

EN BANC

[A.M. No. 17-07-05-SC, July 03, 2018]

RE: MEMORANDUM DATED JULY 10, 2017 FROM ASSOCIATE JUSTICE TERESITA J. LEONARDO-DE CASTRO

[A.M. No. 18-02-13-SC]

RE: LETTER OF RESIGNATION OF ATTY. BRENDA JAY ANGELES MENDOZA, PHILJA CHIEF OF OFFICE FOR THE PHILIPPINE MEDIATION CENTER

RESOLUTION

LEONEN, J.:

This Resolution partially resolves the points raised in the July 10, 2017 Memorandum of Associate Justice Teresita J. Leonardo-De Castro (Associate Justice Leonardo-De Castro) concerning: (1) the extent of the power of appointment of the Court *En Banc*; and (2) the appointment of Atty. Brenda Jay A. Mendoza (Atty. Mendoza) to the position of the Philippine Judicial Academy (PHILJA) Chief of Office for the Philippine Mediation Center.

Associate Justice Leonardo-De Castro submitted to the Court *En Banc* a Memorandum^[1] dated July 10, 2017, on the following subjects:

I. (A) Filling Up of Long Vacant Key Positions in the Supreme Court

(B) Appointment of Incumbent PHILJA Chief of Office for the Philippine Mediation Center not in Accordance with Court Resolution

II. Power of Court *En Banc* to Appoint Court Officials and Personnel

III. The Grant by the Chief Justice of Foreign Travel Allowance to Members of her Staff Without Court Resolution.^[2]

In her Memorandum, Associate Justice Leonardo-De Castro pointed to the following key positions within this Court which had not yet been filled and which she noted were, thus, prejudicial to the best interest of the service:

1. Deputy Clerk of Court and Chief Attorney (Salary Grade 29): vacant since October 30, 2013; and

2. Two (2) positions of Assistant Court Administrator, Office of the Court Administrator (Salary Grade 30): vacant since January 10, 2013.^[3]

She noted that the notice of vacancy for the Deputy Clerk of Court and Chief Attorney position was posted on June 15, 2016. Applications to the post were

transmitted to the Office of the Chief Justice on July 18, 2016. No action had been taken on the applications.

Moreover, she called the attention of this Court to the vacancy for one (1) Assistant Court Administrator, which was posted on October 24, 2016 and for which applications were transmitted to the Office of the Chief Justice on December 13, 2016. Now retired Associate Justice Jose P. Perez had requested several times that the filling-up of the vacancy be put in this Court's agenda, as he and Associate Justice Arturo D. Brion were set to compulsorily retire in December 2016. However, his requests were not granted. The vacancy in the other Assistant Court Administrator position had not been posted.

Further, Associate Justice Leonardo-De Castro presented to this Court that the appointment of the incumbent PHILJA Chief of Office for the Philippine Mediation Center, Atty. Mendoza, is not in accordance with Administrative Order No. 33-2008, which requires appointment by this Court upon the recommendation of PHILJA.

She pointed out that unlike the previous appointments to the position, Atty. Mendoza was not appointed by the Court *En Banc*, upon the recommendation of the PHILJA Board of Trustees in a board resolution. Instead, Atty. Mendoza was appointed by virtue of Memorandum Order No. 26-2016 dated June 28, 2016, signed only by the Chief Justice and the two (2) most senior Associate Justices.

It was the position of Associate Justice Leonardo-De Castro that since the Constitution vests in this Court the power of appointment of all officials and employees of the judiciary,^[4] this power can only be exercised by the Court *En Banc*, unless duly delegated by a court resolution.

She proposed that the Resolution dated April 22, 2003 in A.M. No. 99-12-08-SC (Revised), which was cited as the basis for Memorandum Order No. 26-2016, should be clarified as to the scope of the authority to appoint that is delegated to the Chief Justice and the Chairpersons of the Divisions.

A.M. No. 99-12-08-SC (Revised) states, among others, that the "[a]ppointment and revocation or renewal of appointments of regular (including coterminous), temporary, casual, or contractual personnel in the Supreme Court"^[5] shall be referred to the Chairpersons of the Divisions. Associate Justice Leonardo-De Castro was of the view that the "personnel" referred to in A.M. No. 99-12-08-SC (Revised) should exclude high-ranking officials of the highly technical and/or policy-determining third-level positions below the Chief Justice and Associate Justices. She pointed to A.M. No. 05-9-29-SC, which enumerates the third-level positions as those with salary grades 26 and higher, as a guide for which positions should continue to be appointed by the Court *En Banc*.

Associate Justice Leonardo-De Castro took the position that pursuant to *Manalang v. Quitoriano*,^[6] "personnel" was "used generally to refer to the subordinate officials or clerical employees of an office or enterprise, not to the managers, directors or heads thereof."^[7] Nonetheless, under A.M. No. 99-12-08-SC (Revised), appointments to third-level positions have been delegated to the Chief Justice and the two (2) Senior Associate Justices.

In relation to the matters taken up in this Resolution, our colleague requested that this Court take the following measures:

It is respectfully recommended that the Court assert its Constitutional authority and forthwith take the following actions/measures:

- (1) Order the posting of the long vacant positions of the Deputy Clerk of Court, Chief Attorney, and the two positions of Assistant Court Administrators, for immediate appointment by the Court *en banc* and adopt guidelines to require the expeditious posting and filling-up of vacant positions to serve the best interest of the service;
- (2) To review the appointment of Atty. Mendoza as Chief of the Philippine Mediation Center;
- (3) To identify the positions, particularly from those among the third level positions, whose appointment shall be retained by the Court *en banc*; . . . [8]

On August 15, 2017, Chief Justice Maria Lourdes P. A. Sereno (Chief Justice Sereno) [9] submitted a letter, [10] in which she addressed the issue of the appointment of the PHILJA Chief of Office for the Philippine Mediation Center, while her full response to the Memorandum dated July 10, 2017 was still being finalized. In her letter, she stated that she acted on the matters raised in the Memorandum dated July 10, 2016 pursuant to the authority accorded by the Court *En Banc* to the Chief Justice, and as one (1) of the three (3) most senior Justices of this Court.

Chief Justice Sereno pointed out that the appointment of Atty. Mendoza was approved by the collective act of the three (3) Chairpersons of the Divisions, upon the recommendation of PHILJA. She stated that the appointment was no longer submitted to the Court *En Banc* as A.M. No. 99-12-08-SC (Revised) delegated to the Chairpersons of the Divisions the power to appoint personnel, including the PHILJA Chief of Office for the Philippine Mediation Office. It was her position that the delegation in Section II(a) of A.M. No. 99-12-08-SC (Revised) does not exclude "high ranking officials or the highly technical and/or policy[-]determining third[-]level positions below that of the Chief Justice and Associate Justices." [11] Moreover, the distinction proposed by Associate Justice Leonardo-De Castro is unjustified in light of the intent and purpose of A.M. No. 99-12-08-SC (Revised), which is to relieve the Court *En Banc* from the additional burden of resolving administrative matters at the expense of its deliberations on judicial cases.

Further, Chief Justice Sereno referred to the Supreme Court Human Resource Manual, approved by the Court *En Banc* through A.M. No. 00-6-1-SC dated January 31, 2012, which expressly provides that third-level positions in the career service-including Court Attorney V and Chiefs of Office-shall be appointed by the Chief Justice with the concurrence of the Chairpersons of the Divisions pursuant to A.M. No. 99-12-08-SC. [12] She also noted that Atty. Eden T. Candelaria (Atty. Candelaria), the Deputy Clerk of Court and Chief Administrative Officer of this Court, took the position in her Memorandum *Re: Appointment of PHILJA Chief of Office for PMC* dated April 20, 2016, that this position and other third-level positions which are highly technical and/or policy-determining shall be appointed by the "Chairmen of the Divisions."

Chief Justice Sereno pointed out that the definition of "personnel" in *Manalang v. Quitariano* is inapplicable, since A.M. No. 99-12-08 (Revised) was issued at a later date. Nevertheless, even if the definition in the case were to be applied, it was her position that the PHILJA Chief of Office of the Philippine Mediation Center is not a "manager," "director," or "head" of PHILJA as to be excluded from the scope of "personnel."

In her view, under Republic Act No. 8557 and A.M. No. 01-1-04-SC-PHILJA, PHILJA is directed, headed, and/or managed by its Board of Trustees, and by the Offices of the Chancellor, Vice Chancellor, and Executive Secretary. Pursuant to Administrative Order No. 33-2008, the Philippine Mediation Center is under the operational control and supervision of PHILJA. Thus, the Philippine Mediation Center is under the control of PHILJA, and not the other way around.

The Chief Justice took the position that the PHILJA Chief of Office for the Philippine Mediation Center is only appointed to one (1) of several sub-offices within PHILJA, the other heads of which are appointed by the Chairpersons of the Divisions pursuant to A.M. No. 99-12-08-SC (Revised). Thus, the PHILJA Chief of Office for the Philippine Mediation Center is a subordinate official, which is within the definition of "personnel" in *Manalang v. Quitariano*.

Chief Justice Sereno further pointed out that the PHILJA Chief of Office for the Philippine Mediation Center does not solely "head," "manage," or "direct" the Philippine Mediation Center. Under Administrative Order No. 33-2008, the powers and authority of the Philippine Mediation Center are vested in and exercised by the Executive Committee. This committee is headed by the PHILJA Chancellor as Chairperson, while the Chief of Office is merely an *ex officio* member.

She also took the view that the delegation of appointing power in A.M. No. 99-12-08-SC (Revised) was reiterated by the Court *En Banc* in its Resolution dated August 10, 2010 in A.M. No. 10-4-13-SC. She pointed out that the term "personnel" in the context of the judiciary encompasses all officials and employees aside from Justices and judges:

"Judicial personnel" refer to the incumbent Justices and judges of the courts; and **"Non-judicial personnel"** refer to officials and employees who are performing adjudication support functions (otherwise called judicial support personnel), as well as administrative and financial management functions; including clerks of courts, sheriffs, legal personnel, process servers, accountants, administrative officers, and all other personnel in the Judiciary who are not Justices or judges.^[13]
(Emphasis in the original)

Further, Administrative Circular No. 37-2001A dated August 21, 2001, which is used by the Office of Administrative Services in its daily operations, states that appointments to positions higher than Assistant Chief of Office may be made by the Chief Justice with the concurrence of the Chairpersons of Divisions.

According to Chief Justice Sereno, it was only when then Judge Geraldine Faith A. Econg (Justice Econg), now Associate Justice of the Sandiganbayan, was appointed as the PHILJA Chief of Office for the Philippine Mediation Center that this position was filled by the Court *En Banc*. Prior to Justice Econg, this position was appointed

by the Chairpersons of the Divisions. In a letter dated August 8, 2008, PHILJA, through then Chancellor Ameurfina A. Melencio-Herrera (Chancellor Melencio-Herrera) and Vice Chancellor Justice Justo P. Torres, Jr. (Justice Torres), recommended the appointment of retired Deputy Court Administrator Atty. Bernardo T. Ponferrada (Atty. Ponferrada). This appointment was approved on August 21, 2008 by now retired Chief Justice Reynato S. Puna (Chief Justice Puna) as Chairperson of the First Division, and concurred in by Senior Associate Justice Leonardo A. Quisumbing (Associate Justice Quisumbing), Chairperson of the Second Division, and Associate Justice Consuela Ynares-Santiago (Associate Justice Ynares-Santiago), Chairperson of the Third Division. Thus, Justice Econg's appointment did not revoke the delegated appointing power in A.M. No. 99-12-08-SC (Revised).

However, Chief Justice Sereno did not address whether the Court *En Banc*, in appointing Justice Econg, had already adopted through practice an interpretation of the provisions of this Court's administrative orders.

Chief Justice Sereno presented that Atty. Mendoza's appointment was upon the recommendation of PHILJA, as embodied in its letter dated June 20, 2016. The letter, signed by PHILJA Chancellor Justice Adolfo S. Azcuna (Chancellor Azcuna), explained that a screening panel was constituted by the PHILJA Management Committee, which evaluated the candidates to the vacancy and recommended Atty. Mendoza. Chief Justice Sereno stated that Chancellor Azcuna and Vice Chancellor Justice Romeo S. Callejo, Sr. (Vice Chancellor Calleja) requested to be formally heard by the Court *En Banc* so that they may explain their recommendation of Atty. Mendoza.

In the view of the Chief Justice, a board resolution from the PHILJA Board of Trustees is not a prerequisite for Atty. Mendoza's appointment. As the PHILJA Chief of Office for the Philippine Mediation Center is only an *ex officio* member of the Executive Committee of the Philippine Mediation Center, it is not necessary that the appointee be nominated by the Board of Trustees, since the requirement only applies to the four (4) regular members.^[14] Thus, Atty. Mendoza's appointment as the PHILJA Chief of Office for the Philippine Mediation Center complied with Administrative Order No. 33-2008.

On August 25, 2017, Associate Justice Leonardo-De Castro responded^[15] to the letter of the Chief Justice dated August 15, 2017. She noted that certain facts were not disclosed which were crucial to the resolution of the matter of Atty. Mendoza's appointment.

In her letter, Associate Justice Leonardo-De Castro was of the view that Atty. Ponferrada's appointment as the first PHILJA Chief of Office for the Philippine Mediation Center was approved by the Court *En Banc* in a June 3, 2008 Resolution in A.M. No. 08-2-5-SC-PHILJA, upon the recommendation of the PHILJA Board of Trustees in its Board Resolution No. 08-18 dated May 15, 2008. Thus, both Atty. Ponferrada and Justice Econg's appointments were made by the Court *En Banc* pursuant to a board resolution of the PHILJA Board of Trustees. Only Atty. Mendoza's appointment was made without a PHILJA Board of Trustees Resolution or an approval of the Court *En Banc*.

Further, it was her position that the August 8, 2008 letter, in which Atty.