minutes are verified documents that could be considered at face value.

From these perspectives, both instruments thus take wide liberties with the rules of pleadings and evidence, in contrast with the Petition that was under oath.

Another characteristic, already mentioned above, is that the Supplemental Comment did not expound on what the Comment had already raised or on arguments relating to the Rule 10 reservation.

Not surprisingly and following the pattern of procedural abuse that had been shown, the JBC supplement touched on completely new matters, dwelling at length with allegations about the handling of an arbitration case involving the government, Jardeleza's alleged immorality, and a "show cause" order about stock transaction improprieties.

All these are matters that were never discussed in the public interviews. Nor were these even hinted at in the main Comment. Jardeleza was likewise not given sufficient notice of these objections, except in a general way through J. Lagman on the matter of the arbitration case, as discussed at length below.

The immorality and stock transaction issues also did not appear in the Minutes although they surprisingly appeared in the Supplemental Comment they support. [Immorality was only speculated upon in the Manila Times but was never brought to the attention of the JBC (although the Supplemental Comment mentioned that Atty. Cayosa allegedly bothered to look at these grounds but did not appear to have ever filed any formal report about them)].[30]

The Supplemental Comment's focus was simply on the arbitration case. Per the Minutes of June 16, 2014, at the instance of CJ Sereno, the JBC purposely did not put the challenge in writing as things could be "messy", to which the Secretary of Justice reportedly retorted "If I know there is a challenge to my integrity that would be ground for my disqualification, then I should be given an opportunity to respond." [31] But this observation begs the question: respond to what challenge if the details are not provided?

Under these circumstances, it was not surprising that the petitioner, who had previously bothered to seek redress from the Supreme Court and whose June 24, 2014 letter-petition was then unacted upon, did not immediately answer objections whose scope and details he did not know about.

In sum, this characteristic, as the first one did, took a lot of liberties and stretched procedural rules beyond their breaking point.

A third characteristic of the JBC Supplemental Comment is that it embodied positions from the Chief Justice that

she could no longer, on her own, introduce into this case as she had effectively surrendered her right to comment by not filing one when and as required by her own Court. To be sure, her Court position alone does not entitle her to disregard the periods set by the Court, nor entitle her to file her pleadings at her leisure.

D.2. Other Important Concerns

D.2.a. Basic Lack of Sensitivity to Fairness & Due Process

To top all the above characteristics and to Jardeleza's great prejudice, the JBC dwelt with matters that Jardeleza could no longer controvert in this case without risking the lapse of the presidential time limit on appointments to the Supreme Court.

Additionally, the terms of this Supplemental Comment are, on their faces, sickening as they are no less than daggers used in a character assassination made in the guise of a Supplemental Comment. Expressly, it alleged that Jardeleza had been "disloyal to the country."^[32] The Supplemental Comment also laid bare aspects of the government arbitration case that no responsible government official, more so if she is Chief Justice, would so openly discuss.

To be sure, to be called disloyal to one's country is no laughing matter that one can easily brush aside and forget. At the very least, it is a career-killer, not to mention the personal stigma it leaves on one's person, family and all past accomplishments.

What elevates this charge to the level of malice is that it appears to have been purposely timed to be embodied in the Supplemental Comment at the stage of the case when it could no longer be refuted. Those who have read Shakespeare's Julius Caesar can readily appreciate that Jardeleza can now very rightly say: Et tu, Chief Justice who should be the chief guardian of people's personal rights through the due process clause?

Understandably perhaps, the Comment does not appreciate fairness and due process and even refutes their consideration; the case allegedly does not involve life, liberty or property so that even the concept of fairness cannot apply.

This approach makes one wonder what the terms "integrity" and "reputation" mean to the respondents, and if they realize that libel is penalized because reputation and integrity are precious treasures that people value; they are in fact treasures that live beyond us and are not interred with our bones.

For these reasons, I see no need to dwell on and discuss the substantive merits of the causes alleged to support the disqualification of Jardeleza, and will only focus on the process involved and their internal or procedural contradictions. I refuse to take part in character assassination by dignifying the belatedly cited grounds with a discussion of their substantive merits.

D.2.b. Irresponsible Actions

I do not share, too, CJ Sereno's view that we can discuss and be judgmental about a matter that wholly lies within Executive domain and whose public discussion at this point may work to the prejudice and detriment of the country. The Judiciary has no business passing judgment, however informally, on internal developments within the Executive Department, a coordinate and co-equal branch, unless the developments are facts in issue in a case. Even in the latter case, we should particularly be careful in our actions when these actions may possibly entail risk to the national interests.

If the Chief Justice is adventurous enough to take such risks, then this Opinion and like actions from individual Justices of this Court, will at least signal to the Executive and to the nation that the Court itself as an institution does not share the Chief Justice's views.

If indeed she had an awareness of the sensitivity of the matters brought up to the level of the JBC, she should have taken measures and safeguards to ensure their confidentiality, or, must have at least consulted with the offices concerned on how best to handle possible national interest concerns. Ironically, as events in this case unfolded, she even initiated the full exposition in the Supplemental Comment of matters that may possibly involve national interest risks.

If for this reason alone, the whole Supplemental Comment and its attachments, including the Minutes, should be placed on media and third party embargo, and stricken off the records of this case

D.3. The Petition for Intervention

A twist at this late stage of this case is the Comment in Intervention, allegedly filed by Atty. Purificacion S. Bartolome-Bernabe (who described herself as President of the Bulacan IBP Chapter). Unfortunately, the petition contained nothing new, significant or substantial, and simply parroted the positions in the JBC's own Comment and Supplemental Comment. In this light and at this stage of the present case, denial of the proposed intervention should be proper.

E. Jardeleza's Reply and its Factual Aspects.

a. To support his contention that CJ Sereno purposely excluded him, Jardeleza firstly stressed that on June 16 and 17, 2014, he received a call from J. Lagman that CJ Sereno wanted him to "make himself 'available' and to appear before them on June, 30 2014; and that the Chief Justice would invoke Section 2, Rule 10 of JBC-009 to question his integrity." J. Lagman stated without detail that the objections had to do with his work as Solicitor General, and that the Chief Justice would inform him of her objections to his integrity.[33]

This is a critical point and is one that, to some extent, the original JBC Comment actually conceded.[34] At page 7 of the same JBC Comment, it adds the statement that "he and Justice Lagman spoke briefly about the case and his general explanation for how he handled the same. He agreed to explain himself on the matter. Secretary De Lima also separately informed the petitioner about the content of the impending Rule 10 objection against him on said date."

No dispute appears that the JBC gave Justice Lagman the task of talking to Jardeleza about the Section 2, Rule 10 objection against him. The submitted Minutes made reference to this deputation[35] and likewise generally mentioned what the topic of the queries would be.

What the Minutes and the JBC Comment did not mention, however, were the details of what J. Lagman relayed to Jardeleza, i.e., the specific points of the integrity objection and the inquiry to be made. There was likewise no mention of a separate contact by Secretary De Lima to Jardeleza to make her own notification.

An examination of the Minutes shows that no detailed discussion was made on June 5 and 16, 2014 of the specifics of the Chief Justice's objection. In fact, it was not until June 30 when J. Carpio was invited as resource speaker that he fully explained these details to the JBC members.

Thus, J. Lagman could not have been specific enough about the details when she invited Jardeleza to the June 30, 2014 meeting, for her invitation to serve as a sufficient notice alerting Jardeleza to what he was to fully answer at the coming meeting.

If logic and common experience would be the standards, it is more believable that J. Lagman simply generally referred to the factual and legal bases for the objection, and in fact further said that CJ Sereno would explain the details to Jardeleza at the June 30, 2014 meeting.

From the perspective of strict legality, J. Lagman's phone call and invitation to Jardeleza on June 16 and 17,

2014, cannot therefore serve as a notice sufficient for due process purposes. Jardeleza was invited to come and was only generally informed that there would be an objection against his integrity. As further discussed below, despite his subsequent June 24, 2014 letter to the Court and to CJ Sereno, he was not informed of the details of the objection and was more in the dark rather than informed and enlightened, when he attended the June 30, 2014 JBC meeting.

b. Before the June 30, 2014 meeting, Jardeleza made no secret of his concerns and, in fact, requested specific reliefs, among them the specification of the objections against him and the sworn statements of the witnesses. This was embodied in Jardeleza's June 24, 2014 letter-petition to the Court with copies to all members of the JBC. This aspect of the case is not disputed. What lie in the shadows are the implications of this letter.

At the very least, it cannot be denied that at least five days before the June 30, 2014 meeting, the JBC members were already aware that Jardeleza was already demanding that he be given specific details of the charges/objections against him. Yet, no concern from the JBC members was raised about the need for specific details at the June 30, 2014 meeting; it was only Jardeleza himself who brought the matter up in the context of asking for a deferment of the June 30, 2014 meeting.

Apparently, nothing was raised about specific details as the matter had been settled during the previous June 16, 2014 meeting: nothing would be in writing because to take this step would be "messy." [36]

In effect, the JBC sought to undertake a shortcut: what it had in mind, as influenced by CJ Sereno, was to simply inform Jardeleza of the details of the Section 2 Rule 10 objection to his application on June 30, 2014, and right then and there ask him to answer questions regarding his integrity.

Would a seasoned lawyer, now an applicant to a vacancy in the Highest Court – with years of private law practice and academic teaching experiences behind him, and who acts as counsel representing the government in a pending arbitration case of national importance – reply to an open-ended charge without specifications of its particulars? I think not.

c. The matter of the service of Annex "J" on Jardeleza is another disturbing aspect of this case. Jardeleza denied that he received a copy of Annex "J" which is a letter from a counsel relating to the government arbitration case.

My own records show that I received the August 11, 2014 JBC Comment with attached Annexes "A" to "I," and a separate envelope containing Annex "J." What happened in my case does not necessarily mean, however, that the same thing happened to Jardeleza.

In the first place, why was Annex "J" placed in a separate envelope when it was intended as an integral part of the Comment? Was it selectively served on the parties and was not served on Jardeleza as he claimed? When was this Annex, in fact, given to the JBC members – was it only at the June 30 meeting as the Minutes indicate? [37]

I ask these questions in light of the pattern of manipulation that has become apparent in this case. Is this another one of them? To be sure, I am not ready to accept that Jardeleza received a copy of the separately-enveloped Annex "J" in the absence of independent proof that the separate envelope was separately served and received.

In other words, I do not believe that proof of receipt of the JBC Comment can serve as proof of receipt of the separately-enveloped Annex "J". "Sharp" practitioners have been known in the past to resort to the underhanded technique of serving and asking for the receipt of envelopes with nothing inside them. This could be a variation of this sharp technique and could have happened under the warped circumstances of this case.

F. The JBC's Supplemental Comment and its Factual Aspects

a. The Supplemental Comment opens with an alleged "more detailed and chronologically arranged restatement of

relevant facts.”[38] As I have stated above, most of these are simply new matters that have no place in a “supplement” for the reasons likewise already stated above.

b. The second point the Supplemental Comment raised is a disclaimer on why it is disclosing “sensitive national interest matters.” The reason given is – “because the Petitioner himself challenges the JBC to a public and open discussion of the integrity issue against him...the JBC, to protect its reputation, and under the legal compulsion of candor before this Honorable Court, has no recourse but to disclose the facts...”[39]

This disclaimer was followed by a recital,[40] attributed to CJ Sereno, of internal matters in the arbitration case. I do hope the attribution and the statements are wrong as no Chief Justice or even a Judge or Justice should ever claim the flimsy excuse imputed to her. I ask: if indeed the JBC and the Chief Justice knew of the sensitivity of the issue to the nation, are their given reasons sufficient for the disclosures they made?

Given that disclosures had been made, I believe that the best recourse for this Court under the circumstances, is as I proposed above: embargo the Supplemental Comment and its Annexes, including the disputed Annex “J,” and strike them off from the records of the case.

c. Paragraphs 21 and 22 of the Supplemental Comment are interesting because they lay the basis for the allegations of Jardeleza’s immorality and insider trading.[41] Apparently referring to paragraph 21 (the calls of J. Lagman to Jardeleza) as basis, paragraph 22 –which was again attributed to CJ Sereno – stated that the JBC might as well look into these allegations. The problem though is that J. Lagman does not appear to have ever informed Jardeleza of these grounds as basis for the integrity objection against him. The Minutes, to be sure, do not reflect any such communication, much less its details.

d. Both from the Minutes and the Supplemental Comment, it appears clear that J. Carpio did not appear either as oppositor or as complainant; he was simply invited by the JBC, through the Chief Justice, to explain matters to the Council. Nor does it appear that he ever spoke in the presence of Jardeleza and that he was ever questioned by Jardeleza about the integrity objection.

All these narrations go to show that Jardeleza was never ever fully informed of what objection had been laid against him. On June 30, 2014, he was simply asked to answer general claims with no specification of details – something that no lawyer representing the government in a sensitive national issue and who is worth the title Attorney, would off-handedly answer.

In short, what he faced was a vague charge that the JBC made, at the initiative of CJ Sereno, hoping that Jardeleza would be intimidated and would withdraw as indicated by the Minutes of the June 16 meeting, or that he would blindly answer as indicated in the Minutes of the June 30 meeting.

Neither possibility materialized and so Jardeleza now stands libeled under the charge of being disloyal to the country, and denied, quite possibly, of the chance to be an Associate Justice of the Supreme Court – all because of moves pointedly aimed at preventing him from reaching this Court, seemingly at all costs.

II. Procedural and Legal Issues

A. The Court’s power of supervision over the JBC

The JBC functions as a collegial body that recommends to the President a shortlist of nominees for vacant judicial positions, from which list the President then chooses his appointee. It is a constitutional body created under the 1987 Constitution to replace the highly-political process of judicial appointments in the past, and was meant to make the selection process more competence-based. It also seeks to shield the judiciary from political pressure

from the other branches of government. [42]

To partly quote the wording of the Constitution, Article VIII, Section 8(1) and (5) provide that “A Judicial and Bar Council is hereby created under the supervision of the Supreme Court... It may exercise such other functions and duties as the Supreme Court may assign to it.”

Supervision, as a legal concept, has been defined as the power of oversight, or the authority to see that subordinate officers perform their duties.[43] It involves ensuring that the law or the rules governing the conduct of a government body or subordinate officer are followed. Supervising officials merely see to it that the rules are followed, but they themselves do not lay down these rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to the rules.[44]

Following this definition, the Court’s supervisory authority over the JBC is to see to it that the JBC follows its own rules. Thus, when there are allegations regarding the JBC’s non-compliance with its own rules, especially when it comes from an applicant who is in the position to know of these infirmities, then the Court, through its supervisory authority over the JBC, has the duty to inquire about the matter and ensure that the JBC complies with its own rules.

In the present case, Jardeleza came to know of JBC’s actions and perceived these to be procedurally infirm because he had been kept in the dark about their details. He consequently feared for his chance and opportunity to intelligently answer the charges or objections that could be laid against him. Thus, he came to this Court, asking for the enforcement of the JBC rules as his relief. His allegation of supporting facts and invocation of the JBC rules, generally undenied in the JBC’s Comment, are sufficient to trigger further inquiry from this Court into the JBC’s actions.

B. The Court’s constitutional duty to determine grave abuse of discretion under its expanded jurisdiction

The present petition unequivocally imputes grave abuse of discretion amounting to lack of jurisdiction to the JBC and CJ Sereno, and thus invokes the Court’s expanded jurisdiction under the 1987 Constitution.

As I have noted in several cases in the past, the 1987 Constitution granted the Court an expanded jurisdiction to determine whether grave abuse of discretion had been committed by a government agency or instrumentality, viz:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Under these terms, the present Constitution not only integrates the traditional definition of judicial power, but introduces as well a completely new expanded power to the Judiciary under the last phrase — “to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”

Under this expanded judicial power, justiciability expressly and textually depends only on the presence or absence of grave abuse of discretion, as distinguished from a situation where the issue of constitutional validity is raised within a “traditionally” justiciable case which demands that the requirement of actual controversy based on specific legal rights must exist. Notably, even if the requirements under the traditional definition of judicial power

are applied, these requisites are complied with once grave abuse of discretion is *prima facie* shown to have taken place. The presence or absence of grave abuse of discretion is the justiciable issue to be resolved.

Rule 65 of the Rules of Court reflects the traditional jurisdiction of the Court, and thus requires that a petition for certiorari be directed towards a judicial or quasi-judicial act. Jurisprudence after the 1987 Constitution's enactment, however, has repeatedly invoked the Court's expanded jurisdiction – albeit without expressly naming it – by carving out exceptions on the requirements for justiciability. Recent cases, however, have been more cognizant of the Court's expanded jurisdiction.[45]

Thus, through its practices, the Court has allowed the use of certiorari as a remedy to invoke the Court's expanded jurisdiction to determine whether grave abuse of discretion had been committed. The Court has so acted regardless of whether the assailed act is quasi-judicial or not.[46]

In these lights, I do not find the JBC's argument that Jardeleza availed of the wrong remedy to be persuasive; Jardeleza's petition invoked the Court's expanded jurisdiction, not its traditional jurisdiction.

To successfully invoke the Court's expanded jurisdiction, the petitioner must *prima facie* show that the assailed act constitutes grave abuse of discretion by any branch or instrumentality of government.[47] In my view, Jardeleza complied with this requirement with his narration of the facts that transpired during the selection process vis-a-vis the JBC Rules of Procedure, which allegations the JBC did not essentially contradict.

Notably, Jardeleza has not been lukewarm in asserting his right to due process; he has been very consistent in pushing for the implementation of the JBC rules in his case. He did this in his June 24, 2014 letter-petition to this Court. He repeated this in the position he took and his statement before the JBC on June 30, 2014. He has reiterated these positions in his present petition.

In sum, the Court exercises two points of entry in assuming jurisdiction over the present petition. The first is its supervision over the JBC, while the second is the exercise of its expanded judicial power. Both of these powers are constitutional in nature.

C. The Violation of Jardeleza's right to due process.

In its Comment, the JBC emphasized that under its rules, it has full discretion to conduct a discreet investigation on the background of judicial applicants. This discretion includes, by its account, the authority to determine whether the hearing of oppositors' testimonies and the submission by applicants of written comments on the opposition to them, are necessary.

The JBC downplayed these requirements – whose absence Jardeleza claims to be violative of his rights – and noted that it is not a quasi-judicial nor a judicial body concerned with the applicant's guilt or innocence.[48] In any case, the JBC claimed that it gave Jardeleza the opportunity to be heard on June 30, 2014 but he refused this opportunity as he instead insisted on his claimed procedural rights.

Under these conflicting claims, the case before us largely becomes a due process matter: is Jardeleza entitled to due process and, if so, was he denied his rights?

C.1. Procedural due process applies to the JBC's governmental action of excluding Jardeleza from the shortlist of nominees

As earlier discussed, the JBC is a novel creation under the 1987 Constitution, which replaced the confirmation process that members of the judiciary previously had to undergo after appointment. The 1987 Constitution gave the JBC the task of selecting and submitting a shortlist of nominees (composed of at least three men and/or women of proven competence, independence, probity and integrity) from where the President can choose the

judge or justice he will appoint.

But unlike other constitutional bodies whose functions have been enumerated by the Constitution, the Constitution did not lay down in exact terms the process the JBC shall follow in determining applicants' qualifications. In this sense, the JBC is *sui generis*; the process it shall follow is entirely left for its determination – essentially a grant of quasi-legislative power. This rule making power is at the same time plenary, subject only to the supervisory authority of the Supreme Court, to the constitutional provisions recognizing the fundamental rights of individuals, and to higher constitutional principles such as checks and balances in government, among others.

In other words, the uniqueness and novelty of the JBC's selection process give it ample but not unbridled license to act in performing its duties. It cannot conduct its proceedings in violation of individual fundamental rights or other provisions of the Constitution.

For this reason, I cannot agree with the JBC's contention that the investigative nature of the selection process automatically means that the due process rights of applicants cannot be invoked against it. As a body vested with governmental functions, it interacts with, and its actions affect, individuals whose rights must be considered.

To determine whether these interactions should involve procedural due process rights, the United States Supreme Court (whose Bill of Rights rulings we use as non-binding guides) use the balancing of interests approach developed in *Mathews v. Elridge*[49] as follows:

Due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. Due process is flexible and calls for such procedural protections as the particular situation demands. Accordingly, resolution of the issue whether the administrative procedures are constitutionally sufficient requires analysis of the governmental and private interests that are affected. More precisely, identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail xxx[50]

This test, applied to the accusations of a JBC member against the integrity of Jardeleza, shows that procedural due process should have been made available.

The private interest affected by the JBC's actions involve Jardeleza's inclusion in the shortlist of nominees and his opportunity to become part of this Court. That Jardeleza's inclusion in the list gives him a mere opportunity to become a Supreme Court Justice does not minimize this interest, as the surrounding circumstances show that he was a strong contender for appointment: despite the accusations against him, Jardeleza still gained the four votes necessary for inclusion in the shortlist. Further, the Comment of the Executive Secretary, a party to this case as the alter ego of the President, prayed that Jardeleza be included in the list.

Most importantly, the JBC's actions massively, but negatively, affected Jardeleza's reputation as a lawyer, as a private individual and as a citizen.

Involved here is a reputation built up over the years as an outstanding student, a preeminent law practitioner, and a high ranking government official now officially representing no less than the Government. Jardeleza's non-inclusion in the list – despite being considered by many as a strong contender, taken together with the statement from the Court's Public Information Office announcement that there should have been five nominees, had it not been for an invocation of Rule 10, Section 2 of JBC-009 – cannot but signal doubts about Jardeleza's integrity. That Jardeleza was the excluded nominee had been confirmed by subsequent judicial proceedings before

this Court, that has been the subject of media attention through various articles speculating on his integrity.

Thus, the JBC's failure to apply procedural due process has prejudiced Jardeleza's private interest: he was excluded from the shortlist of nominees, to the prejudice of his reputation and despite the required majority votes he garnered. Conceivably, the accusation against him – if left unresolved – would also affect his continued stay in his post as Solicitor General since the media continues to speculate on the matter. Further inaction from this Court would further taint Jardeleza's reputation, given the allegations already made at the JBC and in these proceedings.

As pointed out in the Prefatory Statement, many other interests are affected by the actions of the JBC. An erroneous application of the JBC selection rules indirectly limits the President's appointment choices and thus restricts the President's appointing authority. An erroneous application can likewise affect the composition of this Court and, under the facts of this case, possibly the values this institution stands for.

The JBC itself benefits by implementing procedural safeguards, such as the interpretation of its rules to consciously implement the rudiments of procedural due process, or at the very least in the present case, by giving Jardeleza a meaningful opportunity to be heard and address the accusations against him. The Judiciary under whose umbrella the JBC exists likewise benefits. Overall, these safeguards increase transparency and credibility of the selection process and produce greater belief in the independence of the judiciary as an institution.

Not to be overlooked in implementing safeguards are the burdens that the JBC must undertake and that procedural due process may entail. All these must be weighed against the JBC's benefits and the private and other interests affected.

The JBC, to be sure, operates under constraints under its duty to submit a shortlist of nominees: the Constitution requires the President to appoint within 90 days from occurrence of the vacancy and he cannot fulfill this duty unless he receives the JBC shortlist. The JBC, too, cannot haphazardly act and must thoroughly examine its nominees to ensure that they possess the required qualifications for membership in the judiciary.

Providing an applicant who has passed the initial screenings and who has in fact secured sufficient votes to be nominated, with the opportunity to meaningfully defend himself from accusations against his integrity, would not have been too much of a burden on the JBC sufficient to adversely affect its actions within the required 90-day appointment period.

Based on the facts of the case, the deadline to transmit the shortlist is a reasonable time before the President's own deadline of August 20, 2014. Even assuming that the accusation against Jardeleza materialized only sometime after the public interview (or on June 5, 2014 at the latest under the facts of the submitted Minutes), the JBC had more than a month to inform Jardeleza of the accusations against him and to confront him about it under due process safeguards. This, unfortunately, was not done although this course of action is fully in line with the JBC's interest to submit properly vetted and qualified nominees, and promote transparency and accountability in the selection process.

C.2. Procedural due process as applied in the case requires fairness

How could and should the JBC have met the requirement of procedural due process in the present case?

Procedural due process is a flexible concept, and the required safeguards and procedures to ensure it may change based on the nature of the case and the attendant facts. But at the heart of procedural due process is fairness, as embodied in its most basic requirements: the meaningful opportunity to be heard (*audi alteram partem*) by an

impartial decision-maker (*nemo iudex in parte sua*).^[51] Due process, as it originated from England, embodied these two interlocking principles, which ultimately prohibits partiality and fosters impartiality.

As the JBC selection process is a *sui generis* proceeding, no existing jurisprudential standard can definitively be used as judicial precedent for the due process required in the selection process. But, at the very least, the most rudimentary aspect of procedural due process should apply: there should be meaningful opportunity to present one's case and the consideration must be made by an impartial judge.

Unfortunately, neither of these aspects had been observed in the present case. On the contrary, what appears from the records on a collective reading of seemingly disparate incidents, is a determined effort to discredit Jardeleza's integrity without giving him the benefit of impartial consideration.

C.3. Jardeleza was not given a meaningful opportunity to be heard

The opportunity to be heard, in order to be truly meaningful, must in the first place involve due notification of what the charge or objection is. The charge or objection is the reckoning point from where the party to be heard will base his own position.

In the present case, this reckoning point is nowhere to be found as the notification, if the phone calls by J. Lagman can be so characterized, was effectively only a summons to a hearing with which Jardeleza complied. As I pointed out above, J. Lagman, who phoned Jardeleza, could not in fact fully state the exact objection because she was also only fully briefed about it on June 30, 2014, when J. Carpio came to explain.

Bothered by what was happening and fearing a Star Chamber inquiry (to borrow an Inquirer editorial allusion), Jardeleza came to this Court and asked for help. Pointedly he asked in his June 24, 2010 letter: what exactly is the objection about?

In my view, it is not enough to say that it is an integrity objection and simply point to the portion of the JBC rules on integrity objections. Even a general idea of what the matter would not be enough under the facts of the present case where Jardeleza is the Solicitor General directly acting on an arbitration case that is still pending. Responding to unspecified charges could only open up a lot of things within the limitations of lawyer-client relationship and the pendency of the case. The matter becomes more complicated if the case indeed involves national security or national interest considerations. Overall, what one could or would say, had to be carefully weighed and considered.

In the considerations of the parties' submissions, I examined all the given facts, although I also posited that the Supplemental Comment should be stricken from the records of the case. But even if I were to fully consider the Supplemental Comment, I would still have the same conclusion, even made stronger in my mind by the seemingly disparate incidents that collectively point to a concerted and focused drive to exclude Jardeleza from the nomination list. Indeed from the seat of power and control, one may manipulate events with facility so that the moving hand remains unseen. But over time and when the dots are inevitably connected to one another, the pattern will show, as that pattern had been shown in the examination made above.

To point the obvious ones, first, the objection was not made at the earliest opportunity to give the JBC, as a body, full consideration of the objection. It was raised at the last moment when the short list was already being considered, using a provision of the JBC rules that is being invoked for the first time.

Second, it was apparently raised after a hidden campaign to exclude Jardeleza must have failed at the JBC, i.e., after it became obvious that Jardeleza would get the required votes unless an overt objection was made. Note in

this regard that even the Supreme Court appeared to have been manipulated when it was not given the chance to vote for its recommendees. Apparently, Jardeleza would have made, if not topped, the list of Court recommendees since the Members of the Court have seen him in action during the oral arguments, have read his pleadings, and collectively have a very high respect for the Solicitor General's handling of the Reproductive Health, the PDAF and the DAP cases, where he conducted a very creditable (although losing) presentation of the government's case.

Third, the JBC obviously and even by admission, shied away from any written specification of the grounds for objection, only for CJ Sereno to come up with, not only one, but three grounds to clinch the exclusion she wanted.

Note that as early as June 5, 2014 she already expressed the intent to use a Section 2, Rule 10 objection – a first in the history of the JBC. Nothing was done however to fully specify what the objections were, or to provide for safeguards if the ground indeed should be highly confidential.

Very easily, the notification could have been a confidential but written one, shared only among the JBC members and Jardeleza. The opportunity to do this was present up to the meeting of June 16, 2014, but still the JBC, apparently with the guidance of CJ Sereno, sought the verbal route. Why the telephone calls could not have served as an effective notice has been discussed above and need not be repeated here.

Fourth, matters came to a head when Jardeleza, instead of being cowed and intimidated into inaction or surrender, chose to meet the situation head-on by writing the Supreme Court his June 24, 2014 letter-petition.

Receipt of the letter-petition by the Court (and soon after, by the Justices) came on June 25, 2014. Yet surprisingly, this was never acted upon, and was not even raffled to a Member-in-Charge until 30 minutes before en banc time a day after the June 30, 2014 JBC meeting.

This type of delayed action, to my mind, showed the intent to manipulate, as an early raffle could have precipitated an urgent recommendation to issue a temporary restraining order, as had been done in previous cases when time was of the essence in important matters and cases. Indeed, it is intriguing that the raffle was made on the day after the June 30, 2014 JBC meeting that resulted in a shortlist of nominees when moot and academic ruling could be very tempting.

Fifth, what apparently threw a monkey wrench in the plan to easily get the June 24, 2014 letter-petition out of the way, was the recommendation of the initial Member-in-Charge, not to simply NOTE the letter and not to enter a "moot and academic" ruling, but to ask the parties to comment in order to conduct a quiet but speedy investigation.

At that point, objections at the En Banc were made, resulting in a majority ruling to NOTE the letter without prejudice to any action Jardeleza might take. This was of course a move that already rose to the level of malice, as time was of the essence in acting on the matter; the regular and formal certiorari process alone would have eaten up precious time on the part of the appointing authority.

Still relying on judicial processes, Jardeleza dutifully filed his petition on July 18, 2014 or about a month away from the President's August 20, 2014 deadline. The Court acted on the petition in its July 22, 2014 Resolution by requiring the parties to comment within a non-extendible period of ten days.

Surprise of surprises, this simple unsigned Court Resolution that could be prepared from a template was not issued until August 1, 2014, thus again eating up a good portion of the President's precious appointing time.

Sixth, the JBC filed its Comment at the last minute of the last hour of the deadline, August 11, 2014 or a day before the en banc meeting of August 12, 2014. A copy of the Comment was given to the Member-in-Charge

about 30 minutes from en banc time: how could the Member-in-Charge meaningfully consider the Comment under this time constraint?

Significantly, CJ Sereno, a separate respondent, did not file any comment despite the non-extendible period given. The catch was in the prayer of the Comment that asked for a supplement where, as events unfolded, the full blast of CJ Sereno's case was disclosed. At that time, Jardeleza could hardly be given time to respond to the new matters alleged in the supplement as it was already August 15, 2014 – the Friday before the last En Banc session on August 19, 2014; the President's limited time expires the next day, August 20, 2014.

C.4. The JBC's impartiality in resolving the integrity objection against Jardeleza is doubtful

The facts, as derived from the pleadings, also raise questions about the JBC's impartiality as shown by the manner it handled the objections against Jardeleza's integrity.

First, Jardeleza's oppositor was CJ Sereno, who was not only a member of the JBC, but its ex-officio chair. Despite the opposition CJ Sereno voiced out against Jardeleza, she was allowed to continue to sit and take part in the JBC deliberations on Jardeleza.

That she did not vote for Jardeleza's inclusion or exclusion in the shortlist is not as material as her participation in the deliberations, where she had been at a better position to influence the decision of the JBC members. The Chief Justice's participation in the deliberations allowed her to answer questions that other JBC members posed as they underwent the decision-making process of including or excluding Jardeleza; she could voice out her opinions and counter-arguments against the misgivings and thoughts of other JBC members while they were individually considering their votes, while effectively blocking whatever arguments there might be to support Jardeleza.

This is in contrast to treating her as any other oppositor, where she would have the opportunity to present her case against Jardeleza but not counter-argue as the JBC members deliberate. Effectively, even without voting, CJ Sereno was allowed to be an oppositor against Jardeleza and at the same time part of the body that would decide his fate – a situation that the maxim *nemo iudex in parte sua* (no man should be a judge of his own cause) had warned against.

The selective application of the JBC's rules is also highly suspect. The proceedings before the JBC showed that some of its members were aware that opposition to an applicant's inclusion in the shortlist and his response thereto should be in writing.^[52] The JBC, upon CJ Sereno's insistence, chose to ignore this rule – which embodied procedural due process – for the sole reason that it would be “messy.”^[53]

Instead, the JBC opted for an on-the-spot confrontation against Jardeleza, and applied the unanimous vote requirement under Section 2, Rule 10 of JBC-009. That a rule favorable to Jardeleza was not implemented while a rule that would make it more difficult for him to become a nominee was enforced, shows beyond doubt the impartiality that the JBC exercised against him.

C.5. The JBC gravely abused its discretion when it violated its own rules

The above discussion on procedural due process does not dwell on the topic of the JBC's compliance with its rules; instead, it juxtaposed the JBC's actions with the rudimentary principles of due process. The two principles of procedural due process – the right to be heard by an impartial tribunal – are required of the JBC, even without any express rule requiring them to observe these standards.

The JBC, however, has formulated its own rules, which even commanded that a higher standard for procedural process be applied to Jardeleza. But even so, by opting to selectively apply its own rules to the prejudice of Jardeleza, the JBC not only violated the precepts of procedural due process; it also violated the very rules it has set for itself and thus violated its own standards.

This kind of violation is far worse than the violation of an independently and externally imposed rule, and cannot but be the violation contemplated by the term grave abuse of discretion. The JBC cannot be allowed to create a rule and at the same time and without justifiable reason, choose when and to whom it shall apply, particularly when the application of these rules affects third persons who have relied on it.

In the case of Jardeleza, the JBC had prevailing rules on how to handle objections posed against applicants as well as rules that fully satisfied the requirements of procedural due process: an objection that is sufficiently serious is required to be in writing under required safeguards, and the applicant is given time to reply and the right to be heard.

The application of these rules on objection were, for some reason, different in the case of Jardeleza. Despite being a very serious candidate who in fact merited the vote of a majority of the members of the JBC, no specification in writing was ever made and the JBC contended itself with a phone notification whose scope and effectiveness are amorphous. The failure continued despite a formal letter-petition made by Jardeleza before this Court that, unfortunately, was itself blocked, so that Jardeleza had to resort to the present case.

The difference in treatment, of course, could be in the personality of the party objecting to Jardeleza – the Chair herself of the JBC – and by the selected timing of the presentation of the objection – after all objections had been heard during the final selection of the nominees to be shortlisted. These circumstances, to my mind, make the JBC violation far worse than a mere differential treatment of an applicant with an outside objector, particularly when, as shown above, circumstances exist revealing a focused effort to exclude Jardeleza.

Admittedly, both JBC-009[54] and JBC-010[55] allow the conduct of a discreet background information on the applicant. It is my view, however, that once the discreet background investigation produces an opposition to the application, then such opposition should be in writing.

True, the JBC has the discretion to *motu proprio* entertain or discard an opposition. That is the import of the word ‘may’ in Section 3,[56] Rule 4. But regardless of the JBC’s action or inaction to it, the opposition should be in writing. Both Section 3, Rule 4 of JBC-009 and Section 2 of JBC-010 require that an opposition or complaint against an applicant be in writing, while the latter even requires that this be supported by annexes. In short, the JBC can receive an opposition to an application only if it is in writing, and cannot choose to receive verbal objections.

Once the complaint or opposition is given due course by the JBC, the Secretary of the Council is duty-bound under Section 2 of JBC-010 to furnish a copy to the applicant, who shall then have five days from receipt thereof to comment, if he so desires.

What is optional for the JBC is to require a testimony of the oppositor or his witnesses – but once it decides to do so, it is required to give due notice to the applicant who shall be allowed to cross-examine the opposite and to offer countervailing evidence.

Thus, I cannot agree with the way the JBC interpreted its rules to allow it to conduct an on-the-spot interrogation of Jardeleza, without even notifying him of the specificities of the charges against him. This, as earlier discussed, violates the basic rudiments of procedural due process.

It must be remembered, at this point, that in case of doubt as to which of two interpretations of a rule applies, the construction that enforces right and justice should prevail;^[57] that which recognizes due process, accountability in government and transparency should be favored. From this perspective and of this principle to the present case, the JBC's interpretation of its rules should not be given effect to the extent that it violates due process and fosters partiality.

III. Court Action on the Petition

In this all-important case where the matter in dispute may touch on the President's power of appointment, the power of the JBC as a body tasked with the submission of nominees to the President, and the Court's own power under the Constitution, the Court once again must tread carefully to ensure maximum harmony among the different contending entities while ensuring that the Constitution is fully respected.

A. The President and his Appointing Power.

No major obstacle appears with respect to the President's power to appoint, as the Court's lookout is protective – how to protect this power to ensure that it remains full and unfettered.

If at all, a problem may arise if the President overshoots the temporal limitation in the exercise of his appointing power, i.e., if he does not appoint and waits for the final outcome of this case.

Any fear of conflict with the President on this point, however, would be misplaced as this is a case of first impression where the risk present is the fettering of the power of appointment. This Court should not be a stumbling block if the President takes the view that he should not exercise his power of appointment in the meantime that the list to be submitted to him is incomplete and is still being litigated in this Court. This presidential approach, in fact, is a recognition of the proper exercise of jurisdiction by this Court.

B. Relationship with the JBC

As has earlier been discussed, the Court exercises two points of entry in assuming jurisdiction over the present petition. The first is its supervision over the JBC, while the second is the exercise of its expanded judicial power. Both of these powers are constitutional in nature.

The JBC is under the supervision, not just of a member of the Supreme Court but of this Court as a collegial body. Since the JBC's main function is to recommend appointees to the judiciary,^[58] this constitutional design was put in place in order to reinforce another constitutional mandate granted to this Court: its administrative supervision over all courts and personnel thereof.^[59]

In *Ambil, Jr. v. Sandiganbayan and People*,^[60] we characterized what makes up the power of supervision:

On the other hand, the power of supervision means “overseeing or the authority of an officer to see to it that the subordinate officers perform their duties.” If the subordinate officers fail or neglect to fulfill their duties, the official may take such action or step as prescribed by law to make them perform their duties. Essentially, the power of supervision means no more than the power of ensuring that laws are faithfully executed, or that subordinate officers act within the law. The supervisor or superintendent merely sees to it that the rules are followed, but he does not lay down the rules, nor does he have discretion to modify or replace them.^[61]

This ruling shows that the power of supervision is both normative and proactive. The supervisor not only ensures that the subordinate acts within the bounds of its law-laden duties and functions; he may also compel a subordinate to perform such duties and functions, whenever it becomes clear that the subordinate has already acted in disregard of it.

That the JBC is granted the full discretion to determine its own rules and select the nominees it deems qualified is

beyond question. This discretion, however, like all other exercise of discretion, comes with the limitation that the JBC rules should not violate the fundamental rights of third parties as well as the provisions of the Constitution. Whenever any such violation occurs, the Supreme Court may step in wearing its second hat in its relationship with the JBC – exercising its power to correct grave abuse of discretion under Section 1, Article VIII of the Constitution.

Thus, under the Court's supervisory authority over the JBC, it can compel the JBC to comply with its own rules. Had the letter-petition earlier been granted, the Court could have had compelled Jardeleza's objectors to put their oppositions in writing and allow Jardeleza to comment thereon, and, if necessary, present countervailing evidence and cross-examine his oppositors in a hearing conducted for such purpose.

Compelling the JBC to exercise its discretion of including a person in a list of nominees, however, is another matter. The Court cannot issue a writ of mandamus to compel the JBC to include Jardeleza in the shortlist, since mandamus can only be directed to oblige the performance of a ministerial act. On the contrary, the decision to include a particular candidate in the shortlist of nominees is a discretionary action on the part of the JBC. As we explained in *Pefianco v. Moral*:^[62]

It is settled that mandamus is employed to compel the performance, when refused, of a ministerial duty, this being its main objective. It does not lie to require anyone to fulfill a discretionary duty. It is essential to the issuance of a writ of mandamus that petitioner should have a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required. It never issues in doubtful cases. While it may not be necessary that the duty be absolutely expressed, it must nevertheless be clear. The writ will not issue to compel an official to do anything which is not his duty to do or which is his duty not to do, or give to the applicant anything to which he is not entitled by law. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.

Thus, the Court's available action, if it is to be based on its power of supervision, is to direct the JBC to reconvene and accord Jardeleza the due process rights that must be accorded to him. Under the circumstances of this case, however, this remedy may not be available as the Court has to take into account the President's time limitation in exercising its power of appointment. Thus, this available action, should only be considered in the future and in reserve, to be taken only in the more appropriate cases where time limitation is not a major constraint.

As the preceding discussions would show, the JBC had acted in grave abuse of discretion when it selectively applied its rules to make it more difficult for Jardeleza to be included in the shortlist. The JBC's non-compliance with its own rules, in turn, violated Jardeleza's due process rights. The recognition that this action is a grave abuse of discretion renders the proceedings undertaken on Jardeleza's integrity null and void, i.e., an event that was never invoked, that never happened, and that should have no legal effect.

In other words, because of the JBC's grave abuse of discretion in handling the accusations against Jardeleza's integrity, its invocation of Rule 10, Section 2 of JBC-009 (requiring unanimous votes in cases where there are accusations against the applicant's integrity) should be nullified. The accusations should be deemed never to have happened so that no need exists to invoke Section 2, Rule 10 of JBC-009. The practical effect of this declaration is to recognize the majority votes the JBC previously cast in Jardeleza's favor. He should thus be declared included in the shortlist of nominees pursuant to this JBC action.

CONCLUSIONS

Based on the above premises, I join the ponencia in the results and additionally hold ? to ensure the maintenance of the Court's integrity and dignity as an institution under the circumstances of this case ? that

1)

The JBC's Supplemental Comment should be stricken from the records and its copies withdrawn from circulation with the caveat that its contents should not be publicly printed and disseminated;

2)

The Court should declare that the JBC's selective application of its rules, in light of accusations against petitioner Jardeleza's integrity, violated Jardeleza's right to due process; the application therefore of Section 2, Rule 10 of JBC-009 is declared invalid; and

3)

In light of this invalidity and the majority votes the JBC already cast in Jardeleza's favor, he should be declared included in the list the JBC submitted to the President on June 30, 2014.

In light of the time considerations involved, the Court's decision should be immediately executory. The Office of the President should be immediately notified of the results of the Court's decision even pending the formal release of the Court's decision.

[1] Letter of Solicitor General Francis H. Jardeleza, June 24, 2014, p. 5.

[2] Jomar Canlas, High Court justices powers clipped, The Manila Times, June 18, 2014; Jomar Canlas, SC Justices Confront Sereno on Vacancy Issue, The Manila Times, June 19, 2014.

[3] Under Section 4(1), Article VIII of the 1987 Constitution, any vacancy in the Supreme Court must be filled within ninety days from the occurrence thereof.

[4] Francis H. Jardeleza's Petition for Certiorari and Mandamus, par. 1, pp. 1 – 2; Jardeleza's Reply, p. 1.

[5] Jardeleza's Petition, par. 22, p.7.

[6] Id. at 2, par. 5.

[7] See JBC Comment of August 11, 2014, p. 2; Justice Carpio was there to "shed light on the very confidential legal memorandum that clarifies and concretizes the integrity objection that the Chief Justice raised against the petitioner..."; see also: Minutes of June 30, 2014 JBC Executive Session, p. 1.

[8] Records show that Chief Justice Sereno received the July 22, 2014 Resolution on July 31, 2014; while Executive Secretary Ochoa received a copy of the Resolution on August 1, 2014.

[9] Jardeleza's Petition, par. 9 – 10, p. 3.

[10] Id. at 3, par. 11.

[11] Section 2, Rule 10 provides:

Section 2. Votes required when integrity of a qualified applicant is challenged – In every case when an integrity of an applicant who is not otherwise disqualified for nomination is raised or challenged, the affirmative vote of all the Member of the Council must be obtained for the favorable consideration of his nomination.

[12] Jardeleza's Petition, par. 12, p. 3.

[13] Id. at 4-5, par. 14.

[14] Ibid.

[15] Indicated in the Summary and Preliminary Evaluation circulated for the Court En Banc meeting of July 1, 2014.

[16] Jardeleza's Petition, par. 16, p. 5.

[17] See page 5 of this Separate Opinion.

[18] Executive Secretary Paquito Ochoa's Comment, pp. 1 – 2.

[19] Id. at 2 – 3.

[20] Id. at 3 – 4.

[21] The Judicial and Bar Council's Comment, pp. 4 – 7.

[22] Id. at 7 – 8.

[23] Id. at. 8 – 10.

[24] Id. at 10 – 11.

[25] Id. at 11 – 16.

[26] Court en banc Resolution dated August 12, 2014.

[27] Jardeleza's Reply dated August 12, 2014, p. 1.

[28] Id. at 11 – 12.

[29] The minutes of the JBC Executive Session on June 5, 16 and 30, 2014 were attached as Annexes A to C, respectively, to the Supplemental Comment – Reply.

[30] Minutes of June 30, 2014 Executive Session, at 2.

[31] See Minutes of the JBC's June 16, 2014 Executive Session, p. 3.

[32] See JBC Supplemental Comment-Reply of August 15, 2014, par. 9, p. 2; par. 28, p. 5; see also: Minutes of the JBC's June 30, 2014 Executive Session at par. 3, p. 4.

[33] Jardeleza's Reply, pp. 1 – 2.

[34] See JBC Comment of August 11, 2014, p. 2; "... JBC Regular Member and former Court of Appeals Justice Aurora Santiago Lagman called petitioner and informed him that during the 5 and 16 June 2014 meetings of the JBC, Hon. Chief Justice Maria Lourdes P. A. Sereno manifested that she would be invoking Section 2, Rule 10 of JBC-009 because she believes that petitioner does not have the required integrity to be a member of the Supreme Court."

[35] Minutes of the JBC's June 16, 2014 Executive Session, at p. 3.

[36] Ibid.

[37] Minutes of the JBC's June 30, 2014 Executive Session, p. 1.

[38] JBC's Supplemental Comment Reply, at par. 2, p. 1.

[39] Id. at 1, par. 4.

[40] Id. at 2-4, pars. 6-19.

[41] Id. at 4.

[42] In *de Castro v. JBC*, G.R. No. 191002, March 17, 2010, 615 SCRA 666, 743 the Court pointed out:

xxx Indeed, the creation of the JBC was precisely intended to de-politicize the Judiciary by doing away with the intervention of the Commission on Appointments. xxx

[43] More often than not, supervision is defined in relation with the concept of control. In *Social Justice Society v. Atienza*, 568 Phil. 658, 715 we defined “supervision” as follows:

[Supervision] means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter.

Under this definition, the Court cannot dictate on the JBC the results of its assigned task, i.e., who to recommend or what standards to use to determine who to recommend. It cannot even direct the JBC on how and when to do its duty, but it can, under its power of supervision, direct the JBC to “take such action or step as prescribed by law to make them perform their duties,” if the duties are not being performed because of JBC’s fault or inaction, or because of extraneous factors affecting performance. Note in this regard that, constitutionally, the Court can also assign the JBC other functions and duties – a power that suggests authority beyond what is purely supervisory.

[44] In *Hon. Dadole v. COA*, 441 Phil. 532, 543-544, citing *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 336 SCRA 201, 214-215, we have further discussed the difference between control and supervision. “Officers in control lay down the rules in the performance or accomplishment of an act. If these rules are not followed, they may, in their discretion, order the act undone or redone by their subordinates or even decide to do it themselves. On the other hand, supervision does not cover such authority. Supervising officials merely see to it that the rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.”

[45] *Belgica v. Executive Secretary*, G.R. No. 208566, November 19, 2013; *Imbong v. Executive Secretary*, G.R. No. 204819, April 8, 2014; *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014.

[46] *Gutierrez v. The House of Representatives Committee on Justice*, G.R. No. 193459, February 15, 2011.

[47] See J. Brion Separate Opinion on *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014, pp. 19 – 20.

[48] JBC Comment, at pp. 9-10.

[49] 424 U.S. 319 (1976); emphasis ours.

[50] Id.

[51] See: Concurring Opinion, J. Brion, in *Perez, et al. v. Phil. Telegraph and Telephone Co.*, G.R. No. 152048, April 7, 2009, 584 SCRA 110.

[52] The minutes of the JBC’s June 16, 2014 Executive Session show that Congressman Tupas pointed out that the rules provide that an outsider’s opposition and the applicant’s comment to the opposition should be in

writing, and asked whether the same requirement should apply if the oppositor is a member of the JBC:

Congressman Tupas continued should there be prior opposition in writing by an outsider, he is allowed an opportunity to comment on the objection in writing. He inquired: If there is a challenge made by an insider or a Member, then the applicant can no longer obtain an affirmative vote from all the Members, and is he therefore automatically disqualified? If a member invokes Rule 10, Sec. 2, should not the candidate be given a chance to respond to the challenge in writing to his integrity before a vote is taken? Minutes of the JBC June 16, 2014 Executive Session, p. 3, emphasis ours.

[53] In response to Congressman Tupas' queries, Chief Justice Sereno replied:

Chief Justice Sereno pointed out that putting the challenge to Sol. Gen. Jardeleza in writing would could be "messy" as it would alert attention from the international community and the international embarrassment and the possible adverse effect of this on the Philippine claim might be complicated.

Minutes of the JBC June 16, 2014 Executive Session, p. 3

[54] Section 2. Background Check – The Council may order a discrete background check on the integrity, reputation and character of the applicant, and receive feedback thereon from the public, which it shall check or verify to validate the means thereof.

[55] SEC. 3. The Judicial and Bar Council shall fix a date when it shall meet in executive session to consider the qualification of the long list of candidates and the complaint or opposition against them, if any. The Council may, on its own, conduct a discreet investigation of the background of the candidates.

On the basis of its evaluation of the qualification of the candidates, the Council shall prepare the shorter list of candidates whom it desires to interview for its further consideration.

[56] Section 3. Testimonies of Parties – The Council may receive written opposition to an applicant on ground of his moral fitness and its discretion, the Council may receive the testimony of the oppositor at a hearing conducted for the purpose, with due notice to the applicant who shall be allowed to be cross-examine the opposite and to offer countervailing evidence.

[57] *De Padilla v. De Padilla*, 74 Phil. 377, 387 (1943).

[58] Constitution, Section 8(5), Article VIII.

[59] Constitution, Section 6, Article VIII.

[60] G.R. Nos. 175457 and 175482, July 6, 2011, 653 SCRA 576,

[61] *Id.* at 596; emphasis ours.

[62] 379 Phil. 468, 479 (2000).

SEPARATE OPINION

PERALTA, J.:

I voted in favor of the majority when the Court en banc deliberated upon the letter-petition of Solicitor General Francis Jardeleza in our June 24, 2014 Resolution, which merely "NOTED" the said letter, because the selection by the Judicial and Bar Council (JBC) was already finished on June 30, 2014 and the lack of sufficient time to

thoroughly study the contents of the said letter, the same having been calendared for deliberation only that morning of July 1, 2014, the scheduled En Banc session.

I, however, concurred with the majority's pronouncement that it was without prejudice to any remedy that Solicitor General Jardeleza would want to pursue. True enough, the proper petition against the Chief Justice, the JBC, and Executive Secretary Paquito N. Ochoa, Jr. was filed by Solicitor General Jardeleza on July 18, 2014.

After going over and pondering upon the ponencia and the opinions of the other Justices, I am registering my concurrence with the opinion of my esteemed colleague Justice Jose Catral Mendoza and, likewise, adopt the separate concurring opinions of my respected colleagues Justices Teresita Leonardo-De Castro and Arturo D. Brion. Verily, Solicitor General Jardeleza was unduly deprived of his right to due process in the proceedings before the JBC and, further, the Court's constitutional power of supervision over the JBC must be upheld.

DISSENTING OPINION

LEONEN, J.:

Prefatory Statement

In the guise of an invocation of due process of law, this petition tempts us to reach beyond our constitutional duties and require the Judicial and Bar Council to amend the list of nominees to the vacancy in this court caused by the retirement of Associate Justice Roberto Abad. The list was unanimously signed by all members of the Judicial and Bar Council and validly transmitted to the President. None of its members dissented to nominating only four names for the vacant position of Associate Justice of the Supreme Court.

The principal issue raised against petitioner during the proceedings in the Judicial and Bar Council was sensitive to the national interest. It relates to his attempts, as Solicitor General, to exclude certain statements in an important arbitration commenced by the Republic of the Philippines.

The comment and supplemental comment submitted by the Judicial and Bar Council show that it appeared to the Chief Justice and another member that these attempts were legally baseless. Their assessment came not only from their own knowledge of the issues as validated by their own discreet investigation but also from the presentation of Senior Associate Justice Antonio Carpio. Senior Associate Justice Antonio Carpio was invited as resource person to place in context the objections to the inclusion of petitioner in the list of nominees. A copy of the memorandum of the Republic's principal foreign legal counsel in this international arbitration was also made available to the members of the Council. The memorandum was addressed to petitioner as Solicitor General and the Secretary of Foreign Affairs.

Given the sensitive character of the grounds raised, the Judicial and Bar Council chose to provide petitioner with a discreet forum to hear his side of this issue. Despite being informed of the nature of the objection, petitioner instead chose to raise solely procedural grounds claiming that the due process clause requires cross-examination.

No person has a vested right to be nominated for a judicial position. In my view, the elemental requirements of fairness embedded in the due process clause was afforded to petitioner.

We should tread carefully, stay our hands, and practice judicial restraint. Significant cases such as these that could result in the nullification of an act of a constitutional organ certainly do not deserve hasty conclusions and the abbreviated deliberations. As the court of last resort, we have to give every argument in every document the conscious thought it deserves.

The Constitution grants to the Judicial and Bar Council the sole and exclusive power to vet not only the qualifications but also the fitness of applicants to this court. It is the Judicial and Bar Council that determines the extent of competence, independence, probity, and integrity that should be possessed by an applicant before he or she is included in the list of nominees prepared for the President.

By constitutional design, this court should wisely resist temptations to participate, directly or indirectly, in the nomination and appointment process of any of its members. In reality, nomination to this court carries with it the political and personal pressures from the supporters of strong contenders. This court is wisely shaded from these stresses. We know that the quality of the rule of law is reduced when any member of this court succumbs to pressure.

The separation of powers inherent in our Constitution is a rational check against abuse and the monopolization of all legal powers. We should not nullify any act of any constitutional organ unless there is grave abuse of discretion. The breach of a constitutional provision should be clearly shown and the necessity for the declaration of nullity should be compelling. Any doubt should trigger judicial restraint, not intervention. Doubts should be resolved in deference to the wisdom and prerogative of co-equal constitutional organs.

Through a petition for certiorari and mandamus with an application for a temporary restraining order, petitioner prays that we order that the list officially transmitted by the Judicial and Bar Council and received by the Office of the President be disregarded and in its place a new one made with his name included. This is what he means when he prays that his name be “deemed included.” He claims that the production of a new list is mandatory and ministerial on the part of the Judicial and Bar Council.

Conflicts in the narration of facts

should be resolved in favor of the constitutional body

There are conflicts in the ambient facts as gathered from the pleadings.

On March 6, 2014, the Judicial and Bar Council announced the opening, for application and recommendation, of the position of Associate Justice of the Supreme Court to be vacated by Associate Justice Roberto A. Abad. On March 14, 2014, the Council received a letter dated March 10, 2014 from Dean Danilo Concepcion of the University of the Philippines College of Law, nominating petitioner to the position. The Council also received a letter dated March 10, 2014 from petitioner accepting the nomination.[1]

On April 24, 2014, the Council announced the names of candidates to the position, which included petitioner’s, as well as the schedule of their interviews. Petitioner was interviewed on May 29, 2014.[2]

Then the versions of petitioner and respondent Judicial and Bar Council diverge. The Council alleges as follows:[3]

- The basis of the challenge, as detailed by the Chief Justice, was the events that transpired in the handling of the Republic of the Philippines’ Memorial in the case of Republic of the Philippines v. The People’s Republic of China of which Petitioner was the Philippine agent. The case involved compulsory arbitration under the United Nations Convention on the Law of the Sea (UNCLOS) initiated by the Republic of the Philippines before the Permanent Court of Arbitration.[4]
- According to her, in the Philippine Memorial, the Petitioner deliberately sought the exclusion of a discussion on a very important physical feature in the West Philippine Sea. This feature is the “rock” referred to as Itu Aba. . . . The importance of the paragraphs that the Petitioner instructed the international lawyers to delete from the entire Philippine claim will be discussed in a later portion of this Supplemental Comment.
- In the view of the Chief Justice, this deliberate refusal to promote the remedies available to the Philippines,

by deliberately weakening the country's arguments, showed that the Petitioner had been disloyal to the country.

- To provide the other JBC Members a factual background, the Chief Justice told them that she first learned about Petitioner's behaviour as the Philippine agent in the case through Senior Associate Justice Carpio. She then conducted discreet inquiries on her own. While the final Philippine Memorial included the important discussion point of *Itu Aba* she discovered that Petitioner insisted upon its exclusion and was only overruled through timely intervention.

- After this discussion, Congressman Tupas made it of record that he would still want to vote for Petitioner. Justice Lagman, Atty. Mejia and Atty. Cayosa likewise manifested their intention to vote for Petitioner, had it not been for the seriousness of the issue on the West Philippine Sea. They commonly agreed on giving him an opportunity to present his side. For his part, Senator Pimentel inquired on the definition of integrity as contemplated in Section 2 of Rule 10.

- The Chief Justice indicated that because of the seriousness of the matter being raised, it would be the first time that anyone would be invoking Section 2, Rule 10, and unless a different scenario ensues, she would be invoking the rule at the appropriate time.

- On 16 June 2014, the JBC met again in an executive session. The Chief Justice informed the body that since there was no change in the conditions obtaining since the meeting on 5 June 2014, she would invoke Rule 10 with respect to Petitioner's nomination. She was asked whether the integrity objection would hold considering that there was no proof that the Petitioner obtained money for his actuation in the West Philippine Sea case. She explained her point of view that one's capacity and willingness to uphold the Constitution determines integrity. An objection to integrity does not necessarily require proof of unlawful receipt of money in exchange for a decision or an action. She stressed that one does not have integrity when one is not willing to protect the interest of one's client to the utmost, especially in this case when the client happens to be the Republic. She said that through his actuations, Petitioner has demonstrated weakness of character. She inferred that he may have been listening to extraneous factors or may have been promised something. She also said she had seen many instances where national interests had been compromised because of personal agendas. She cited her experiences as the Director of the Institute of International Legal Studies in the University of the Philippines, when she observed the actuations of certain government officials. She saw how the country's ability to protect Scarborough Shoal was compromised by a foreign affairs official in exchange for a possible United Nations position. She also observed how public officials were willing to see the country lose its defense in the two international arbitration cases brought against it by the companies Fraport and Philippine International Air Terminals Co., Inc., all for something other than duty to the Republic.

- Congressman Tupas raised questions on the proper interpretation and application of Rule 10, Section 2, and extensive discussions on the rule followed.

- It was finally agreed that Petitioner would be invited to explain his side before the JBC at its next meeting on 30 June 2014. Justice Lagman was requested by the JBC to convey this invitation to him. It was also agreed that Senior Associate Justice Carpio would be invited to the next session as a resource speaker.

- Before the start of the discussion in the executive session on 30 June 2014, copies of a memorandum from the Philippines' international legal counsel for the West Philippine Sea case were distributed.^[5] The memorandum was signed by Messrs. Paul Riechler and Lawrence Martin, and was dated 19 March 2014. This memorandum had earlier been handed to the Chief Justice by Senior Associate Justice Carpio for distribution to the Members of the JBC. . . .

- Chief Justice Sereno clarified at the start of the executive session on 30 June 2014 that the invitations to Senior Associate Justice Carpio and Petitioner were pursuant to Rule 4, Sections 1 (Evidence of Integrity) and 2 (Background Check); and Rule 5, Sections 1 (Evidence of Probity and Independence) and 2 (Testimonials of

Probity and Independence) of the JBC Rules.

- The Chief Justice said that she took pains to validate all the information she had obtained, and that she was able to confirm her initial impressions. She elaborated that the instruction to exclude the discussion concerning Itu Aba was made by Petitioner himself to the Philippines' international legal counsel, and that he had insisted on this position up to the very end, when he was overruled when the President himself intervened. Secretary De Lima then explained that she was not involved in the preparation of the Memorial, but in the later stages learned that it was the collective decision of the Philippine legal team not to raise any discussion on Itu Aba in the Memorial but take it up during the oral arguments as a strategy.

- The Chief Justice responded that the alleged strategy would have proven too risky, because the International Tribunal may not call for oral arguments; and even if it does, it may not allow any argument on a matter not raised in the Memorial. Secretary De Lima said she was not informed of such risk.

- The JBC also discussed the media articles speculating on the issue of the nomination of Petitioner. It lamented the fact that while it had done everything to keep the objection against the Petitioner confidential, it still leaked out. . . .

- The Chief Justice emphasized the inaccuracy of media reports that Petitioner was not informed of the objection against him, considering that he had been informed by the JBC through Justice Lagman of the basis of the integrity objection.

. . . .

- After a short break, the JBC reconvened upon the arrival of Senior Associate Justice Carpio to shed light on the legal memorandum that had been distributed.[6]

- Senior Associate Justice Carpio confirmed that the exclusion of the 14-paragraph discussion on Itu Aba from the Memorial would have been detrimental to the Philippine claim in the West Philippine Sea case. He had found it strange that the Petitioner would not include the vital 14 paragraphs which were already in the original draft submitted by the Philippines' international lawyers Mssrs. Reichler and Martin.

- At this point, Justice Lagman said that upon informing Petitioner that Itu Aba was the subject of the integrity issue against him, the Petitioner mentioned that someone told him that a German scholar advised its exclusion. She informed the body that she called Petitioner a second time to inform him of the invitation to appear before the JBC for this day's session.

- Senior Associate Justice Carpio explained that in the arbitral tribunal, there might not be an oral argument. The tribunal would wonder why the Philippines would not include Itu Aba. Moreover, he opined that there could only be one German scholar referred to by the Petitioner, Professor Talman, who wrote in his work that the tribunal does not have jurisdiction over the case because Itu Aba was never raised nor mentioned by the Philippines in its earlier pleadings. He stressed that it was known in the international community that Professor Talman has been engaged by China to write for it and to promote its cause.

- Senior Associate Justice Carpio found it inexplicable that the Petitioner had instructed the exclusion of Itu Aba from the Memorial, even when its inclusion was already strongly advised by the best international lawyers.

. . . .

- Petitioner was called to face the JBC in the afternoon of the same day. The Chief Justice acknowledged and thanked Petitioner for his presence. She informed the Petitioner that the JBC would like to propound questions on the following issues:

(a) His actuations in handling the West Philippine Sea case;

....

- Petitioner, in response, reiterated his prayer in the aforementioned letter-petition and asked the JBC to defer its meeting, since he was expecting the Supreme Court en banc, which would be meeting the next day, to act on his letter-petition. Specifically, he demanded that the Chief Justice execute a sworn statement of her objections, and that he must have the right to cross-examine her in a public hearing. He indicated that the same should also be required of Senior Associate Justice Carpio. Congressman Tupas indicated that he wanted to hear for himself the explanation of Petitioner, but the latter refused. Petitioner further stated that he would not be lulled into waiving his rights. He then put on record a Statement[7] appealing that the JBC “stay their hand” that day and let the full Supreme Court address the issue of what process was due him.

- After a one-minute talk with Congressman Tupas, Petitioner gave his final remarks and asked to be excused from the session. Congressman Tupas said that Petitioner was unwilling to answer any of the JBC’s questions.

- The JBC moved on to discuss the nomination list and unanimously agreed that Petitioner’s name would still be part of the ballot.

- The voting resulted in a shortlist of the following candidates: Apolinario D. Bruselas Jr. with six (6) votes; Jose C. Reyes with six (6) votes; Maria Gracia M. Pulido-Tan with five (5) votes; and Reynaldo B. Daway with four (4) votes.

- The JBC agreed that while Petitioner garnered four (4) votes, he could not be included in the shortlist because of an invocation of Rule 10, Section 2 of the JBC Rules.

- Atty. Cayosa informed the JBC that while she had previously voted for Petitioner in various positions for which he was a candidate, she could not vote for him this time. She stated that she had also studied, investigated and validated the issues raised against Petitioner . . . on how he handled the West Philippine Sea case. She said that this investigation had cast serious doubts on his integrity. She would have wanted to hear his explanation or response to these issues to overcome the challenge to his integrity; but sadly, he had insisted that all challenges be put in writing even if to do so may affect national interest.

- Finally, to refute the claim of Petitioner in his Reply dated 15 August 2014 that he did not receive a copy of Annex “J” of the Comment dated 11 August 2014, which is the legal memorandum addressed to Petitioner and Sec. Albert del Rosario dated 19 March 2014 of Foley Hoag LLP, the international legal counsel of the Republic of the Philippines in *Philippines v. China*,^[8] attached as Annex “D” to this Supplemental Comment-Reply is an affidavit of personal service confirming that Petitioner was duly furnished Annex “J,” a memorandum that he has had since 19 March 2014. (Emphasis and underscoring supplied)^[9]

Petitioner, on his part, claims that while he was informed by Justice Lagman of the integrity objection, he was given very little information:

- The acts of respondent Chief Justice Sereno in the events leading up to and during the vote on the shortlist on June 30, 2014 show a premeditated and persistent pattern of exclusion on the petitioner.

- First, on 16 and 17 June 2014, petitioner was informed by JBC member Justice Aurora S. Lagman, through a phone call, that respondent Chief Justice Sereno directed that petitioner make himself “available” to appear before them on 30 June 2014. Petitioner was also informed that Chief Justice Sereno invoked Section 2, Rule 10 of JBC-009 against him at their June 5 and June 16 meetings. Justice Lagman stated, without detail, that the objections had to do with his work as Solicitor General, but that Chief Justice Sereno will be the one to inform him of her objection to his integrity, at the 30 June 2014 meeting. Petitioner was never formally notified in

writing of the allegations against him. This, notwithstanding that respondent Chief Justice Sereno had already been campaigning against petitioner at the previous JBC meetings of June 5 and 16, 2014.

- Second, petitioner's letter-petition filed before the Supreme Court on 25 June 2014, or five (5) days before the 30 June 2014 hearing of the JBC, was not acted upon by respondent Chief Justice Sereno who controls the scheduling of the en banc meetings and agenda. Thus, the reliefs- which are based on the JBC's own rules-prayed for by petitioner, including, among others, a written notice containing the sworn specifications of the charges against him by his oppositors, the sworn statements of supporting witnesses, if any, and copies of documents in support of the charges, were mooted and made academic pursuant to the Honorable Court's Resolution dated 08 July 2014. Petitioner appeared before the JBC on 30 June 2014 with very little information concerning the objections against his integrity. All that he could gather was that it had to do with his work as Solicitor General.

- Third, during the 30 June 2014 meeting, petitioner was informed by Secretary of Justice Leila M. de Lima, just before the JBC summoned him at 2:00 PM, that Associate Justice Antonio T. Carpio testified against him "about work." A "very confidential legal memorandum that clarifies and concretizes the integrity objection that the Chief Justice raised against petitioner" was allegedly distributed. Petitioner was not informed about the existence of such memorandum nor furnished a copy thereof. When Chief Justice Sereno asked petitioner if he wanted to defend himself, petitioner was compelled to reiterate his request for due process as prayed for in his letter-petition. Representative [Niel] Tupas, Jr. also asked petitioner if he wanted to defend himself. Petitioner answered he cannot defend himself unless his due process rights were granted. Petitioner also submitted into the record a Statement, which was again a plea for due process. Instead of heeding his request, respondent JBC considered petitioner's refusal to explain as a waiver of his right to answer the unspecified allegations. The 30 June 2014 meeting lasted about ten (10) minutes.

- Fourth, the JBC released the shortlist of nominees on the same day. It is a fact that petitioner obtained a majority of four votes-the same number of votes obtained by Judge Reynaldo B. Daway-even after respondent Chief Justice Sereno and Justice Carpio presented their objections. Petitioner, however, was not included in the shortlist, despite his plea for it to stay its hand and provide him real opportunity to be heard.

- Clearly, the manner by which petitioner was given only verbal notice of the allegations against him and forced to answer on the spot said allegations shows a pre-meditated and persistent pattern of exclusion that deprived him of a reasonable opportunity to mount a meaningful defense. It is a fact that no complaint or opposition was filed against petitioner after the public had been notified of his nomination. No opposition was raised against him during his public interview on 29 May 2014. It was only on 16 and 17 June 2014, or shortly before the final deliberation on the shortlist, that petitioner was verbally notified of respondent Chief Justice Sereno's objection against his integrity, and with no details at that. The objections against him were therefore foisted past the period for filing objections to his nomination-a move calculated to deprive him of the opportunity to properly respond in accordance with the JBC's own rules. Even his plea for relief before the Honorable Court, as a last resort, was rendered useless due to the malicious scheme employed by respondent Chief Justice Sereno.

- Deprived of a formal notice detailing the unspecified allegations against him, coupled with the lack of reasonable time to prepare for his defense, the circumstances under which petitioner was placed patently demonstrate a premeditated and persistent pattern to railroad the rejection of his nomination. Without having been previously informed of the specific details of the accusation against him, petitioner had only two options-either to participate in the proceeding unarmed with information and risk losing his case for lack of opportunity to present strong countervailing evidence, or refuse to participate in the proceeding and be estopped from claiming he was denied an opportunity to be heard. Either way, petitioner was caught in a dilemma which effectively deprived him of any real opportunity to be heard.

- Even now, petitioner is kept in the dark as to the details of the objection against him which allegedly pertains

to "a very important specific case for the Republic." Petitioner was not, and has not been, furnished a copy of Annex "J" of the JBC Comment. If, indeed, the objection to petitioner's integrity relates to a matter of highest importance, there is an even greater reason to disclose the allegations in public. Concealing the details of these allegations amounts to irresponsible rumor-mongering which maximizes petitioner's inability to defend himself.

- Petitioner assumes that the objection against him is related to the conduct of his official functions as Solicitor General of the Republic. The JBC Comment vaguely refers to an alleged "inability to discharge the duty of the Solicitor General" on "a matter of highest importance" relating to the "way he handled a very important specific case for the Republic." He therefore finds it in gross violation of his rights to due process because, while his principals in the Executive Department have not sought it fit to complain, much less sanction him in any way for his official conduct "on a very important specific case for the Republic," two members of the Judiciary, who are in no way his supervisors or principals, have found reasons to object to his nomination on the basis of what can only be considered second-hand information. (Emphasis in the original)[10]

However, petitioner, in his reply, admits to have been informed of the integrity issue against him at least immediately after the executive session. Until this case was deliberated by this court, he has not given any sufficient explanation about the substance of the charges. Neither has he informed this court that he will not do so in view of any privileges he wishes to avail.

His claim that he was given very little information about the integrity objection is contrary to the statement of Justice Lagman who disclosed during the June 30, 2014 session the following:

At this point, Justice Lagman said that upon informing Petitioner that Itu Aba was the subject of the integrity issue against him, the Petitioner mentioned that someone told him that a German scholar advised its exclusion. She informed the body that she called Petitioner a second time to inform him of the invitation to appear before the JBC for this day's session.[11]

The factual claims of petitioner relating to the extent of the information given to him were sufficiently traversed in the pleadings of the Judicial and Bar Council. We must presume that the Council's minutes contains the true narration of facts unless proven otherwise by petitioner. This is to give deference to a constitutional body in relation to its discharge of its official functions.

On the afternoon of the same day, the Judicial and Bar Council continued its deliberations and proceeded to vote for the nominees. All members of the Council were present. Thereafter, the Council released its list of nominees, which included: Court of Appeals Justice Apolinario D. Bruselas with six (6) votes, Court of Appeals Justice Jose C. Reyes with six (6) votes, Commission on Audit Chair Maria Gracia M. Pulido-Tan with five (5) votes, and Regional Trial Court Judge Reynaldo B. Daway with four (4) votes.[12]

The communication to the Office of the President reads:

June 30, 2014

His Excellency

President Benigno Simeon C. Aquino III

Malacañang

Manila

Thru: Atty. Paquito N. Ochoa

Executive Secretary, Office of the President

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the position of ASSOCIATE JUSTICE of the SUPREME COURT (vice Hon. Roberto A. Abad), according to the number of votes, per the JBC Minutes of even date:

- BRUSELAS, Apolinario Jr. D - 6 votes
- REYES, Jose Jr. C. - 6 votes
- PULIDO-TAN, Maria Gracia M. - 5 votes
- DAWAY, Reynaldo B. - 4 votes

Their respective curriculum vitae are hereto attached.

Very truly yours,

[Original signed]

MARIA LOURDES P.A. SERENO

Chief Justice & Ex-Officio Chairperson

[Original signed] [Original signed]

LEILA M. DE LIMA NIEL C. TUPAS, JR.

Ex Officio Member Ex Officio Member

[Original signed] [Original signed]

AURORA SANTIAGO LAGMAN JOSE V. MEJIA

Member Member

[Original signed]

MARIA MILAGROS N. FERNAN-CAYOSA

Member[13]

The transmittal letter was signed by all the current members of the Judicial and Bar Council. There was no dissent. The list submitted consisted of four names. It was clear that the Judicial and Bar Council unanimously agreed not to transmit the name of petitioner.

On July 8, 2014, the court En Banc issued a resolution which only noted petitioner's letter-petition on the ground of mootness in view of the transmittal of the list of nominees to the Office of the President.[14]

On July 18, 2014, petitioner filed this petition for certiorari and mandamus with this court, with an application for the issuance of a temporary restraining order, against Chief Justice Sereno, the Judicial and Bar Council, and the Executive Secretary Paquito N. Ochoa. He prays that Chief Justice Sereno and the Judicial and Bar Council be found to have acted in grave abuse of discretion and that the Council be ordered to include his name in the shortlist of candidates for the position of Associate Justice. He also prays that a temporary restraining order be issued against the President, through the Executive Secretary, to desist from appointing an Associate Justice pending the determination of his petition.[15]

While his letter and his petition were pending, it appeared that petitioner had been issuing statements to the media defending his actions in this court.[16]

The issues in this case are as follows:

Procedural:

- Whether a writ of certiorari may issue against the proceedings of the Judicial and Bar Council

- Whether the remedy of mandamus may lie against the act of the Judicial and Bar Council
- Whether a temporary restraining order may be issued against a period mandated by the Constitution

Substantive:

- Whether the supervisory power of this court over the Judicial and Bar Council includes acts done in the exercise of its discretion
- Whether petitioner's right to due process was violated by the Judicial and Bar Council

Petitioner argues that Chief Justice Sereno and the Judicial and Bar Council committed grave abuse of discretion when his name was excluded from the final list of nominees. He argues that his right to due process was violated when accusations against his integrity were made twice, ex parte, by Chief Justice Sereno without giving him an opportunity to be heard. He argues that Rule 4 of JBC-009 allows him to confront his accusers publicly, and the refusal of Chief Justice Sereno and the Judicial and Bar Council constitutes grave abuse of discretion.[17]

He also argues that Chief Justice Sereno's interpretation of Rule 10, Section 2 of JBC-009 goes against the collegial character of the Judicial and Bar Council since "the lone objector will be made completely capable of taking hostage the entire voting process, only by the expedient of objecting." [18] He argues that since he was able to garner four (4) votes, the

same as that of trial court Judge Daway, his name should have been included in the shortlist.[19]

In his comment, Executive Secretary Ochoa agrees with petitioner's arguments and argues that Rule 10, Section 2 of JBC-009 is unconstitutional as it impairs the collegial nature of the Judicial and Bar Council.[20] He also prays that petitioner's name be deemed included in the shortlist of nominees.[21]

The Judicial and Bar Council, on the other hand, argues that certiorari will not lie since the proceedings of the Council are neither judicial nor quasi-judicial.[22] It also argues that the remedy of mandamus is incorrect since the remedy does not lie to compel a discretionary act.[23]

The Council argues that petitioner was not deprived of due process since he was given every opportunity to be heard.[24] The Council also argues that its interpretation of Rule 10, Section 2 was correct since even if Chief Justice Sereno's vote were excluded, petitioner still needed five (5) votes, not four (4), to be included in the shortlist.[25] It argues that petitioner violated the prohibition on conflict of interest representation. It alleges that petitioner used the Office of the Solicitor General to pursue a purely private interest in violation of Rule 15.03 of the Code of Professional Responsibility. It also argues that petitioner, by suing in his capacity as a Solicitor General, has allowed a situation where he became the petitioner against his own clients, despite the fact that the law establishes an attorney-client relationship between them.[26]

The Council also argues that petitioner has not shown any right that may be protected by the issuance of a temporary restraining order. It argues that a temporary restraining order cannot be used to restrain a constitutional mandate.[27]

I vote to deny the petition.

I

The supervisory power of this court over the
Judicial and Bar Council is mainly administrative

The Judicial and Bar Council is a fully independent constitutional body which functions as a check on the President's power of appointment. The historical context of its creation has been previously passed upon by this

court in *Chavez v. Judicial and Bar Council*:^[28]

Long before the naissance of the present Constitution, the annals of history bear witness to the fact that the exercise of appointing members of the Judiciary has always been the exclusive prerogative of the executive and legislative branches of the government. Like their progenitor of American origins, both the Malolos Constitution and the 1935 Constitution had vested the power to appoint the members of the Judiciary in the President, subject to confirmation by the Commission on Appointments. It was during these times that the country became witness to the deplorable practice of aspirants seeking confirmation of their appointment in the Judiciary to ingratiate themselves with the members of the legislative body.

Then, with the fusion of executive and legislative power under the 1973 Constitution, the appointment of judges and justices was no longer subject to the scrutiny of another body. It was absolute, except that the appointees must have all the qualifications and none of the disqualifications.

Prompted by the clamor to rid the process of appointments to the Judiciary from political pressure and partisan activities, the members of the Constitutional Commission saw the need to create a separate, competent and independent body to recommend nominees to the President. Thus, it conceived of a body representative of all the stakeholders in the judicial appointment process and called it the Judicial and Bar Council (JBC). Its composition, term and functions are provided under Section 8, Article VIII of the Constitution^[29]

The creation of a Judicial and Bar Council was proposed by former Chief Justice Roberto Concepcion during the deliberations in the drafting of the 1987 Constitution. According to him, the committee on justice of the Constitutional Commission “felt neither the President nor the Commission on Appointments would have the time to carefully study the qualifications of every candidate, especially with respect to their probity and sense of morality.”^[30]

Commissioner Rene Sarmiento echoed this sentiment, stressing that “the creation of the Council is a step towards achieving judicial independence.”^[31] Thus, under Article VIII, Section 8(5) of the Constitution, the Judicial and Bar Council “shall have the principal function of recommending appointees to the Judiciary.” In its entirety, the provision states:

Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

(2) The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.

(3) The Clerk of the Supreme Court shall be the Secretary ex officio of the Council and shall keep a record of its proceedings.

(4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.

(5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

While the President has the discretion to choose who to appoint in the judiciary, the Constitution delegates to the Council the sovereign power to vet these choices after a careful and deliberative process. In the dissenting opinion in *Chavez v. Judicial and Bar Council*:^[32]

By virtue of the fundamental premise of separation of powers, the appointing power in the judiciary should be done by the Supreme Court. However, for judicial positions, this is vested in the Executive. Furthermore, because of the importance of these appointments, the President's discretion is limited to a shortlist submitted to him by the Judicial and Bar Council which is under the supervision of the Supreme Court but composed of several components.

The Judicial and Bar Council represents the constituents affected by judicial appointments and by extension, judicial decisions. It provides for those who have some function vis a vis the law that should be applied and interpreted by our courts. Hence, represented are practicing lawyers (Integrated Bar of the Philippines), prosecutors (Secretary of the Department of Justice), legal academia (professor of law), and judges or justices (retired justice and the Chief Justice). Also represented in some way are those that will be affected by the interpretation directly (private sector representative).[33] (Emphasis supplied)

In Article VIII, Section 8(1) and (5) of the Constitution, the Judicial and Bar Council is “under the supervision of the Supreme Court”[34] and “may exercise such other functions and duties as the Supreme Court may assign to it.”[35]

This court's supervision over the Judicial and Bar Council is manifested by its composition, wherein the Chief Justice is its ex-officio Chair and the Clerk of Court is its Secretary ex-officio.[36] The emoluments of the members of the Council and its budget are determined and provided by this court.[37] Under Section 4(a) of A.M. No. 03-11-16-SC or A Resolution Strengthening The Role and Capacity of the Judicial and Bar Council and Establishing the Offices Therein, “the Ex-officio Chairman shall exercise overall administrative authority in the execution of the JBC's mandate.”

There is nothing in the Constitution which allows this court to interfere with the Council's exercise of its discretion in the execution of its constitutional mandate. At most, this court's supervision is merely administrative.

The fully independent character of the Judicial and Bar Council is further elucidated by Justice Brion in his separate opinion in *De Castro v. Judicial and Bar Council*: [38]

This aspect of the power of the Court - its power of supervision - is particularly relevant in this case since the JBC was created “under the supervision of the Supreme Court,” with the “principal function of recommending appointees to the Judiciary.” In the same manner that the Court cannot dictate on the lower courts on how they should decide cases except through the appeal and review process provided by the Rules of Court, so also cannot the Court intervene in the JBC's authority to discharge its principal function. In this sense, the JBC is fully independent as shown by A.M. No. 03-11-16-SC or Resolution Strengthening The Role and Capacity of the Judicial and Bar Council and Establishing the Offices Therein. In both cases, however and unless otherwise defined by the Court (as in A.M. No. 03-11-16-SC), the Court can supervise by ensuring the legality and correctness of these entities' exercise of their powers as to means and manner, and interpreting for them the constitutional provisions, laws and regulations affecting the means and manner of the exercise of their powers as the Supreme Court is the final authority on the interpretation of these instruments. . . . [39] (Emphasis supplied)

II

The remedy of certiorari does not lie
in non-judicial or non-quasi-judicial functions

Petitioner claims that the non-inclusion of his name in the shortlist was tantamount to grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Chief Justice and the Judicial and Bar Council.

To be clear, Rule 65, Section 1 of the Revised Rules of Civil Procedure provides for the remedy of certiorari:

Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

Spouses Ducadao v. Secretary of Justice^[40] clarifies that the writ of certiorari only lies when the tribunal, board, or officer exercises judicial or quasi-judicial functions. Thus:

For a special civil action for certiorari to prosper, therefore, the following requisites must concur, namely: (a) it must be directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (b) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (c) there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. The burden of proof lies on petitioners to demonstrate that the assailed order was issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.^[41] (Citation omitted; emphasis supplied)

The Judicial and Bar Council correctly underscores that its proceedings is neither judicial nor quasi-judicial in nature.^[42] An administrative body is deemed to be exercising judicial or quasi-judicial functions when it is authorized to adjudicate upon the rights and obligations of the parties before it.^[43] It must have both judicial discretion and the authority to render judgment that affects the parties.^[44]

The principal role of the Judicial and Bar Council is to recommend appointees to the judiciary.^[45] It serves as a constitutional body that scrutinizes applicants and recommends to the President not only those who are qualified but, in its discretion, the most fit among the applicants to be included in a shortlist from which the President can make appointments to the judiciary.^[46] There is nothing in this function that makes it a quasi-judicial office or agency.

When the Judicial and Bar Council requested petitioner to appear before its members on June 30, 2014,^[47] it was not for the purpose of determining whether petitioner was innocent or guilty of any allegation made against him.^[48] Loosely akin to a “job interview,” the process before the Judicial and Bar Council “ascertains the fitness of the applicant vis-a-vis the constitutional requirement of ‘proven competence, integrity, probity, and independence.’”^[49] The request to appear was made not only to allow petitioner to air his side but also to enlighten Council members before they nominate those they determine to be the most fit for the vacancy.^[50]

The Judicial and Bar Council is also not an agency for debate. The request for petitioner to appear before the Judicial and Bar Council is merely an extension of the discreet background check the body is entitled to conduct, especially on issues relating to the integrity of the applicant.^[51] The Council is entitled to verify claims made against petitioner, without necessarily going into a full-blown trial.

At any rate, it is not within the Council’s functions to determine factual issues and make a pronouncement based on its findings. It is part of the process to satisfy each member’s basis for their choices. After being provided with such information, the members vote for their preferences based on their own view of the qualifications and fitness of all the applicants. The actions of the Council questioned in this petition, therefore, are not reviewable through the procedural vehicle of certiorari as a special civil action.

III

The remedy of mandamus does not lie to compel a discretionary act

Mandamus also does not lie against respondents.

Rule 65, Section 3 of the Revised Rules of Civil Procedure provides for the remedy of mandamus, thus:

SEC. 3. Petition for mandamus.- When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

Metro Manila Development Authority v. Concerned Residents of Manila Bay[52] clarifies when a writ of mandamus lies:

Generally, the writ of mandamus lies to require the execution of a ministerial duty. A ministerial duty is one that “requires neither the exercise of official discretion nor judgment.” It connotes an act in which nothing is left to the discretion of the person executing it. It is a “simple, definite duty arising under conditions admitted or proved to exist and imposed by law.” Mandamus is available to compel action, when refused, on matters involving discretion, but not to direct the exercise of judgment or discretion one way or the other.[53]

The determination by the Judicial and Bar Council of the qualifications and fitness of applicants for positions in the judiciary is not a ministerial duty. It is constitutionally part of its discretion. Mandamus cannot compel the amendment of any list already transmitted, and it cannot be made available to compel the Council to transmit a name not in the original list.

De Castro v. Judicial and Bar Council[54] clarifies a unique instance when mandamus lies against the Council. This is with respect only to the constitutional duty to allow the President the mandatory 90 days to make an appointment. Thus:

The duty of the JBC to submit a list of nominees before the start of the President’s mandatory 90-day period to appoint is ministerial, but its selection of the candidates whose names will be in the list to be submitted to the President lies within the discretion of the JBC. The object of the petitions for mandamus herein should only refer to the duty to submit to the President the list of nominees for every vacancy in the Judiciary, because in order to constitute unlawful neglect of duty, there must be an unjustified delay in performing that duty. For mandamus to lie against the JBC, therefore, there should be an unexplained delay on its part in recommending nominees to the Judiciary, that is, in submitting the list to the President.[55] (Emphasis supplied)

The decision to include names in the shortlist of nominees for the action of the President is, thus, a prerogative of the Judicial and Bar Council, not this court.

In this case, the list was transmitted without any objection from the Council’s members. During the final deliberations of the Council, all six (6) members were present, namely: Chief Justice Maria Lourdes P.A. Sereno, Department of Justice Secretary Leila M. De Lima, Representative Niel C. Tupas, Jr., former Justice Aurora Santiago Lagman, Atty. Jose V. Mejia, and Atty. Maria Milagros N. Fernan-Cayosa. Senator Aquilino Pimentel III was also present but did not vote. The minutes of the Judicial and Bar Council executive session dated June 30, 2014 shows:[56]

Justice Lagman suggested that the voting be deferred but Chief Justice Sereno replied that the Council has already completed the process required for the voting to proceed. There being no objection, the Council proceeded to vote for the position of Associate Justice of the Supreme Court.

....

The Council agreed to consider the thirteen (13) candidates for the position of Associate Justice of the Supreme Court.

The Members agreed to vote for a maximum of five (5) candidates each. The ballots were distributed and votes cast and tallied accordingly.

....

The following candidates garnered the highest number of votes and included in the shortlist:

Bruselas, Apolinario - 6 votes

Reyes, Jose Jr. C - 6 votes

Pulido-Tan, Maria Gracia M.- - 5 votes

Daway, Reynaldo B. - - 4 votes

While candidate Jardeleza, Francis H. garnered 4 votes, he cannot be included in the shortlist because of an invocation of Rule 10, Section 2 of JBC-009 (JBC Rules) against him.

....

There being no other matter to discuss, the meeting was adjourned at around 3:10 p.m.[57] (Emphasis supplied)

The absence of any objection by the members of the Council, orally and in the letter of transmittal submitted to the President, should conclusively show that the manner of selection and the results were accepted by all concerned. Again, it bears repeating, that the shortlist transmitted to the Office of the President was signed by all the members of the Council without exception,[58] thereby expressing their unanimity as to its contents.

Mandamus, therefore, does not lie to amend this list.

IV

This court's expanded jurisdiction does not justify interference with the principal functions of the Judicial and Bar Council

The invocation of this court's power under Article VIII, Section 1 of the Constitution "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government" in relation to the Judicial and Bar Council's discretion should be read in context. It should not be read too expansively so as to undermine the constitutional limits of our relation to the Council.

A showing of grave abuse of discretion should refer to a demonstrably clear breach of a constitutional duty that is "arbitrary, capricious and whimsical." [59] Our constitutional duty and power of review is not to accept the arguments of petitioner because it is plausible. Judicial review is also not a license to impose our own plausible interpretation of the rules of the Council over their own. Judicial review requires as an absolute predicate, a showing that the Council's interpretation and application of its rules is so bereft of reason and so implausible. We do not analyze the cogency of the arguments of petitioner or the interpretation that we would have put had we been in the Council. Rather, the mode of analysis in our exercise of judicial review is to scrutinize whether there are no viable reasonable bases for the interpretation, application, and actions of the Judicial and Bar Council.

In other words, the error we need to discover before nullifying a discretionary act of another constitutional organ is not whether there could have been a more reasonable interpretation and application of its rules; rather, it should be that we clearly find that their interpretation and application cannot stand on any legal justification. It is not about which of the arguments posed by petitioner and respondents are better in relation to each other. Rather,

judicial review requires an absolute finding that the actions of respondents being reviewed are arbitrary, capricious, and whimsical.

Notably, the constitutional text provides not simply “abuse of discretion”; it requires “grave abuse of discretion.”

In this way, we do not overreach precipitously and endanger the balance of constitutional power. We do not disturb the balance of political power envisioned by the sovereign and textually mapped out in the fundamental law. Judicial restraint is required in a constitutional democracy.

Even after this court determines that there is such grave abuse of discretion, the relief we provide should be prudently tailored so as to preserve the carefully crafted balance among constitutional organs as well as between governmental powers and its citizens.

Furthermore, any change in the interpretation of the rules of the Council should not inequitably prejudice third parties who relied on the existence of these rules. Petitioner was not the sole applicant to the position vacated by the retirement of a member of this court. There are four (4) individuals that passed the Council’s determination of qualifications and fitness in the list transmitted to the President. There are six (6) other individuals who did not make it to the list.

Thus, even if we assume, without conceding, that there was “grave abuse of discretion” on the part of respondents, it will be both inequitable and a violation of the rights of the other applicants and the other nominees to simply require the amendment of the list transmitted to the President. Petitioner chose not to implead them. They did not benefit from an opportunity to be heard by this court. Any amendment to the rules of the Council through our interpretation given the parties impleaded in this case should, thus, be prospective and applicable only to future processes for nomination and appointment to our courts.

V

The interpretation of Judicial and Bar Council Rules is best addressed to the Council. Its interpretation should be given the presumption of constitutionality

Petitioner argues that the Council erroneously interpreted its own rules when its Chair invoked Rule 10, Section 2. In particular, he claims that Chief Justice Sereno’s interpretation “goes against the JBC’s collegial character, giving any member an effective veto.”[60]

This argument is wrong for two reasons. First, the transmittal letter to the President was signed by all the members of the Judicial and Bar Council. There was no dissent. The minutes showed that the whole council agreed to limit the list to four (4) names excluding petitioner’s. There remains to be no dissent as shown by the comment and the supplemental comment of the Council which it filed in this case. The assertion that the rules were interpreted only by the Chair of the Council is not accurate. It, unfortunately, unnecessarily colors the issues in this case as a personal controversy between the applicant and the Chief Justice.

Second, the argument fails to properly characterize the issue in order to invoke the power of judicial review. Again, to underscore by repeating, there must be a showing that the interpretation and application of the Council’s rules be “arbitrary, capricious and whimsical.” It must be shown to be implausible and bereft of reason. There must be a compelling interest to provide relief in a narrowly tailored manner so as not to infringe inequitably into the rights of innocent third parties who were not made parties to this case.

The Judicial and Bar Council, being a fully independent constitutional body, has the discretion to formulate its own rules.

Before the promulgation of JBC-009, the only criteria the Council relied on was what was stated in Article VIII,

Section 7 of the Constitution:

Section 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more, a judge of a lower court or engaged in the practice of law in the Philippines.

(2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.

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

The Council, recognizing the monumental task mandated to them by the Constitution, resolved to promulgate on October 18, 2000, JBC-009 or the Rules of the Judicial and Bar Council, stating:

....

WHEREAS, the Council is thus vested with a delicate function and burdened with a great responsibility; its task of determining who meets the constitutional requirements to merit recommendation for appointment to the Judiciary is a most difficult and trying duty because the virtues and qualities of competence, integrity, probity and independence are not easily determinable as they are developed and nurtured through the years; and it is self-evident that, to be a good judge, one must have attained sufficient mastery of the law and legal principles, be of irreproachable character and must possess unsullied reputation and integrity, should consider his office as a sacred public trust; and, above all, he must be one whose loyalty to law, justice and the ideals of an independent Judiciary is beyond doubt;

....

WHEREAS, while it is not possible or advisable to lay down iron-clad rules to determine the fitness of those who aspire to become a Justice, Judge, Ombudsman or Deputy Ombudsman, certain guidelines or criteria may be prescribed to ascertain if one seeking such office meets the minimum constitutional qualifications and possesses qualities of mind and heart expected of a member of the Judiciary, or an Ombudsman or Deputy Ombudsman;

WHEREAS, while the Council has been applying similar criteria in its assessment of candidates to the judicial office or the Ombudsman or deputy Ombudsman, there is a need to put these criteria in writing to insure transparency in its proceedings and promote stability and uniformity in its guiding precepts and principles;^[61] (Emphasis supplied)

The rules of the Judicial and Bar Council is its interpretation as to how it is to go about with its duty to determine the “competence, integrity, probity and independence” that is constitutionally required of every member to this court. How the Council go about with its duty is primarily and presumptively addressed to it solely as an independent constitutional organ attached only to this court through administrative supervision. The constitutional provisions do not require a vote requirement on the part of the members for a finding of either competence, integrity, probity, or independence. Neither does it textually provide for the meaning of these terms. It is up to the Judicial and Bar Council to find a reasonable construction of the fundamental requirements.

For reference, the constitutional provisions relevant to the duties of the Judicial and Bar Council in relation to the appointment of a member of this court are as follows:

ARTICLE VIII

Judicial Department

Sec. 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age and, must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

(2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.

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

Sec. 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

(2) The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.

(3) The Clerk of the Supreme Court shall be the Secretary ex officio of the Council and shall keep a record of its proceedings.

(4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.

(5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

Sec. 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list. (Emphasis supplied)

In Section 4 of the same article, it provides the following:

Sec. 4. (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit en banc or, in its discretion, in divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof. (Emphasis supplied)

In *Eastern Telecommunications Philippines v. International Communication Corporation*,^[62] this court stated:

The Court has consistently yielded and accorded great respect to the interpretation by administrative agencies of their own rules unless there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law.

In *City Government of Makati vs. Civil Service Commission*, the Court cited cases where the interpretation of a particular administrative agency of a certain rule was adhered to, viz.:

As properly noted, CSC was only interpreting its own rules on leave of absence and not a statutory provision in coming up with this uniform rule. Undoubtedly, the CSC like any other agency has the power to interpret its own rules and any phrase contained in them with its interpretation significantly becoming part of the rules themselves. As observed in *West Texas Compress & Warehouse Co. v. Panhandle & S.F. Railing Co.*—

....

This principle is not new to us. In *Geukeko v. Araneta*, this Court upheld the interpretation of the Department of Agriculture and Commerce of its own rules of procedure in suspending the period of appeal even if such action was nowhere stated therein. We said -

....

. . . It must be remembered that Lands Administrative Order No. 6 is in the nature of procedural rules promulgated by the Secretary of Agriculture and Natural Resources pursuant to the power bestowed on said administrative agency to promulgate rules and regulations necessary for the proper discharge and management of the functions imposed by law upon said office. . . . Recognizing the existence of such rule-making authority, what is the weight of an interpretation given by an administrative agency to its own rules or regulations? Authorities sustain the doctrine that the interpretation given to a rule or regulation by those charged with its execution is entitled to the greatest weight by the Court construing such rule or regulation, and such interpretation will be followed unless it appears to be clearly unreasonable or arbitrary (42 Am. Jur. 431). It has also been said that:

....

The same precept was enunciated in *Bagatsing v. Committee on Privatization* where we upheld the action of the Commission on Audit (COA) in validating the sale of Petron Corporation to Aramco Overseas Corporation on the basis of COA's interpretation of its own circular that set bidding and audit guidelines on the disposal of government assets –

The COA itself, the agency that adopted the rules on bidding procedure to be followed by government offices and corporations, had upheld the validity and legality of the questioned bidding. The interpretation of an agency of its own rules should be given more weight than the interpretation by that agency of the law it is merely tasked to administer.[63] (Emphasis and underscoring in the original)

The interpretation of any of the Council's rules is constitutionally addressed to the Council's discretion. It is the only constitutional body with the power to interpret its rules to determine the competence, integrity, probity, and independence of applicants to the judiciary. We cannot superimpose this court's interpretation even if in our view it would be a better one.

The Rules of the Judicial and Bar Council contains Rule 10, Section 2 which provides:

SEC. 2. Votes required when integrity of a qualified applicant is challenged. - In every case where the integrity of an applicant who is not otherwise disqualified for nomination is raised or challenged the affirmative vote of all the Members of the Council must be obtained for the favorable consideration of his nomination.

The current members of this court may have their own views with respect to the wisdom of this rule. For instance, some may disagree with the qualified vote requirement for questions of integrity. Others may prefer a clearer definition of what integrity may mean or who may invoke the rule as well as the procedure after it is invoked. These, however, reflect policy preferences which are properly addressed to the constitutional body to whom the sovereign delegated these matters of interpretation, i.e., the Judicial and Bar Council.

There is nothing inherently unconstitutional with the lack of statutory or procedural definition of integrity. This remains within the purview of the members of the Council. It is a matter that is addressed to their reasoned judgment. The Judicial and Bar Council is designed to act collegially. This is where contending views coming from various sectors affected by every nomination and represented in the discussions may be taken into consideration. Integrity can mean different things for different people. Like all significant words, it has a sufficient set of meanings that can frame expectations but at the same time is left malleable to address the needs at

present. The acts which lead to questions relating to integrity may be different for each candidate. Thus, the past actions of a Justice of the Court of Appeals, a Solicitor General, or a Dean of a College of Law who is aspiring for the position of Associate Justice of this court that will be assessed by the Judicial and Bar Council will be different.

As seen in the debates in the minutes of the meeting of the Council submitted to us through its supplemental comment, the lack of integrity could be seen through acts which directly or indirectly could be considered as dishonest and corrupt which result in some illicit pecuniary benefit to the applicant. For the principal legal counsel of government tasked to oversee arbitration to protect our claims to our maritime resources, lack of integrity can mean unexplained decisions which put this important initiative in peril.

It is not for us to make these judgments simply because it is not our constitutional duty to do so.

Neither is there anything strange with a qualified vote.

Even our Constitution provides for qualified votes for some sovereign acts such as the processes for the amendment of our Constitution.[64] A qualified vote underscores the importance of the matter under scrutiny. Of the four requirements — probity, integrity, competence, and independence — it may have been the policy decision of the Judicial and Bar Council to give importance to integrity.

There are very plausible reasons for this policy.

In this court, it is the quality of integrity of each member that inspires us to have the courage to use our constitutional duty to speak to power. We speak to power whether this is sourced formally from the authority of the Constitution or informally when it comes from the political influence, commercial standing, or the ability of a party, litigant, or lawyer to mold media opinion. While theoretically and constitutionally protected, we are hounded by the same human fears as any person occupying a public office. We all know that we disgrace the privilege of our office if we succumb to fear or favor.

More than any other quality, integrity emboldens us to separate the “what” from the “who”: that is, to decide for what is right — in the light of the law and principle — rather than consider who it will incidentally and immediately benefit. Giving it primordial importance through a stricter voting requirement when invoked is not bereft of reason. It is not arbitrary, capricious, or whimsical.

There are members of this court who feel that the invocation by one member of the Council of this rule on integrity without any discussion amounts to a veto of its collegial nature. The records submitted to us are clear: (1) discussions ensued when it was invoked and (2) all members of the Judicial and Bar Council, after the basis of the objection had been laid out clearly before them, agreed that it be invoked.[65] There was no violation of the collegiate nature of the Council.

The Rules permits a member of the Council to invoke the rule. The Chief Justice, who is the ex-officio chair of the Council, initially manifested that she was invoking the rule in the executive session of the Council on June 5, 2014.[66]

A discussion took place during the executive session on June 16, 2014 regarding Rule 10, Section 2. Thus, in the minutes as submitted to this court:

Secretary de Lima inquired whether the Chief Justice would still invoke Rule 10, Sec. 2 of the JBC-009 (JBC Rules) notwithstanding the vote of all the other members. She cautioned that there may be a lot of explaining to do on the invocation of the Rule.

. . . .

At this juncture, Congressman Tupas suggested a review of the JBC Rules on integrity and went on to read the provisions in Rule 10, Section 2, thereof:

....

Congressman Tupas stressed the need to carefully examine the Rules since this is the first time that the Rule will be invoked. For instance, he poised the question of how many votes must a candidate garner when the affirmative vote of all Members of the Council is required under Rule 10, Sec. 2. There is also the matter of who can raise or challenge the integrity of an applicant: must it be raised by a Member, or can a non-Member raise or challenge under the Rule. At what stage may the challenge on the integrity of an applicant be raised? Should there be a need for a prior complaint or objection?

Secretary De Lima commented that the Rules do not say whether the challenge must be made by an insider or an outsider.[67]

The minutes of the executive session undoubtedly show that the members of the Council were aware of the import of the rule and its consequences. When the Council met again on June 30, 2014:

A discussion on Rule 10, Section 2 of JBC-009 (JBC Rules) followed. Congressman Tupas asked if the Rule is being against a candidate, will the name of the candidate remain. The Council unanimously agreed that the name of candidate will still be part of the ballot.[68]

The excerpts of the minutes show that the Council, as a collegial body, not only allowed the invocation of its own rules by a Council member, but also agreed that petitioner's name would still be part of the ballot, despite knowledge that he might not get a unanimous vote.[69]

This indicates that the Council wanted to see the actual votes for a candidate. There can be no other conclusion except that the Council required a unanimous vote of all the other members excluding the member who invoked the rule on integrity. Excluding the vote of the Chief Justice, petitioner still failed to garner unanimity of the remaining members. He received four (4) votes of the possible five (5).[70]

Clearly, it was not the will of only one member (the Chief Justice) which governed. The invocation of the rule was collegially discussed. Clearly, the exclusion of petitioner from the list was a unanimous Council decision.

We are not presented with a situation where only one member invoked the integrity rule and the remaining members were unanimous in still including the name of the applicant objected to in the list. This is not the situation that gave rise to the issues in this case. The exercise of the power of judicial review must be narrowly tailored in the light of the facts presented before us. It is not our duty to declare an act as unconstitutional on the basis of speculative facts which could happen in the future. We are not constitutionally empowered to provide advisory opinions. Neither would it be equitable to declare an act as unconstitutional on the basis of facts which have not yet happened.

This opinion is, therefore, limited to the ambient facts of this case. I reserve opinion for other possibilities relating to Rule 10, Section 2 which have not yet happened. The Judicial and Bar Council, not this court, continues to have the power to amend its rules in the light of some possibilities that, in its judgment, may result in inequity.

With respect to the facts of this case, the interpretation and application of the rule by the Council were not implausible or bereft of reason. Hence, the challenge against its constitutionality should fail.

VI

There is no violation of due process

The crux of this petition was that petitioner was allegedly deprived of his constitutional right to due process when

he was not given an opportunity to be heard with regard to the questions against his integrity. He impliedly invokes Article III, Section 1 of the Constitution which states that:

No person shall be deprived of life, liberty, or property without due process of the law. . . .

In *White Light Corporation v. City of Manila*,^[71] this court said:

. . . Due process evades a precise definition. The purpose of the guaranty is to prevent arbitrary governmental encroachment against the life, liberty and property of individuals. The due process guaranty serves as a protection against arbitrary regulation or seizure. Even corporations and partnerships are protected by the guaranty insofar as their property is concerned.

The due process guaranty has traditionally been interpreted as imposing two related but distinct restrictions on government, “procedural due process” and “substantive due process.” Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Procedural due process concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere. Examples range from the form of notice given to the level of formality of a hearing.^[72]

Before the due process clause of the Constitution may be invoked, there must first be an encroachment to one’s “life, liberty, or property.” Petitioner carries the burden of showing that an act of government affects an indubitable vested right protected by the Constitution.

This court clarified the concept of a vested right in *ABAKADA Guro Party List v. Executive Secretary Ermita*:^[73]

The concept of “vested right” is a consequence of the constitutional guaranty of due process that expresses a present fixed interest which in right reason and natural justice is protected against arbitrary state action; it includes not only legal or equitable title to the enforcement of a demand but also exemptions from new obligations created after the right has become vested. Rights are considered vested when the right to enjoyment is a present interest, absolute, unconditional, and perfect or fixed and irrefutable.^[74] (Emphasis supplied)

No vested right to be nominated

No person has a constitutionally vested right to be nominated to a judicial position. Just because a person meets the qualifications does not entitle him or her to a nomination. The Judicial and Bar Council must render a finding of his or her fitness which results in the inclusion of his or her name in the list. A nomination is not a right that is protected by the due process clause of the Constitution. It is rather a privilege granted to one who has successfully passed the application process and has qualified.

The attainment of the majority vote of Council members is not an “absolute, unconditional, and perfect or fixed and irrefutable”^[75] basis to garner a place in the shortlist. As discussed, under the present rules, when integrity is at stake, the vote requirement may be unanimity in the vote of the remaining members excluding the member who invoked Rule 10, Section 2 of the rules of the Judicial and Bar Council. Moreover, the list of qualified candidates is still subject to the final deliberation of the Council in an executive session before the list is submitted to the Office of the President.^[76]

Assuming *arguendo*, procedural
due process is not as technical as
claimed by petitioner

Fairness as embodied in the due process clause of the Constitution takes its form in relation to the right invoked and the forum where it is invoked. Certainly, when the accused invokes his or her right in criminal trial, this takes

the form among others of the right to full-blown cross-examination of all witnesses presented by the prosecution. For applicants to a vacancy in the Supreme Court and in the process of the Judicial and Bar Council, the right to be considered for purposes of an assessment of his or her qualifications and fitness also certainly does not require a forum for cross-examination. The Council is possessed with a wide latitude to draw information so that it may, consistent with its constitutional duty, make a selection of at least three (3) names from a field of so many applicants.

The Constitution does not require a specific procedure whether in terms of a process or a required vote. The sparse language of the Constitution leaves it up to the Council to decide on these details. The Council only needs to follow its own rules. It is entirely possible, at minimum, that fairness and due process be already met when the applicant is given the opportunity to submit whatever information he or she deems important subject only to reasonable requirements of form.

Even assuming, only for the sake of argument, that petitioner is right with his insistence on procedural due process, this court's response is best seen through the prism of the concurring opinion of Justice Brion in *Perez v. Philippine Telegraph and Telephone Company*:^[77]

At its most basic, procedural due process is about fairness in the mode of procedure to be followed. It is not a novel concept, but one that traces its roots in the common law principle of natural justice.

Natural justice connotes the requirement that administrative tribunals, when reaching a decision, must do so with procedural fairness. If they err, the superior courts will step in to quash the decision by certiorari or prevent the error by a writ of prohibition. The requirement was initially applied in a purely judicial context, but was subsequently extended to executive regulatory fact-finding, as the administrative powers of the English justices of the peace were transferred to administrative bodies that were required to adopt some of the procedures reminiscent of those used in a courtroom. Natural justice was comprised of two main sub-rules: *audi alteram partem* – that a person must know the case against him and be given an opportunity to answer it; and *nemo iudex in sua causa debet esse* - the rule against bias. Still much later, the natural justice principle gave rise to the duty to be fair to cover governmental decisions which cannot be characterized as judicial or quasi-judicial in nature.

While the *audi alteram partem* rule provided for the right to be notified of the case against him, the right to bring evidence, and to make argument – whether in the traditional judicial or the administrative setting – common law maintained a distinction between the two settings. “An administrative tribunal had a duty to act in good faith and to listen fairly to both sides, but not to treat the question as if it were a trial. There would be no need to examine under oath, nor even to examine witnesses at all. Any other procedure could be utilized which would obtain the information required, as long as the parties had an opportunity to know and to contradict anything which might be prejudicial to their case.”^[78](Emphasis supplied)

This characterization of due process is not without precedent. In *Ledesma v. Court of Appeals*:^[79]

. . . Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.^[80]

In *Pichay v. Office of the Executive Secretary*:^[81]

. . . In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so

charged to answer the accusations against him constitute the minimum requirements of due process, which simply means having the opportunity to explain one's side. Hence, as long as petitioner was given the opportunity to explain his side and present evidence, the requirements of due process are satisfactorily complied with because what the law abhors is an absolute lack of opportunity to be heard.[82]

Accordingly, the essence of procedural due process is simply the right to be heard. Petitioner's insistence, therefore, that the Council must adhere to a procedure he suggested, using his interpretation of the Judicial and Bar Council's own rules, goes beyond the minimum required by jurisprudence.

Petitioner was given the opportunity to be heard

The right to procedural due process cannot be derived from an invocation of Rule 4, Sections 3 and 4 of JBC-009, which state:

SEC. 3. Testimony of parties.- The Council may receive written opposition to an applicant on ground of his moral fitness and, at its discretion, the Council may receive the testimony of the oppositor at a hearing conducted for the purpose, with due notice to the applicant who shall be allowed to cross-examine the oppositor and to offer countervailing evidence.

SEC. 4. Anonymous complaints. - Anonymous complaints against an applicant shall not be given due course, unless there appears on its face a probable cause sufficient to engender belief that the allegations may be true. In the latter case, the Council may either direct a discreet investigation or require the applicant to comment thereon in writing or during the interview. (Emphasis supplied)

According to these provisions, the Council may receive written opposition and may require the applicant to comment on the opposition. The use of the word "may" is permissive, not mandatory.[83] The Council retains the discretion to require that opposition be written. It also retains the discretion not to require comment on any of the opposition filed. This may apply when the basis of the opposition is too trivial or when the members determine that they are already possessed with sufficient information necessary for them to vote their preferences. But this is not what happened in this case.

Contrary to petitioner's allegations, petitioner was given the opportunity to explain his version of the facts that were based to question his integrity. The Council insisted that petitioner be allowed to explain his side. The minutes of the executive session dated June 16, 2014 narrate:

Justice Lagman stated that Sol. Gen. Jardeleza had a good reputation, but considering the seriousness of the allegations on his integrity, he may challenge the process. She said that fairness dictates that he be given due process and moved that Sol. Gen. Jardeleza be allowed to explain his side.

. . . .

After a discussion of the different options, Atty. Mejia reiterated Justice Lagman's motion to give Sol. Gen. Jardeleza a chance to explain. Duly seconded, the motion to invite Sol. Gen. Jardeleza to shed light on the issues raised against him was approved.[84]

When petitioner appeared before the Council on June 30, 2014, he refused to answer the allegations against him since the objections were not in writing. Representative Tupas even approached petitioner, hoping to get his explanation. However, he was refused, as petitioner was insistent on a written opposition.[85]

Furthermore, petitioner was provided with a venue to explain his side on the afternoon of June 30, 2014 with respect to the matter raised against him. Instead of responding on the substance of the matter to enlighten and convince the Council of his integrity, he chose to emphasize the procedural aspect of his claims. Rather than

provide the Council with the substantial arguments to defend his integrity, he chose to find the procedural path defaulting in the opportunity to assist the Council in assessing his fitness. As the Solicitor General is the principal legal counsel of government, we could assume that there would have been nothing amiss for him to state his substantial arguments *arguendo*.

Petitioner appeared to have abandoned his argument using JBC-009 when he filed his reply, stating that “[r]eliance on Sections 3 and 4 of JBC-009 is misplaced.”[86] He argued instead that Section 2 of JBC-10, or “Rule to Further Promote Public Awareness of and Accessibility to the Proceedings of the Judicial and Bar Council,” requires “complaints and oppositions to be in writing and under oath.”[87] Section 2 states:

SEC. 2. The complaint or opposition shall be in writing, under oath and in ten (10) legible copies, together with its supporting annexes. It shall strictly relate to the qualifications of the candidate or lack thereof, as provided for in the Constitution, statutes, and the Rules of the Judicial and Bar Council, as well as resolutions or regulations promulgated by it.

The Secretary of the Council shall furnish the candidate a copy of the complaint or opposition against him. The candidate shall have five (5) days from receipt thereof within which to file his comment to the complaint or opposition, if he so desires.

In the first place, petitioner was the one who relied on JBC-009 to formulate his argument that he was deprived of due process. On page 7 of his petition, he alleged that “[t]he [Judicial and Bar Council] gravely abused its discretion when it denied petitioner the mandatory due process safeguards under its own rules,” citing Rule 4, Sections 3 and 4 of JBC-009. He cannot, by way of reply, suddenly abandon that argument and insist on a different provision.

The reluctance of the Chief Justice to put the matter in writing was reasonable considering that it was a matter of national security. According to the minutes of the executive session held on June 30, 2014, “the Members agreed that it is best that this be kept as confidential as possible to avoid problems for the country.”[88] The confidentiality observed by the Council was not for the purpose of denying petitioner his rights. The Council merely had the best interests of the nation in mind.

VII

A time period mandated by the Constitution cannot be deferred by injunctive writ

Petitioner requests the issuance of an injunctive writ or a temporary restraining order against the President of the Republic of the Philippines. This cannot be done.

First, the President is not a party and could not be a party to this case.[89] It is the Executive Secretary who was impleaded as a party respondent. As to why the Executive Secretary was made respondent is known only to petitioner.

The power to appoint members of the judiciary from a list of names transmitted by the Judicial and Bar Council is a prerogative of the President which cannot be delegated to the Executive Secretary. Thus, for issues raised by petitioner and for the relief he prays for, the Executive Secretary cannot act as an alter ego of the President.

Second, Article VIII, Section 4(1) of the Constitution clearly provides for a constitutional period for making appointments to this court. Thus:

Section 4. (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit en banc or in its discretion, in division of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.

In *De Castro v. Judicial and Bar Council*,^[90] this court clarified:

[T]he usage in Section 4(1), Article VIII of the word shall – an imperative, operating to impose a duty that may be enforced – should not be disregarded. Thereby, Sections 4(1) imposes on the President the imperative duty to make an appointment of a Member of the Supreme Court within 90 days from the occurrence of the vacancy. The failure by the President to do so will be a clear disobedience to the Constitution.^[91] (Emphasis supplied)

The Constitution mandates that the President make an appointment 90 days from the occurrence of the vacancy. Justice Abad's retirement on his birthday which was May 22, 2014 caused the vacancy in the present court. The President, therefore, has until August 20, 2014 to make an appointment for the vacancy. A temporary restraining order is a writ in equity provided for only in the rules of procedure promulgated by this court.^[92] This court cannot, by way of temporary restraining order, delay the running of the period mandated by the Constitution.

Third, it would be highly irregular and a violation of the ethical rules of the profession for the present Solicitor General to request for an injunctive writ or a temporary restraining order against the President who is his client and principal.

Even assuming, for the sake of argument, that a temporary restraining order may be issued to restrain the President from performing his constitutional duty, petitioner has not shown proof that he is entitled to its issuance. In *Philippine School of Business Administration v. Hon. Tolentino-Genilo*,^[93] this court stated:

The requisites for preliminary injunctive relief are: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.^[94]

There is no right that exists that could be protected by the issuance of a temporary restraining order since petitioner has no vested right. He has not shown that he possesses a clear and unmistakable right. Therefore, there is no material and substantial invasion that must be prevented through a writ from this court.

VIII

To grant the reliefs prayed for by petitioner
inequitably prejudices the rights of third parties
not impleaded in the petition

The rights of those currently in the list of nominees transmitted by the Judicial and Bar Council to the President will be impaired by the reliefs prayed for by petitioner in this case. They are indispensable parties to this case because no complete and final determination of the issues can be had without their participation. They have more of a vested right in the preservation of the current list of nominees than petitioner. They certainly will have a more adversarial stance than that of the Executive Secretary. Petitioner should have impleaded them and given them the opportunity also to be heard by this court.

The proper remedy would be for this court to order that the four individuals currently in the list of nominees transmitted to the President be impleaded and the opportunity to be heard given. They deserve to be heard before this court even considers diluting their chances of being appointed. Alternatively, any relief should, therefore, be prospective and should not affect their vested rights. Assuming without conceding that the majority will vote to nullify Rule 10, Section 2 of the Rules of the Judicial and Bar Council, its effects should be prospective. Those who were nominated deserve the benefit of the presumption of constitutionality of the rules under which they were vetted.

The lack of efficacy of petitioner's reliefs due to the deliberations of this court can be attributable only to petitioner. His petition failed to implead all the indispensable parties. We cannot render a decision that will be at

odds with the same constitutional provision of due process of law which petitioner invokes.

IX

Proposal to expunge supplemental
comment-reply of the Judicial and Bar Council

A member^[95] of this court is suggesting that the national interest requires the suppression of the matters raised in the supplemental comment-reply of the Judicial and Bar Council. This implies that we decide on this case without considering the basis of the objection made by the Chief Justice and heard by the other members of the Council. In effect, we are asked to decide without discussing the merits of the position of one of the respondents.

I disagree that this is the proper way to decide this case.

In my view, it is the insistence of petitioner not to respond directly to the objections during the in camera and confidential discussions of the Council on June 30, 2014 that has now caused both sides to lay bare their full arguments. Surely, as much as petitioner believes in the importance of defending himself in this court, respondents are also entitled to believe that it is institutionally important for them to defend the integrity of the Judicial and Bar Council. For petitioner to claim due process of law is the more important question. For respondents, petitioner was accorded his opportunity to be heard, and the more important question is there would have been an anomaly in our arbitral claims.

Both these views are entitled to our full consideration.

Parenthetically, the documents that have been submitted in the international arbitration between the Republic of the Philippines and China are now the subject of vigorous academic discussion on both sides.^[96] Discussion in our opinions on the existence of this controversy will not be new. It may even perhaps contribute to the public's desire for transparency. The Solicitor General is a public official as well as a lawyer. The arbitral claim affects all of us. It behooves our public to fully understand its contents. It behooves us to meet all the arguments of the parties fully in the spirit of fairness and objectivity.

I do not share Justice Brion's characterization of the actuaciones of the Chief Justice. I would rather be more circumspect and grant a colleague her full right to provide this court with her explanations of the motives leveled against her. The power of our published opinions compels us to treat our words with the responsibility that this institution and its members deserve.

The letter filed earlier by the Solicitor General did not contain a prayer for special raffle. The opportunity to have an early raffle of the case is known to all seasoned practitioners. Certainly, petitioner compares to none in terms of present experience in this court. Be that as it may, we do have a raffle committee. The raffle committee does not include the Chief Justice.

The Chief Justice inhibited early. This means that she had no control over the promulgation of our relevant resolutions. The Senior Associate Justice also inhibited because he was named in the petition. At the relevant times, the third most senior member of this court was on leave. This will probably explain why there was some delay in the promulgation of some of our resolutions.

It is normal for a deliberative body to initially hear the tentative views of its members. Thus, the matter of invoking Rule 10, Section 2 of the Council's rules was discussed. Most of us can imagine how the conversations may have transpired as all of those concerned would have wanted to find solutions to avoid the unnecessary taint on the character of petitioner or deliberately air the conflicts in the legal team in charge of our international arbitration. Failing in these efforts, the Council decided to give petitioner an opportunity to be heard.

X

Final note

Some members of this court will have their own personal evaluation of the qualification and fitness of petitioner to be nominated for the position of Associate Justice of the Supreme Court. I am no exception.

I have benefited from the wisdom of petitioner as a colleague in the faculty of the UP College of Law. I have witnessed his appearances both orally and in writing as the Solicitor General in the many cases that passed through this court. I know of his family as well as his reputation held by many of our common friends.

Like in many cases, our decisions as Justices of this court carry the pains and burdens which we have sworn to uphold. We have to follow the results of our decisions on the issues posed before us.

It is not up to us to make judgments of the Solicitor General's competence, integrity, probity, and independence.

A becoming modesty of this court and its own respect for the constitutional legitimacy of its existence requires that it respects and presumes competence in the constitutional organs including the Judicial and Bar Council. We should presume that it has discharged its functions with the same competence and zeal for the national interest that we have. We should not presume that we have a monopoly of an understanding of the common weal, let alone of the character of petitioner and his qualifications and fitness to become a member of this court.

Petitioner has not shown that he has vested rights to the nomination. He has not shown that the actions of the Judicial and Bar Council were arbitrary, capricious, and whimsical. He has not demonstrated that the interpretation and application by the whole Judicial and Bar Council of Rule 10, Section 2 were bereft of reason and so implausible as to impair his alleged rights. He was given the opportunity to be heard. He chose not to use the forums he was provided with to rebut the substantial basis for the invocation of the rule on integrity.

The Judicial and Bar Council, by transmitting a list without petitioner's name, has acceded to the invocation of lack of integrity by one of its members. Excluding the vote of the Chief Justice, he was not able to garner unanimity among the remaining members of the Council as required by the rules.

The importance of fully asserting the extent of our claims to natural resources located within our continental shelves and our exclusive economic zone cannot be understated. Present and future generations of Filipinos will rely on these valid and legal claims.

It is with this in mind that we mark the heroism of our men and women in uniform especially in our Navy and in the Marines. With the least of equipment, they stand ready to defend the integrity of our claims in sometimes desolate and far-flung posts pitting post-war military equipment against the modern military might of a superpower. They stay in harm's way knowing that their impending heroism is what our people deserve. There is no better way to characterize them and their courage except to call them heroes.

Thankfully, legal argument in the context of peaceful international arbitration and diplomacy has been deployed by the current administration. What we may lack in modern naval warfare, we make up with cogent and viable legal acumen. Considering what is at stake, the margins for legal error are understandably thin. We have spared little to get the best legal experts on the United Nations Convention on the Law of the Sea. We expect no less than vigorous, aggressive, competent representation from the lawyers of the Republic led by petitioner as Solicitor General.

The questions posed to petitioner by the Judicial and Bar Council are matters that are sensitive because these pertain to a pending case undergoing international arbitration. However, they are also public matters that needed a response.

It was within the power of petitioner to explain in executive session before the Judicial and Bar Council. He could have done so while not waiving any of his constitutional rights.

He has not done so. He chose not to. This case presents an ambiguity and an anomaly he has chosen to live with. Perhaps, this will be one of those cases that will await our history's better judgment.

ACCORDINGLY, I vote to DISMISS this petition.

[1] Judicial and Bar Council comment, p. 1.

[2] *Id.* at 1-2.

[3] Judicial and Bar Council supplemental comment-reply, pp. 1-7.

[4] *Id.*, citing PCA Case No. 2013-19.

[6] *Id.*, citing Annex J of the comment.

[7] *Id.*, citing Annex F of the comment; also marked as Annex C of the petition.

[8] *Id.*, citing PCA Case No. 2013-19.

[9] *Id.* at 2-7.

[10] Petitioner's reply, pp. 1-4.

[11] Judicial and Bar Council supplemental comment-reply, p. 5.

[12] Petition, p. 5 and Judicial and Bar Council comment, p. 3.

[13] Annex D of petition and Annex H of comment.

[14] Annex H of comment. See also *Re: Nomination of Solicitor General Francis H. Jardeleza for the Position of Associate Justice Vacated by Justice Roberto A. Abad*, A.M. No. 14-07-01-SC-JBC, July 15, 2014 [unsigned resolution, *En Banc*].

[15] Petition for certiorari and mandamus, pp. 12-13.

[16] See for example Avendaño, Christine. "A first: SolGen asks SC to bar Chief Justice from voting", *Philippine Daily Inquirer*, June 26, 2014 last accessed August 27, 2014.

[17] *Id.* at 6-7.

[18] *Id.* at 9.

[19] *Id.* at 10.

[20] Comment of the Executive Secretary, pp. 1-3.

[21] *Id.* at 4.

[22] Judicial and Bar Council comment, pp. 4-5.

[23] *Id.* at 5-7.

[24] *Id.* at 7-10.

[25] *Id.* at 11.

[26] Id. at 11-16.

[27] Id. at 17-20.

[28] G.R. No. 202242, July 17, 2012, 676 SCRA 579 [Per J. Mendoza, En Banc].

[29] Id. at 585-586, citing Malolos Const., title X, art. 80; Const. (1935), art. VIII, sec. 5; 1 Records of the Constitutional Commission Proceedings and Debates, 437; Const. (1973), art. X, sec. 4; 1 Records, Constitutional Commission, Proceedings and Debates, 487.

[30] 1 Records, Constitutional Commission, Proceedings and Debates, Journal No. 29 (Monday, July 14, 1986).

[31] Id.

[32] G.R. No. 202242, April 16, 2013, 696 SCRA 496 [Per J. Mendoza, En Banc].

[33] Dissenting opinion of J. Leonen, Chavez v. Judicial and Bar Council, G.R. No. 2902242, April 16, 2013, 676 SCRA 579, 696 SCRA 496, 533 [Per J. Mendoza, En Banc].

[34] Const., art. VIII, sec. 8(1).

[35] Const., art. VIII, sec. 8(5).

[36] Const., art. VIII, sec. 8(1) and 8(3).

[37] Const., art. VIII, sec. 8(4).

[38] G.R. Nos. 191002, 191032, 191057, 191149, A.M. No. 10-2-5-SC, G. R. No. 191002, March 17, 2010, 615 SCRA 666 [Per J. Bersamin, En Banc].

[39] Separate opinion of Justice Brion, De Castro v. Judicial and Bar Council, G.R. Nos. 191002, 191032, 191057, 191149, A.M. No. 10-2-5-SC, G. R. No. 191002, March 17, 2010, 615 SCRA 666, 788 [Per J. Bersamin, En Banc].

[40] Spouses Ducadao v. Secretary of Justice, G.R. No. 188056, January 8, 2013, 688 SCRA 109 [Per J. Bersamin, En Banc].

[41] Id. at 119, citing Azucar v. Jorolan, G.R. No. 177878, April 7, 2010, 617 SCRA 519, 527-528 [Per J. Villarama, Jr., First Division].

[42] Judicial and Bar Council comment, pp. 4-5.

[43] Secretary of Justice v. Lantion, 379 Phil. 165, 198-199 [Per J. Melo, En Banc], citing Ruperto v. Torres, 100 Phil. 1098 (1957) [Unreported].

[44] Id.

[45] Judicial and Bar Council comment, pp. 4-5; Const. (1987), art. VIII, sec. 8(5).

[46] See Judicial and Bar Council supplemental comment-reply, pp. 9-10.

[47] Judicial and Bar Council comment, p. 8.

[48] Id.

[49] Judicial and Bar Council supplemental comment-reply, pp. 7-8, citing Const. (1987), art. VIII, sec. 7(3).

[50] Id. at 8.

[51] *Id.*

[52] 595 Phil. 305 (2008) [Per J. Velasco, Jr., En Banc].

[53] *Id.* at 326, citing *Angchangco, Jr. v. Ombudsman*, 335 Phil. 767 (1997) [Per J. Melo, Third Division]; *BLACK'S LAW DICTIONARY* (8th ed., 2004); *Lamb v. Phipps*, 22 Phil. 456, 490 (1912) [Per J. Johnson, En Banc].

[54] G.R. Nos. 191002, 191032, 191057, 191149, A.M. No. 10-2-5-SC, G. R. No. 191002, March 17, 2010, 615 SCRA 666 [Per J. Bersamin, En Banc].

[55] *Id.* at 752, citing *Nery v. Gamolo*, 445 Phil. 76 (2003). See also *Musni v. Morales*, 373 Phil. 703 (1999) [Per J. Panganiban, Third Division].

[56] Judicial and Bar Council supplemental comment-reply, Annex C, minutes of the Judicial and Bar Council Executive Session held on June 30, 2014.

[57] *Id.* at 6-8.

[58] See Annex D of petition for certiorari and mandamus and Annex H of Judicial and Bar Council comment.

[59] See *Ganaden, et al. v. Court of Appeals, et al.*, G.R. Nos. 170500 and 170510-11, June 1, 2011, 650 SCRA 117 [Per J. Villarama, Jr., Third Division] and *Ysidoro v. Hon. De Castro*, G.R. Nos. 171513, 190963, February 6, 2012, 665 SCRA 1 [Per J. Brion, Second Division].

[60] Petition for certiorari and mandamus, p. 9.

[61] Fifth, Seventh, and Eighth Whereas Clauses, JBC-009 (2000).

[62] 516 Phil. 518 (2006) [Per J. Austria-Martinez, Special Second Division].

[63] *Id.* at 521-523, citing *Melendres, Jr. v. COMELEC*, 377 Phil. 275 [Per J. Ynares-Santiago, En Banc]; *City Government of Makati v. Civil Service Commission*, 426 Phil. 631, 646-649 (2002) [Per J. Bellosillo, En Banc].

[64] Const., art. XVIII.

[65] Judicial and Bar Council Supplemental Comment-Reply, Annex B, pp. 1-4, Minutes of the Judicial and Bar Council Executive Session Held on June 16, 2014.

[66] Judicial and Bar Council Supplemental Comment-Reply, Annex A, pp. 1-2, Minutes of the Judicial and Bar Council Executive Session Held on June 5, 2014.

[67] Judicial and Bar Council supplemental comment-reply, Annex B, pp. 1-2, minutes of the Judicial and Bar Council Executive Session held on June 16, 2014.

[68] Judicial and Bar Council supplemental comment-reply, Annex C, p. 6, minutes of the Judicial and Bar Council Executive Session held on June 30, 2014.

[69] *Id.* at 6.

[70] *Id.* at 7.

[71] 596 Phil. 444 (2009) [Per J. Tinga, En Banc].

[72] *Id.* at 461, citing *Lopez v. Director of Lands*, 47 Phil. 23, 32 (1924) [Per J. Johnson, En Banc].

[73] G.R. No. 168056, October 18, 2005, [Resolution, En Banc, Decision penned by J. Austria-Martinez].

[74] *Id.*, citing *Lahom v. Sibulo*, 453 Phil. 987 (2003) [Per J. Vitug, First Division].

[75] *Id.*

[76] Section 6, JBC-10.

[77] 602 Phil. 522 (2009) [Per J. Corona, En Banc].

[78] *Id.* at 545-546, citing *D.P. Jones and A. De Villars, Principles of Administrative Law* 148-149 (1985 ed.); *Ridge v. Baldwin*, [1963] 2 All E.R. 66 (H.L.).

[79] 565 Phil. 731 (2007) [Per J. Tinga, Second Division].

[80] *Id.* at 740, citing *Cayago v. Lina*, 489 Phil. 735, 750-751 [Per J. Callejo, Sr., Second Division]; *Libres v. NLRC*, 367 Phil. 181, 190 (1999) [Per J. Bellosillo, Second Division].

[81] G.R. No. 196425, July 24, 2012 [Per J. Perlas-Bernabe, En Banc].

[82] *Id.*, citing *Cayago v. Lina*, G.R. No. 149539, January 19, 2005, 449 SCRA 29; *Libres v. NLRC*, 367 Phil. 181 (1999) [Per J. Bellosillo, Second Division]; *Montemayor v. Bundalian*, 453 Phil. 158 (2003) [Per J. Puno, Third Division]; *AMA Computer College-East Rizal, et al. v. Ignacio*, 608 Phil. 436 (2009) [Per J. Chico-Nazario, Third Division].

[83] See *Office of the Ombudsman v. Court of Appeals*, 576 Phil. 784, 796 (2008) [Per J. Carpio, First Division] citing *De Ocampo v. Secretary of Justice*, 515 Phil. 702 (2006) [Per J. Carpio, Third Division].

[84] Judicial and Bar Council supplemental comment-reply, Annex B, minutes of the Judicial and Bar Council Executive Session held on June 16, 2014, p. 3.

[85] Judicial and Bar Council supplemental comment-reply, Annex C, minutes of the Judicial and Bar Council Executive Session held on June 30, 2014, pp. 5-6.

[86] Petitioner's reply, p. 4.

[87] *Id.* at 5.

[88] Judicial and Bar Council supplemental comment-reply, Annex C, minutes of the Judicial and Bar Council Executive Session held on June 30, 2014, p. 4.

[89] See *Lozada v. President Gloria Macapagal-Arroyo*, G.R. No. 184379-88, April 24, 2012, 670 SCRA 545, 559-560 [Per J. Sereno, En Banc] on its discussion on presidential immunity from suits.

[90] G.R. Nos. 191002, 191032, 191057, 191149, A.M. No. 10-2-5-SC, G. R. No. 191002, March 17, 2010, 615 SCRA 666 [Per J. Bersamin, En Banc].

[91] *Id.* at 737-738, citing *Dizon v. Encarnacion*, 119 Phil. 20 (1963) [Per J. Concepcion, En Banc].

[92] See Rules of Civil Procedure, sec. 58.

[93] 488 Phil. 446 (2004) [Per J. Garcia, Third Division].

[94] *Id.* at 452, citing *Toyota Motor Philippines Corporation Workers' Association v. Court of Appeals*, 458 Phil. 661 (2003) [Per J. Callejo, Second Division].

[95] See separate opinion of J. Brion, pp. 10-13.

[96] See for instance S. Talmon and B. Jia, *The South Sea China Arbitration: A Chinese Perspective* (2014). The

materials in this book are widely perceived as China's informal response to the claim of the Republic of the Philippines.

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