

**RAMON A. GONZALES, PETITIONER, VS. HON. FRANCISCO I. CHAVEZ,
IN HIS CAPACITY AS SOLICITOR GENERAL, PRESIDENTIAL
COMMISSION ON GOOD GOVERNMENT, AND COMMISSION ON
AUDIT, RESPONDENTS.**

G.R. No. 97351. February 04, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

In the instant petition for mandamus and prohibition with prayer for the issuance of a temporary restraining order, petitioner submits for the Court's adjudication the twin issues of whether or not the Solicitor General neglected his public duty by withdrawing as counsel for the Republic of the Philippines and the Presidential Commission on Good Government (PCGG) in cases he had filed in court and whether or not the PCGG acted without or in excess of jurisdiction in hiring private lawyers as a result of such withdrawal of appearance.

Petitioner Ramon A. Gonzales, as a citizen and taxpayer, filed the petition as a class suit under Section 12, Rule 3 of the Rules of Court on the ground that the subject matters involved are of common and general interest to all Filipino citizens and taxpayers as they pertain to the enforcement of a public duty and the prevention of unlawful expenditure of public funds.

According to the petitioner, the Solicitor General is the counsel for the Republic and the PCGG in thirty-three (33) cases before this Court, one hundred nine (109) cases in the Sandiganbayan, one (1) case in the National Labor Relations Commission and another case in the Municipal Trial Court or a total of one hundred forty-four (144) cases.[1] In December 1990, the Solicitor General withdrew as counsel in said cases through a pleading entitled "Withdrawal of Appearance with Reservation." [2] The pleading states:

"The SOLICITOR GENERAL, to this Honorable Court, hereby respectfully withdraws as counsel for plaintiff Presidential Commission on Good Government (PCGG) in the above-captioned case, with the reservation, however, conformably with Presidential Decree No. 478, the provisions of Executive Order No. 292 as well as the decisional law of 'Orbos v. Civil Service Commission, et al.' (G.R. No. 92561, September 12, 1990), to submit his comment/observation on incidents/matters pending with this Honorable Court, if called for by circumstances in the interest of the government or if he is so required by the court.

Makati, Metro Manila, December 3, 1990.

(Sgd.) FRANCISCO I. CHAVEZ

IBP O.R. No. 289417-2.06.90"

The Solicitor General filed a substantially similar pleading in the cases where the Republic is a party.

As a result of such withdrawal of appearance, the PCGG hired forty (40) private lawyers, nineteen (19) of whom are trial lawyers. They would receive a monthly compensation of at least P10,000.00 plus appearance fee of

P1,700.00 in actual trial and/or P500.00 if trial is postponed.[3]

Petitioner contends that since the Solicitor General's withdrawal of appearance was made without any reason, it implied that it was "within the absolute discretion" of said public official. Section 1 of Presidential Decree No. 478 and Section 35 of the Administrative Code of 1987, however, mandatorily require the Solicitor General to stand in the place of, and act for the Republic and the PCGG in court. Therefore, the Solicitor General has "no discretion to reject by withdrawing" as counsel for said entities.

Applying the ruling of this Court with respect to a fiscal in *Sta. Rosa Mining Co. v. Zabala*,^[4] the petitioner further states that: "Similarly, it is the duty of the Solicitor General to appear for the Republic and the PCGG, hence regardless of his personal convictions or opinions, he must proceed to discharge his duty (not withdraw, which is equivalent to refusal to prosecute), and let the court decide the merits of the case."^[5]

Moreover, petitioner avers that the Solicitor General cannot withdraw his appearance "with reservation" nor can he file his "comment/observation on the incidents/matters" after such withdrawal because by ceasing to appear as counsel, he loses his standing in court. Unless a case involves the constitutionality of a treaty, law, ordinance or executive order for which Rule 3, Section 23 of the Rules of Court^[6] mandates his appearance, the Solicitor General is not authorized to appear therein after his withdrawal as counsel inasmuch as he himself is not a party-litigant.

Furthermore, under Section 26 of Rule 138,^[7] the Solicitor General may not unilaterally withdraw his appearance without the consent of the Republic or the PCGG unless the court authorizes his withdrawal. Since there was no such court authority, the Solicitor General's withdrawal of appearance in said several cases is null and void, as it constitutes an act against a mandatory law and hence, it may be attacked collaterally.

Neither may the Solicitor General withdraw on the authority of *Orbos v. Civil Service Commission*^[8] wherein this Court held:

"In the discharge of this task the Solicitor General must see to it that the best interest of the government is upheld within the limits set by law. x x x

x x x x x x x x

There are cases where a government agency declines the services of the Solicitor General or otherwise fails or refuses to forward the papers of the case to him for appropriate action. x x x. The Court finds and so holds that this practice should be stopped. To repeat, the Solicitor General is the lawyer of the government, any of its agents and officials in any litigation, proceeding, investigation or matter requiring the services of a lawyer. The exception is when such officials or agents are being charged criminally or are being civilly sued for damages arising from a felony. His services cannot be lightly rejected, much less ignored by the office or officials concerned.

Indeed, the assistance of the Solicitor General should be welcomed by the parties. He should be given full support and cooperation by any agency or official involved in litigation. He should be enabled to faithfully discharge his duties and responsibilities as the government advocate. And he should do no less for his clients. His burden of assisting in the fair and just administration of justice is clear.

This Court does not expect the Solicitor General to waver in the performance of his duty. As a matter of fact, the Court appreciates the participation of the Solicitor General in many proceedings and his continued fealty to his assigned task. He should not therefore desist from appearing before this Court even in those cases he finds his opinion inconsistent with the government or any of its agents he is expected to represent. The Court must be advised of his position just as well." (Underscoring supplied)

The petitioner adds the following observations:[9]

"Therefore, this case militates more against the Solicitor General than in his favor. For if the government and its officials cannot reject the services of the Solicitor General, neither may the latter select the case he would represent by withdrawing in some and retaining others. For unlike private lawyers who are bound to their clients by contract and, therefore, can reject cases offered to them, the Solicitor General and PCGG are wedded to each other by statute for better and for worse. And only a divorce, through the abolition of PCGG or resignation of the Solicitor General, can untie the marital knot. Otherwise, the relationship should continue sans PCGG demurring, and the Solicitor General withdrawing. Absent such resignation or abolition, the Solicitor General has to prosecute or defend the said cases to the best of his ability."

Hence, petitioner contends, the PCGG acted without or in excess of jurisdiction in hiring private lawyers as substitutes for the Solicitor General. Nowhere in Executive Orders Nos. 1, 2 and 14 does it appear that the PCGG is authorized to hire said lawyers. Since the Solicitor General is named by law as the lawyer for all government agencies, the hiring of private lawyers by such agencies is impliedly excluded. Thus, by employing private lawyers, the PCGG is creating a public office and naming a public officer. However, in the absence of a law providing for the creation of the office of PCGG counsel, said hired lawyers are usurpers or intruders whose acts may be challenged in a collateral proceeding such as an action for prohibition.

Similarly, petitioner asserts, prohibition will lie against the Commission on Audit considering that any payment for the services of the PCGG-hired lawyers would result in an unlawful expenditure of public funds. Stressing the need to preserve the status quo until the determination of his rights as a citizen and taxpayer, petitioner prays for the issuance of a temporary restraining order.

Acting on the petition, however, the Court required the respondents to file their respective comments on the petition without granting the prayer for a temporary restraining order.[10]

In its comment, the Commission on Audit (COA) alleges that it has not allowed the disbursement of funds to pay for the services of PCGG-hired private lawyers. It points out the fact that under COA Circular No. 89-299 dated March 21, 1989, the COA has withdrawn the pre-audit of transactions entered into by national government agencies pursuant to the constitutional provision that the COA has the exclusive authority to "define the scope of its audit and examination, to establish the techniques and methods required therefor." [11] Neither has the COA allowed in post-audit the disbursements of funds in payment of the services of the hired private lawyers. Moreover, under COA Circular No. 86-255 dated April 2, 1986, the hiring of private lawyers by government agencies and instrumentalities is prohibited unless there is prior written conformity of the Solicitor General or the Government Corporate Counsel, as the case may be, as well as the written concurrence of COA.

For its part, the PCGG, through Commissioner Maximo A. Maceren and lawyer Eliseo B. Alampay, asserts in its comment that the scope of its authority under Executive Orders Nos. 1, 2 and 14 is broad enough to include the authority to engage the services of private lawyers, if necessary, for the fulfillment of its mandate. While such authority is not expressly stated in said executive orders, "it must be deemed necessarily implied in and subsumed under the expressly enumerated powers of the Commission." [12]

The PCGG contends that its power under Section 1 of Executive Order No. 14 to "file and prosecute all cases investigated by it" includes "the grant of discretion to the Commission in determining the manner of filing and prosecuting its cases including the matter of who, in particular, will control and supervise the prosecution of said cases." The phrase "with the assistance of the Office of the Solicitor General and other government agencies" simply means that the Solicitor General is called upon to render assistance to the PCGG and whether or not such assistance is required by the Commission is a matter of discretion on its part. Such provision does not preclude the PCGG from engaging the services of private lawyers in the same way that it is "clearly authorized to hire

accountants, appraisers, researchers and other professionals as it performs its functions." Since, upon the dictates of legal and practical necessity, it has hired lawyers in the United States and in Switzerland, "it may similarly hire Filipino lawyers in prosecuting its Philippine cases." [13]

The PCGG further asserts that the hiring of private lawyers is "not an ultra vires" act but a "means by which (it) can effectively exercise its powers." It emphasizes the fact that it hired private lawyers "only after the Office of the Solicitor General had unilaterally withdrawn its appearance" for the PCGG in the various pending PCGG-instituted cases. Its own Litigation Division, which was constituted after the Solicitor General's withdrawal, is "sorely undermanned" but it has to contend with "affluent and influential individuals and entities" who can "afford to hire skilled lawyers and organize vast litigation networks." The PCGG tried to seek the assistance of the Department of Justice and the Office of the Government Corporate Counsel but only the former sent two additional prosecutors to handle its cases. [14]

The PCGG clarifies that its powers are circumscribed, not only by the executive orders aforementioned but also by the inherent police power of the State. By hiring private lawyers, it was merely trying to assist the President of the Philippines in protecting the interest of the State. As such, it was acting as an alter ego of the President and therefore, it was the Executive which determined the necessity of engaging the services of private prosecutors. Contending that "overwhelming necessity" impelled it to hire private lawyers, the PCGG avers that inasmuch as the Central Bank of the Philippines or the Philippine National Bank may engage the services of private lawyers, with more reason may it be allowed to hire private prosecutors after it was abandoned by the Solicitor General in the prosecution of the ill-gotten wealth cases. Consequently, "the Solicitor General's withdrawal of assistance is tantamount to his tacit approval of the PCGG's hiring of private prosecutors in replacement of the solicitors handling the said civil cases." [15]

The PCGG concludes that the reasonableness of the compensation for its hired lawyers can hardly be questioned considering the expertise of said lawyers and the complexity of the cases they would be handling for the PCGG. Thus, the prayer for a preliminary injunction must be denied otherwise "the harm that would be done would be far greater than the perceived mischief petitioner seeks to prevent." [16]

Solicitor General Francisco I. Chavez inhibits himself from appearing in this case "considering that as far as the Office of the Solicitor General (OSG for brevity) is concerned, the subject is a closed matter among the OSG, the PCGG and the Courts." [17] In the comment filed by Assistant Solicitor General Edgardo L. Kilayko and Solicitor Iderlina P. Pagunuran, the OSG sets out at length the history of the PCGG from its creation until the filing in the Sandiganbayan of thirty-nine (39) "prima facie cases" for ill-gotten wealth against former President Marcos and his cronies. As suits and countersuits stemmed from the original thirty-nine (39) civil cases, "the OSG had been put to a tremendous task and thus invariably in urgent need of being consulted or informed by PCGG of the facts and circumstances material to the prosecution and progress not only of the original 39 civil cases, but also of all kinds of 'incidents.'"

Nonetheless, the OSG lawyers faced the challenges and the odds if only to live up to their task as "the best lawyers there are in the country." The OSG further explains: [18]

"On many a time, however, the lack of the above-mentioned consultation or information resulted in situations that rendered the OSG unavoidably incapable of performing its functions and duties as Lawyer of the Government, not only as mandated upon it by law and as spelled out in *Orbos v. CSC*, G. R. No. 92561, September 12, 1990, but also in consonance with its office motto: 'Integrity In Advocacy.'

"Once the OSG argued before the Sandiganbayan that an asset was under sequestration, only to be informed by the adverse party waving a document before the Sandiganbayan Justices that the sequestration had earlier been

lifted, with a PCGG resolution, the document, to boot (Razon case). Then, again, OSG argued, even before this Honorable Court, that an ill-gotten asset had 'mysteriously' disappeared, only to be informed by the Honorable Court, that a PCGG Commissioner had earlier by resolution authorized the disposition of the asset (COCOFED case). All the instances need not be enumerated here, as they are not of meat and substance, even as OSG is rendered thereby a laughing stock in its professionalism.

"As to matters that are of great pith and moment, suffice it to say that the recent Benedicto 'compromise' agreement, not to mention the SMC-UCPB Compromise settlement, is sub judice or under advisement not only of the Sandiganbayan but also of this Honorable Court in separate 'incidents,' and suffice it to state that the relationship, obtaining between the Government offices/agencies and the Office of the Solicitor General as counsel, is not at all like one that simply would obtain between private client and private lawyer in private practice, although constant consultation and advice are sine qua non in both types of relationship. The relationship is rather one, created as it is by law, where imposed upon OSG is the responsibility to present to the courts the position that will uphold the best interest of the People, the Government and the State, albeit the same may run counter to its client's position or route of action. At any rate, the PCGG through nationwide TV broadcast and print media, publicly announced that PCGG had dispensed with or otherwise did not need the legal services of the Lawyer of the Government, and thus on OSG descended, not the unmerited remark of having 'abandoned' the ill-gotten wealth cases, but the time-honored principle of *impossibilium nulla obligatio est*. i.e., there is no obligation to do impossible things (*Lim Co Chui v. Paredes*, 47 Phil. 463), without in any way casting any aspersion on the moral integrity of any Commissioner or PCGG official, as made clear by the Solicitor General to the President in a meeting with PCGG.

"Hence, in the light of all the foregoing circumstances, at rock-bottom precisely so as not to prejudice 'the interest of the Government' (Orbos), the Solicitor General withdrew as counsel for PCGG in all said cases by filing a notice of 'Withdrawal of Appearance with Reservation.'"

In arguing that the instant petition should be dismissed, the OSG contends that this case has become moot and academic as this very Court had resolved to allow the withdrawal of appearance of the Solicitor General in all the cases pending before it "with reservation, conformably with PD No. 478, Executive Order No. 292, as well as the doctrine laid down in '*Orbos v. Civil Service Commission, et al.*,' G.R. No. 92561, September 12, 1990, x x x." [19] For its part, the Sandiganbayan had also resolved that "the appearance of the Solicitor General is deemed withdrawn to be substituted by the PCGG's legal panel." [20]

The OSG maintains further that the instant petition does not present a case and controversy as the petitioner himself does not even have a "court standing" and a "litigable interest." All the petitioner seeks is an "advisory opinion." The OSG asserts that the "incident" (referring to the Solicitor General's withdrawal of appearance) should be distinguished from that in *JPC Enterprises, Inc. v. Court of Appeals, et al.*, [21] wherein the Assets Privatization Trust (APT) decided to appear for itself because the law names the Minister of Justice only as its *ex officio* legal adviser while by itself it can file suits and institute proceedings and engage external expertise in the fulfillment of its tasks. However, since the APT has no personality of its own, it should have appeared through the Solicitor General. The OSG argues that said "adversarial incident" is not present in this case.

In his reply to the comments of the PCGG and the OSG, the petitioner insists that although as between the Solicitor General and the PCGG, this case may have been rendered moot and academic, as between him on the one hand and the Solicitor General and the PCGG on the other hand, a "real controversy" still exists and the issues raised herein have not ceased to exist either. Moreover, a judgment of prohibition and mandamus would have a "practical legal effect and can be enforced." [22]

Citing *Manuel v. Zulueta*, [23] and *Tanada v. Tuvera*, [24] petitioner asserts that he has a standing in court because where a question of public right is involved and the object of the mandamus is the enforcement of a public duty,

the relator need not show any legal or special interest in the result of the proceeding. It is sufficient that, as a citizen, he is interested in having the laws executed and the duty in question enforced.

The petitioner rebuts the PCGG's contention that its power to hire private lawyers may be implied from its expressly enumerated powers. He asserts that since P.D. No. 478 mandates that "the Solicitor General as law office of the government with the duty to appear for the PCGG," no implication from the express powers of (the) PCGG can stand against the language of P.D. No. 478. On the other hand, the law regarding the PCGG and that regarding the Solicitor General should be harmonized.[25]

The Court considers these pleadings sufficient bases for resolving this petition and, on account of the importance and imperativeness of the issues raised herein, the filing of memoranda by the parties is dispensed with.

We shall, first of all, confront a preliminary issue interposed by the OSG - whether or not this case has been rendered moot and academic by this Court's resolution granting the Solicitor General's motion to withdraw appearance as counsel in the several cases pending herein. It should be clarified that the resolution had to be issued with the national interest in mind. Time was of the essence and any hedging on the part of the PCGG and/or its counsel could, not merely set back but prejudice, the government's all-out efforts to recover ill-gotten wealth.

Notwithstanding the ostensible mootness of the issues raised in a case, this Court has never shirked from its symbolic function of educating bench and bar by formulating guiding and controlling principles, precepts, doctrines and rules.[26] More so, if the case is of such magnitude that certain legal ambiguities must be unravelled for the protection of the national interest.[27]

To allow the transcendental issue of whether the OSG may withdraw its appearance in a cluster of cases of national import to pass into legal limbo simply because it has been "mooted" would be a clear case of misguided judicial self-restraint. This Court has assiduously taken every opportunity to lay down brick by brick the doctrinal infrastructure of our legal system. Certainly, this is no time for a display of judicial timorousness of the kind which the Solicitor General is untimely exhibiting now.

Accordingly, we confront the issues conscious of their far-reaching implications, not alone on the instant case but on future ones as well, which the OSG will surely be called upon to handle again and again.

The resolution of the first issue laid down at the beginning of this ponencia hinges on whether or not the Solicitor General may be compelled by mandamus to appear for the Republic and the PCGG. This issue is best resolved by a close scrutiny of the nature and extent of the power and authority lodged by law on the Solicitor General.

At this juncture, a flashback on the statutory origins of the Office of the Solicitor General is in order. Incorporated in Act No. 136 dated June 11, 1901[28] providing for the organization of courts in the Philippine Islands was Chapter III entitled "The Attorney General." Section 40 states:

"There shall be an Attorney-General for the Philippine Islands, to be appointed by the Philippine Commission . . ."

The catalog of his duties includes the following:

"He shall prosecute or defend therein all causes, civil and criminal, to which the Government of the Philippine Islands, or any officer thereof, in his official capacity, is a party. . ."[29]

Section 41 further provides:

"There shall be an officer learned in the law to assist the Attorney-General in the performance of all his duties,

called the Solicitor-General who shall be appointed by the Commission... In case of a vacancy in the office of Attorney-General, or of his absence or disability, the Solicitor-General shall have power to exercise the duties of that office. Under the supervision of the Attorney-General, it shall be the especial duty of the Solicitor-General to conduct and argue suits and appeals in the Supreme Court, in which the Philippine Government is interested, and the Attorney-General may, whenever he deems it for the interest of the Philippine Government, either in person conduct and argue any case in any court of the Philippine Islands in which the Philippine Government is interested or may direct the Solicitor General to do so." (Underscoring supplied)

Six months later, a law was passed reorganizing the Office of the Attorney-General and providing for the appointment of the said official and the Solicitor-General by the Civil Governor and for an increase in their salaries. Their duties remained basically the same.[30]

In the meantime, Act No. 222 was passed on September 6, 1901 providing for the organization of, among others, the Department of Finance and Justice which embraced within its executive control the Bureau of Justice.[31]

Under Act No. 2711, otherwise known as the Administrative Code of 1917, the Bureau of Justice is specifically constituted "the law office of the Government of the Philippine Islands and by it shall be performed duties requiring the services of a law officer." [32] Its chief officials are the Attorney-General and his assistant, the Solicitor-General.[33]

"As principal law office of the Government, the Attorney-General shall have authority to act for and represent the Government of the Philippine Islands, its officers, and agents in any official investigation, proceeding, or matter requiring the services of a lawyer." [34]

In 1932, the office of the Attorney-General was phased out and his functions were assumed by the Secretary of Justice.[35] Subsequently, the Bureau of Justice came to be known as the Office of the Solicitor General,[36] headed by the Solicitor General.[37]

Parenthetically, these institutions were patterned after the Office of Attorney-General created by the First U.S. Congress in the Judiciary Act of 1789 which called for a "meet person, learned in the law, to act as Attorney General for the U.S." [38] When the Department of Justice was established in 1870, the position of Solicitor-General was created as an assistant to the Attorney-General.[39] Over a century later, their respective positions and functions remain the same. The Attorney-General of the United States, appointed by the President with the advice and consent of the Senate, is now the head of the Department of Justice.[40] In the same manner, a Solicitor General, learned in the law, is appointed to assist the Attorney-General in the performance of his duties.[41]

In contrast, the Solicitor-General of the Philippines, emerging from the shadow of the Attorney-General and later, of the Secretary of Justice, has come to his own. On July 20, 1948, Republic Act No. 335, amending Section 1659 of the Administrative Code, bestowed on him the rank of Under-secretary of a Department. Subsequently, a series of amendatory laws designed to enlarge the complement of the Office Of the Solicitor General was enacted[42] until on June 4, 1974, by virtue of Presidential Decree No. 478, its pivotal role in the government became clearly defined and delineated.

During the martial law years, President Ferdinand E. Marcos leaned heavily on his Solicitor General to provide the legal underpinnings of his official acts. Reflective of the tremendously enhanced power of the official and the position was Executive Order No. 454 enacted on September 23, 1975, conferring upon the Solicitor General the rank of a member of the Cabinet "with all the rights, honors and privileges pertaining to the position." Said executive order was superseded by Executive Order No. 473 dated August 12, 1976 "making the Solicitor General

a member of the Cabinet." These executive orders were capped by Executive Order No. 552 dated August 14, 1979 elevating the OSG into a Ministry with the same powers and functions defined in P.D. Nos. 478 and 1347.

P.D. 478 became, as it were, the Magna Carta of the Office of the Solicitor General. After the change of administration, or on July 25, 1987, President Corazon C. Aquino signed into law Executive Order No. 292 instituting the Administrative Code of 1987. Under Book IV, Title III, Chapter 12 thereof, the Office of the Solicitor General is described as an "independent and autonomous office attached to the Department of Justice." Headed by the Solicitor General, "who is the principal law officer and legal defender of the Government," the Office shall have a Legal Staff composed of fifteen (15) Assistant Solicitors General and such number of Solicitors and Trial Attorneys "as may be necessary to operate the Office which shall be divided into fifteen (15) divisions.[43] Among its powers and functions are the following which are relevant to the issues at hand:

"Section 35. Powers and Functions. - The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. (Underscoring supplied.) It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

(2) Investigate, initiate court action, or in any manner proceed against any person, corporation or firm for the enforcement of any contract, bond, guarantee, mortgage, pledge or other collateral executed in favor of the Government. Where proceedings are to be conducted outside of the Philippines, the Solicitor General may employ counsel to assist in the discharge of the aforementioned responsibilities.

x x x x x x x x

(8) Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal Officers with respect to such cases.

(9) Call on any department, bureau, office, agency or instrumentality of the Government for such service, assistance and cooperation as may be necessary in fulfilling its functions and responsibilities and for this purpose enlist the services of any government official or employee in the pursuit of his tasks.

Departments, bureaus, agencies, offices, instrumentalities and corporations to whom the Office of the Solicitor General renders legal services are authorized to disburse funds from their sundry operating and other funds for the latter Office. For this purpose, the Solicitor General and his staff are specifically authorized to receive allowances as may be provided by the Government offices, instrumentalities and corporations concerned, in addition to their regular compensation.

(10) Represent, upon the instructions of the President of the Republic of the Philippines in international litigations, negotiations or conferences where the legal position of the Republic must be defended or presented.

(11) Act for the Republic and/or the people before any court, tribunal, body or commission in any matter, action or proceeding which, in his opinion, affects the welfare of the people as the ends of Justice may require; and

(12) Perform such other functions as may be provided by law.”[44]

In thus tracing the origins of the Office of the Solicitor General to gain a clear understanding of the nature of the functions and extent of the powers of the Solicitor General himself, it is evident that a policy decision was made in the early beginnings to consolidate in one official the discharge of legal functions and services in the government. These took the form mostly of representing the Government in various legal proceedings.

The rationale behind this step is not difficult to comprehend. Sound government operations require consistency in legal policies and practices among the instrumentalities of the State. Moreover, an official learned in the law and skilled in advocacy could best plan and coordinate the strategies and moves of the legal battles of the different arms of the government. Surely, the economy factor, too, must have weighed heavily in arriving at such a decision.

It is patent that the intent of the lawmaker was to give the designated official, the Solicitor General, in this case, the unequivocal mandate to appear for the government in legal proceedings. Spread out in the laws creating the office is the discernible intent which may be gathered from the term "shall," which is invariably employed, from Act No. 136 (1901) to the more recent Executive Order No. 292 (1987).

Under the principles of statutory construction, so familiar even law students, the term "shall" is nothing if not mandatory.

"In common or ordinary parlance and in its ordinary significance, the term 'shall' is a word of command, and one which has always and which must be given a compulsory meaning, and it is generally imperative or mandatory. It has the invariable significance of operating to impose a duty which may be enforced, particularly if public policy is in favor of this meaning or when public interest is involved, or where the public or persons have rights which ought to be exercised or enforced, unless a contrary intent appears.”[45]

"The presumption is that the word 'shall' in a statute is used in an imperative, and not in a directory, sense. If a different interpretation is sought, it must rest upon something in the character of the legislation or in the context which will justify a different meaning.”[46]

Exactly what is the signification of the mandate for the OSG "to represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer?"

"To 'represent' is standing in place, supplying the place, or performing the duties or exercising the rights, of the party represented; to speak or act with authority on behalf of another; to conduct and control proceedings in court on behalf of another.”[47]

The decision of this Court as early as 1910 with respect to the duties of the Attorney-General well applies to the Solicitor General under the facts of the present case. The Court then declared:

"In this jurisdiction, it is the duty of the Attorney General 'to perform the duties imposed upon him by law' and 'he shall prosecute all causes, civil and criminal, to which the Government of the Philippine Islands, or any officer thereof, in his official capacity, is a party. . .’”[48]

Being a public officer, the Solicitor General is "invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public.”[49] Another role of the Solicitor General is as an officer of the Court, in which case he is called upon "to share in the task and responsibility of dispensing justice and resolving disputes;" therefore, he may be enjoined in the same manner that a special prosecutor was so enjoined by this Court from committing any act which may tend to "obstruct, pervert or impede and degrade the

administration of justice."[50]

In one case where a fiscal manifested before the trial court that he would not prosecute the case in court for insufficiency of evidence after his motion to dismiss had been denied, this Court granted a petition for mandamus to compel him to prosecute the case. We declared:

"Notwithstanding his personal convictions or opinions, the fiscal must proceed with his duty of presenting evidence to the court to enable the court to arrive at its own independent judgment as to the culpability of the accused. The fiscal should not shirk from his responsibility much less leave the prosecution of the case at the hands of a private prosecutor . . . In the trial of criminal cases, it is the duty of the public prosecutor to appear for the government since an offense is an outrage to the sovereignty of the State. . . This is so because the prosecuting officer is the representative not of an ordinary party to a controversy but of a sovereignty where obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer."[51]

Undoubtedly, the above arguments apply equally well to the Solicitor General who is sought to be compelled to appear before the different courts to ensure that the case of the Republic of the Philippines against those who illegally amassed wealth at the expense of the people may be made to account for their misdeeds and return said wealth.

Like the Attorney-General of the United States who has absolute discretion in choosing whether to prosecute or not to prosecute or to abandon a prosecution already started,[52] our own Solicitor General may even dismiss, abandon, discontinue or compromise suits either with or without stipulation with the other party.[53] Abandonment of a case, however, does not mean that the Solicitor General may just drop it without any legal and valid reasons, for the discretion given him is not unlimited.[54] Its exercise must be, not only within the parameters set by law but with the best interest of the State as the ultimate goal. Such are reflected in its policies, thus:

"The discretionary power of the attorney for the United States in determining whether a prosecution shall be commenced or maintained may well depend upon matters of policy wholly apart from any question of probable cause. Although as a member of the bar, the attorney for the United States is an officer of the court, he is nevertheless an executive official of the Government, and it is as an officer of the executive department that he exercises a discretion as to whether or not there shall be a prosecution in a particular case. x x x"[55]

The first executive order ever issued by President Aquino on February 28, 1986, created the PCGG. It announced the government's policy of recovering all ill-gotten wealth amassed by former President Marcos, his immediate family, relatives and close associates. It charged the PCGG with the "task of assisting the President" in regard to the recovery of all ill-gotten wealth, investigation of "such cases of graft and corruption as the President may assign" to it, and the adoption of safeguards to ensure that corruption may not be again committed with impunity.

This issuance was followed by Executive Order No. 2 dated March 12, 1986 freezing all assets and properties of Marcos, his family and cronies; prohibiting their transfer, conveyance, encumbrance or concealment, and requiring all persons in and outside of the Philippines who are in possession of said properties to make full disclosure of the same to the PCGG.

On April 11, 1986, the PCGG promulgated its Rules and Regulations. A pertinent provision states:

"Section 10. Findings of the Commission. - Based on the evidence adduced, the Commission shall determine whether there is reasonable ground to believe that the asset, property or business enterprise in question

constitute ill-gotten wealth as described in Executive Orders Nos. 1 and 2. In the event of an affirmative finding, the Commission shall certify the case to the Solicitor General for appropriate action in accordance with law. Businesses, properties, funds and other assets found to be lawfully acquired shall be immediately released and the writ of sequestration, hold or freeze orders lifted accordingly. (Underscoring supplied)

Thereafter, or on May 7, 1986, Executive Order No. 14 defining the jurisdiction over cases involving such ill-gotten wealth was issued, it contains the following provisions:

"Section 1. Any provision of law to the contrary notwithstanding, the Presidential Commission on Good Government, with the assistance of the office of the Solicitor General and other government agencies, is hereby empowered to file and prosecute all cases investigated by it under Executive Order No. 1, dated February 28, 1986, and Executive Order No. 2, dated March 12, 1986, as may be warranted by its finding.

Section 2. The Presidential Commission on Good Government shall file all such cases, whether civil or criminal, with the Sandiganbayan, which shall have exclusive and original jurisdiction thereof.

Section 3. Civil suits for restitution, reparation of damages, or indemnification for consequential damages, forfeiture proceedings provided for under Republic Act No. 1379, or any other civil actions under the Civil Code or other existing laws, in connection with Executive Order No. 2 dated March 12, 1986, may be filed separately from and proceed independently of any criminal proceedings and may be proved by a preponderance of evidence." (Underscoring supplied).

All these legal provisions ineluctably lead to no other conclusion but that under the law of its creation and the complementary Rules, the law office of the PCGG, as it is for the rest of the Government, is the Office of the Solicitor General. Although the PCGG is "empowered to file and prosecute all cases investigated by it" under Executive Orders Nos. 1 and 2, does not thereby oust the Office of the Solicitor General from its lawful mandate to represent the Government and its agencies in any litigation, proceeding, investigation or matter requiring the services of a lawyer. Moreover, such express grant of power to PCGG does not imply that it may abdicate such power and turn over the prosecution of the cases to private lawyers whom it may decide to employ. In those instances where proceedings are to be conducted outside of the Philippines, the Solicitor General, continuing to discharge his duties, may employ counsel to assist him,[56] particularly because he may not be licensed to appear before the courts in a foreign jurisdiction.

Under its own Rules and Regulations, specifically the provision aforequoted, the PCGG certifies to the Solicitor General the cases for which it had found reasonable ground to believe that certain assets and properties are ill-gotten under Executive Orders Nos. 1 and 2. The Solicitor General shall then proceed "in accordance with law."

Upon receipt of a case certified to him, the Solicitor General exercises his discretion in the management of the case. He may start the prosecution of the case by filing the appropriate action in court or he may opt not to file the case at all. He may do everything within his legal authority but always conformably with the national interest and the policy of the government on the matter at hand.

After filing a case, he may even move for its dismissal in the event that, along the way, he realizes that prosecuting the case would not serve the government's purposes. In other words, because he was appointed to the position on account of his qualification as a man "learned in the law," the Solicitor General is obligated to perform his functions and to perform them well. He may not, however, abdicate his function through an arbitrary exercise of his discretion. We find that a withdrawal of appearance on flimsy or petty grounds is tantamount to withdrawing on no grounds at all and to a dereliction of duty.

The Office of the Solicitor General repeatedly invoked the ruling in *Orbos v. Civil Service Commission*,[57]

which hardly constitutes authority to uphold its position with respect to the withdrawal of the Solicitor General in the instant case. On the contrary, in said case, this Court struck private respondent's motion to disqualify the OSG from appearing for petitioner Department of Transportation and Communications Secretary Orbos. At the risk of being repetitious, the parties were reminded that under Section 1 of Presidential Decree No. 478 ---

"The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of a lawyer." (Underscoring Supplied)

This Court clarified that even when "confronted with a situation where one government office takes an adverse position against another government agency, as in this case, the Solicitor General should not refrain from performing his duty as the lawyer of the government. It is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position. In such an instance, the government office adversely affected by the position taken of the Solicitor General, if it still believes in the merit of its case may appear in its own behalf through its legal personnel or representative."

The Court further pointed out that it is not entirely impossible that the Office of the Solicitor General may take a position adverse to his clients like the Civil Service Commission and the National Labor Relations Commission, among others, and even the People of the Philippines. In such instances, however, it is not proper for the Solicitor General to simply decline to handle the case or arbitrarily withdraw therefrom. The Court enjoins him to "nevertheless" manifest his opinion and recommendations to the Court which is an invaluable aid in the disposition of the case." [58]

However, in those cases where a government agency declines the services of the Solicitor General or otherwise fails or refuses to forward the papers of the case to him for appropriate action, the Court categorically held that ". . . this practice should be stopped." [59] By the same token, the Solicitor General should not decline to appear in court to represent a government agency without just and valid reason, especially the PCGG which is under the Office of the President, he being a part of the Executive Department.

In the case at bar, the reason advanced by the Solicitor General for his Motion to withdraw his appearance as lawyer for the PCGG is that he has been, more than once embarrassed in court and thereby made "a laughing stock in its (his) professionalism." Examples are when the OSG lawyers betrayed ignorance in open court of certain moves taken by the PCGG, such as the lifting of a sequestration of an asset or when it was under the impression that an asset had mysteriously disappeared only to be informed that "a PCGG Commissioner had earlier by resolution authorized the disposition of said asset."

The last straw, as it were, was the public announcement through media by the PCGG that it had "dispensed with or otherwise did not need the legal services of the lawyer of the government." [60] It is evident that the withdrawal of the Solicitor General was precipitated by institutional pique, the lawyers concerned having allowed their collective pride to prevail over their sense of duty in protecting and upholding the public interest.

One wistfully wishes that the OSG could have been as zealous in representing the PCGG as it was in appearing for the head of their office, the Solicitor General, in a civil suit for damages filed against him in a Regional Trial Court arising from allegedly defamatory remarks uttered by him.

Such enthusiasm, according to this Court, was misplaced. For Section 1 of Presidential Decree No. 478 which authorizes the OSG to represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, admits of an exception, and that is, it stops short of representing "a public official at any stage of a criminal case or in a civil suit for damages arising from a felony." [61]

In instances such as the above, the OSG can, with reason, withdraw its representation even if it has already entered its appearance. But the Solicitor General, as the officially-mandated lawyer of the Government, is not empowered to take a similar step on the basis of a petty reason like embarrassment, as that to which the individual lawyers assigned to appear for their office were subjected. Had they not been too preoccupied with their personal feelings, they could have checked themselves in time. For a sense of professional responsibility and proper decorum would dictate that they distinguish between the institution which, from the very beginning, had been constituted as the law office of the Government and the individuals through whom its powers and duties are exercised. No emotions, of whatever kind and degree, should be allowed to becloud their high sense of duty and commitment to country and people.

The OSG itself admitted refraining from citing other incidents as additional bases for the Solicitor General's withdrawal "as they are not of meat and substance" but apparently, their overwhelming sense of shame overcame them as the OSG was "rendered thereby a laughing stock in its professionalism." [62]

Now a word on the incidents that allegedly caused humiliation to the OSG lawyers, thus provoking the Solicitor General into withdrawing his appearance as counsel for the PCGG. No litigation can be assured of success if counsel does not enjoy the confidence of his client. This is manifested by, among other things, holding regular, constant and untrammelled consultations with each other. Who can say but that if the communication lines had been kept open between the OSG and the PCGG, no surprises would have been sprung on the former by the latter in open court?

Petitioner's claim that the Solicitor General could not withdraw his appearance as lawyer of PCGG inasmuch as he had neither the consent of his client nor the authority from the court, applying the pertinent provisions of the Rules of Court, is not well-taken. Here is no ordinary lawyer-client relationship. Let it be remembered that the client is no less than the Republic of the Philippines in whom the plenum of sovereignty resides. Whether regarded as an abstract entity or an ideal person, it is to state the obvious that it can only act through the instrumentality of the government which, according to the Administrative Code of 1987, refers to the "corporate governmental entity through which the functions of government are exercised throughout the Philippines . . ." [63] And the OSG is, by law, constituted the law office of the Government whose specific powers and functions include that of representing the Republic and/or the people before any court in any action which affects the welfare of the people as the ends of justice may require.

Indeed, in the final analysis, it is the Filipino people as a collectivity that constitutes the Republic of the Philippines. Thus, the distinguished client of the OSG is the people themselves of which the individual lawyers in said office are a part.

In order to cushion the impact of his untimely withdrawal of appearance which might adversely affect the case, the Solicitor General has offered "to submit his comment/observation on incidents/matters pending with this Honorable Court, if called for by circumstances in the interest of the government or if he it so required by the court." However, as correctly pointed out by the petitioner, while the Solicitor General may be free to express his views and comments before the Court in connection with a case he is handling, he may not do so anymore after he has formally expressed his refusal to appear therein. For by then, he has lost his standing in court. Unless his views are sought by the court, the Solicitor General may not voluntarily appear in behalf of his client after his withdrawal from the case; otherwise, such reappearance would constitute a blatant disregard for court rules and procedure, and that, on the part of one who is presumed to be "learned in the law."

In the face of such express refusal on the part of the Solicitor General to continue his appearance as counsel of the PCGG in the cases to recover the ill-gotten wealth of the Filipino people from the Marcoses and their cronies, the

PCGG has had to employ the services of a group of private attorneys lest the national interest be prejudiced. Were this Court to allow such action to remain unchallenged, this could well signal the laying down of the novel and unprecedented doctrine that the representation by the Solicitor General of the Government enunciated by law is, after all, not mandatory but merely directory. Worse, that this option may be exercised on less than meritorious grounds; not on substance but on whimsy, depending on the all too human frailties of the lawyers in the OSG assigned to a particular case. Under such circumstances, it were better to repeal the law than leave the various government agencies, all dependent on the OSG for legal representation, in a condition of suspenseful uncertainty. With every looming legal battle, they will be speculating whether they can rely on the Solicitor General to defend the Government's interest or whether they shall have to depend on their own "in-house" resources for legal assistance.

The Court is firmly convinced that, considering the spirit and the letter of the law, there can be no other logical interpretation of Sec. 35 of the Administrative Code than that it is, indeed, mandatory upon the OSG to "represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer."

Sound management policies require that the government's approach to legal problems and policies formulated on legal issues be harmonized and coordinated by a specific agency. The government owes it to its officials and their respective offices, the political units at different levels, the public and the various sectors, local and international, that have dealings with it, to assure them of a degree of certitude and predictability in matters of legal import.

From the historical and statutory perspectives detailed earlier in this ponencia, it is beyond cavil that it is the Solicitor General who has been conferred the singular honor and privilege of being the "principal law officer and legal defender of the Government." One would be hard put to name a single legal group or law firm that can match the expertise, experience, resources, staff and prestige of the OSG which were painstakingly built up for almost a century.

Moreover, endowed with a broad perspective that spans the legal interests of virtually the entire government officialdom, the OSG may be expected to transcend the parochial concerns of a particular client agency and instead, promote and protect the public weal. Given such objectivity, it can discern, metaphorically speaking, the panoply that is the forest and not just the individual trees. Not merely will it strive for a legal victory circumscribed by the narrow interests of the client office or official, but as well, the vast concerns of the sovereign which it is committed to serve.

In light of the foregoing, the Solicitor General's withdrawal of his appearance on behalf of the PCGG was beyond the scope of his authority in the management of a case. As a public official, it is his sworn duty to provide legal services to the Government, particularly to represent it in litigations. And such duty may be enjoined upon him by the writ of mandamus. Such order, however, should not be construed to mean that his discretion in the handling of his cases may be interfered with. The Court is not compelling him to act in a particular way.[64] Rather, the Court is directing him to prevent a failure of justice[65] resulting from his abandonment in midstream of the cause of the PCGG and the Republic and ultimately, of the Filipino people.

In view of the foregoing, there need be no proof adduced that the petitioner has a personal interest in the case, as his petition is anchored on the right of the people, through the PCGG and the Republic, to be represented in court by the public officer duly authorized by law. The requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen and hence, part of the public which possesses the right.[66]

The writ of prohibition, however, may not be similarly treated and granted in this petition. The said writ, being intended to prevent the doing of some act that is about to be done, it may not provide a remedy for acts which are

already fait accompli.[67] Having been placed in a situation where it was constrained to hire private lawyers if the Republic's campaign to legally recover the wealth amassed by the Marcoses, their friends and relatives was to prosper, the PCGG's action is justified. However, it was not entirely blameless. Its failure to coordinate closely with the Solicitor General has spawned the incidents which culminated in the withdrawal or the latter from appearing as counsel in its cases.

WHEREFORE, the petition for a writ of mandamus is hereby GRANTED. The Solicitor General is DIRECTED to immediately re-enter his appearance in the cases wherein he had filed a motion to withdraw appearance and the PCGG shall terminate the services of the lawyers it had employed but not before paying them the reasonable fees due them in accordance with rules and regulations of the Commission on Audit.

This decision is immediately executory.

SO ORDERED.

Narvasa, C.J., Herrera, Gutierrez, Jr., Cruz, Paras, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., and Nocon, JJ., concur.

Feliciano, J., in the result.

[1] Petition, pp. 1-2; Rollo, pp. 2-3.

[2] Annexes B and C; Rollo, pp. 27-30.

[3] Petition, p. 2; Rollo, p. 3.

[4] L-44723, August 31, 1987, 153 SCRA 367.

[5] Petition, p. 5; Rollo, p. 6.

[6] Sec. 23. Notice to Solicitor General. - In any action involving the validity of any treaty, law, ordinance or executive order, rules or regulations, a superior court, in its discretion, may require the appearance of the Solicitor General who may be heard in person or through a representative duly designated by him.

[7] Sec. 26. Change of Attorneys. - An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire.

[8] G.R. No. 92561, September 12, 1990, 189 SCRA 459, 466-467.

[9] Petition, p. 8; Rollo, p. 9.

[10] Ibid, p. 33.

[11] Article IX-D, Section 2 (2).

[12] Comment, p. 3; Rollo, p. 54.

[13] Ibid. pp. 4-5; Rollo, pp. 55-56.

[14] Ibid, pp. 6-7; Rollo, pp. 57-58.

[15] Ibid, p.10; Rollo, p. 61.

- [16] Ibid, p. 11; Rollo, p. 62.
- [17] Footnote on p. 22 of Comment; Rollo, p. 86.
- [18] OSG's Comment, pp. 7-10; Rollo, pp. 71-74.
- [19] OSG's Comment, p. 10; Rollo, p.74.
- [20] Ibid, p. 11; Rollo, p. 75.
- [21] G.R. No. 94573 which is still pending decision in this Court.
- [22] Reply, p. 2; Rollo, p. 89.
- [23] L- 19869, April 30, 1966, 16 SCRA 860.
- [24] G.R. No. 63915, April 24, 1985, 136 SCRA 27.
- [25] Reply, pp. 3-4; Rollo, pp. 90-91.
- [26] Salonga v. Cruz Pano, G.R. No. 59524, February 18, 1985, 134 SCRA 438 citing Gonzales v. Marcos, L-31685, July 31, 1975, 65 SCRA 624; Aquino, Jr. v. Enrile, L-35538, September 17, 1974, 59 SCRA 184, and De la Camara v. Enage, L-32951-2, September 17, 1971, 41 SCRA 1.
- [27] Demetria v. Alba, G.R. No. 71977, February 27, 1987, 148 SCRA 208 citing Javier v. Comelec, G.R. Nos. 68379-81, September 22, 1986, 144 SCRA 194.
- [28] It took effect on June 16, 1901.
- [29] Act No. 136, section 45 (b).
- [30] Act No. 325 which was enacted and took effect on December 31, 1901.
- [31] Section 3.
- [32] Section 1660.
- [33] Adm. Code of 1917, Section 1659.
- [34] Ibid, Section 1661.
- [35] Act 4007 enacted on December 5, 1932.
- [36] Exec. Order No. 94, Section 66, enacted on October 4, 1947.
- [37] Com. Act No. 543 of May 26, 1940, amending Section 1659 of the Administrative Code of 1917.
- [38] Ch. 20, Sec. 35, 1 Stat. 93 corresponding to 28 U.S.C., Sec. 503 (1970).
- [39] Act of June 22, 1870, Ch. 150, Secs. 3, 15-16, 16 Stat. 162, 164 corresponding to 28 U.S.C. Secs. 505-506 [1970]).
- [40] 28 U.S.C., Sec. 503.
- [41] 28 U.S.C. Sec. 505.
- [42] Rep. Act Nos. 311, 945, 2068, 3463, 3596, and 4360, as well as Pres. Decree No. 212.
- [43] Exec. Order No. 292, sec. 34. As of the writing of this ponencia, the Office of the Solicitor General has,

besides the Solicitor General himself, 14 Assistant Solicitors General, 66 Solicitors, 45 Associate Solicitors and 235 members of the administrative staff.

[44] This section is a virtual reproduction of Section 1 of Pres. Decree No. 478.

[45] 30 Words and Phrases, Permanent Ed., p. 90.

[46] 39 Words and Phrases, Permanent Ed., p. 93.

[47] 37 Words and Phrases, Permanent Ed., p. 34.

[48] *Severino v. Governor General*, 16 Phil. 366, 376; (1910) *Lee Jua v. Collector of Customs*, 32 Phil. 24 (1915).

[49] *Aparri v. Court of Appeals*, L-30057, January 31, 1984, 127 SCRA 231 citing *Mechem, Public Offices and Officers*, Sec. 1.

[50] *Zaldivar v. Gonzales*, L-79690-707, October 7, 1988, 166 SCRA 316.

[51] *Sta. Rosa Mining Co. v. Zabala*, L-44723, August 31, 1987, 153 SCRA 367.

[52] *Smith v. U.S.*, 375 F. 2d 243, certiorari denied 88 S. Ct. 76, 389 U.S. 841, 19 L. Ed. 2d 106 (1967).

[53] *State ex rel. Derryberry v. Kerr-McGee Corp.*, 516 P. 2d 813 (1973).

[54] *In Re Intervention of Attorney General*, 50 N.W. 2d 124 (1949).

[55] *U.S. v. Cox*, 5 Cir. 1965, 342 F. 2d 167, 171 cited in *Smith v. U.S.*, *supra*, footnote 52.

[56] *Adm. Code*, Sec. 35 (2).

[57] G.R. No. 92561, September 12, 1990, 189 SCRA 459.

[58] *Ibid*, p. 466.

[59] *Ibid*, p. 9; *Rollo*, p. 73.

[60] *Comment*, p. 9; *Rollo*, p. 73.

[61] *Urbano v. Chavez*, G.R. No. 87977, March 19, 1990, 183 SCRA 347.

[62] *Comment*, p. 8; *Rollo*, p. 72.

[63] *Adm. Code of 1987*, Sec. 2(1).

[64] *BF Homes, Incorporated v. National Water Resources Council*, G.R. No. 78529, September 17, 1987, 154 SCRA 88.

[65] *National Investment and Development Corporation v. Aquino*, L-34192, June 30, 1988, 163 SCRA 153 citing *Marcelo Steel Corporation v. Import Central Board*, 87 Phil. 375.

[66] *Legaspi v. Civil Service Commission*, G.R. No. 72119, May 29, 1987, 150 SCRA 530 citing *Tanada v. Tuvera*, *supra*, at p. 36.

[67] *Heirs of Eugenia V. Roxas, Inc. v. IAC*, G.R. No. 67195, May 29, 1989, 173 SCRA 581 citing *Cabanero v. Torres*, 61 Phil. 522 (1935); *Agustin, et al. v. De la Fuente*, 84 Phil. 515 (1949); and *Navarro v. Lardizabal*, L-25361, September 28, 1968, 25 SCRA 370.

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