

EN BANC

G.R. No. 237428 – REPUBLIC OF THE PHILIPPINES, Represented by SOLICITOR GENERAL JOSE C. CALIDA, *Petitioner* v. HON. CHIEF JUSTICE MARIA LOURDES P. A. SERENO, *Respondent*.

Promulgated:

May 11, 2018

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DISSENTING OPINION

CARPIO, J.:

This *quo warranto* petition, filed by the Republic of the Philippines, represented by the Office of the Solicitor General (OSG), seeks to nullify the appointment of respondent Maria Lourdes P. A. Sereno as Chief Justice of the Supreme Court, an impeachable officer under Section 2, Article XI of the Constitution,<sup>1</sup> for lack of proven integrity which is required under Section 7(3), Article VIII of the Constitution<sup>2</sup> for appointment to a judicial post. Petitioner asserts that respondent's repeated failure to file her Statement of Assets, Liabilities, and Networth (SALN) as required by law shows lack of integrity.

The qualifications of members of the Supreme Court are prescribed under Sections 7(1) and 7(3), Article VIII of the Constitution, to wit:

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) x x x

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

<sup>1</sup> This provision reads:

Sec. 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not impeachment.

<sup>2</sup> This provision reads:

Sec. 7 (3) A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.

*h*

When the position of the Chief Justice became vacant in 2012, upon the impeachment of then Chief Justice Renato C. Corona, the Judicial and Bar Council (JBC) issued an announcement for the opening of the Chief Justice position. Included in the documents required to be submitted were the SALNs of the applicant: *All previous SALNs (up to 31 December 2011) for those in the government or SALN as of 31 December 2011 for those from the private sector.*<sup>3</sup> As an applicant for the Chief Justice position, respondent submitted to the JBC her SALNs only for the years 2009, 2010, and 2011, despite being in government service for 20 years (1986-2006) as a professor at the University of the Philippines (UP) College of Law. The Certification dated 8 December 2017 of Director Angela D. Escoto of the UP Human Resources Development Office (UP HRDO) stated that based on the 201 files of respondent under the custody of the UP HRDO, between the period of 2000 to 2009, the respondent's SALN on file is only as of 31 December 2002. Based on the records, it appears that while employed at the UP College of Law, respondent only submitted her SALNs for the years 1985, 1989, 1990, 1991, 1993, 1994, 1995, 1996, 1997, 1998,<sup>4</sup> and 2002.<sup>5</sup>

### *I. Failure to File SALN*

No less than the Constitution mandates the filing of the SALN by all public officers and employees upon assumption of office and as often thereafter as may be required by law. Section 17, Article XI of the Constitution expressly declares:

**Sec. 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth.** In the case of the President, the Vice President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law. (Emphasis supplied)

Republic Act No. (RA) 3019, or the *Anti-Graft and Corrupt Practices Act*, likewise requires the filing of the SALN by every government employee not only upon assumption of office and every year thereafter, but also upon the expiration of his term of office or upon his resignation or separation from office. Section 7 of RA 3019 provides:

<sup>3</sup> [jbc.judiciary.gov.ph/announcements/2012/CJ%20Vacancy%206-4-12.pdf](http://jbc.judiciary.gov.ph/announcements/2012/CJ%20Vacancy%206-4-12.pdf) (visited 11 May 2018).

<sup>4</sup> The certified true copy of respondent's 1998 SALN was obtained from the Office of the Ombudsman.

<sup>5</sup> The certified true copies of respondent's SALN for the years 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002 were obtained from the Human Resources Development Office of the UP-Diliman. Respondent furnished the Court a photocopy of her 1989 SALN but it was not a certified true copy.

Section 7. *Statement of assets and liabilities.* – Every public officer, within thirty days after assuming office, thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of department or Chief of an independent office, with the Office of the President, a true, detailed sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: *Provided*, That the public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of the said calendar year.<sup>6</sup> (Emphasis supplied)

The importance of filing a SALN for all public officials and employees is furthermore emphasized in RA 6713,<sup>7</sup> or the *Code of Conduct and Ethical Standards for Public Officials and Employees*, the latest law on the matter and which has a more detailed provision of the SALN requirement. Section 8 of RA 6713 states:

**Section 8. *Statements and Disclosure.* - Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.**


(A) Statements of Assets and Liabilities and Financial Disclosure. - All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The two documents shall contain information on the following:

- (a) real property, its improvements, acquisition costs, assessed value and current fair market value;
- (b) personal property and acquisition cost;
- (c) all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;
- (d) liabilities, and;
- (e) all business interests and financial connections.

<sup>6</sup> As amended by RA 3047 (approved on 17 June 1961) and PD 677 (issued on 31 March 1975).

<sup>7</sup> AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES. RA 6713 was enacted on 20 February 1989 and took effect on 25 March 1989.



**The documents must be filed:**

- (a) within thirty (30) days after assumption of office;**
- (b) on or before April 30, of every year thereafter; and**
- (c) within thirty (30) days after separation from the service.**

All public officials and employees required under this section to file the aforesaid documents shall also execute, within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their assets, liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible, the year when they first assumed any office in the Government.

Husband and wife who are both public officials or employees may file the required statements jointly or separately.

**The Statements of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections shall be filed by:**

- (1) Constitutional and national elective officials, with the national office of the Ombudsman;
- (2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively; **Justices, with the Clerk of Court of the Supreme Court;** Judges, with the Court Administrator; and all national executive officials with the Office of the President.
- (3) Regional and local officials and employees, with the Deputy Ombudsman in their respective regions;
- (4) Officers of the armed forces from the rank of colonel or naval captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and
- (5) All other public officials and employees, defined in Republic Act No. 3019, as amended, with the Civil Service Commission.

(B) Identification and disclosure of relatives. - It shall be the duty of every public official or employee to identify and disclose, to the best of his knowledge and information, his relatives in the Government in the form, manner and frequency prescribed by the Civil Service Commission.

(C) Accessibility of documents. - (1) Any and all statements filed under this Act, shall be made available for inspection at reasonable hours.

(2) Such statements shall be made available for copying or reproduction after ten (10) working days from the time they are filed as required by law.

(3) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of reproduction and mailing of such statement, as well as the cost of certification.

**(4) Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.**

(D) Prohibited acts. - It shall be unlawful for any person to obtain or use any statement filed under this Act for:

- (a) any purpose contrary to morals or public policy; or
  - (b) any commercial purpose other than by news and communications media for dissemination to the general public.
- (Emphasis supplied)

Likewise highlighting the significance of the SALN, Executive Order No. 292 or the *Administrative Code of 1987* explicitly declares as a general principle governing government employees the filing of the SALN, thus:

SECTION 34. Declaration of Assets, Liabilities and Net Worth.—A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth.

The *Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees* (Rules),<sup>8</sup> which was promulgated by the Civil Service Commission (CSC) on 27 May 1989, clarified when the SALN should be filed. Section 1(c) of Rule VII reads:

(c) When to File

The above documents under the Code must be filed:

- (1) **within thirty (30) days after assumption of office, statements of which must be reckoned as of his first day of service;**
  - (2) **on or before April 30 of every year thereafter, statements of which must be reckoned as of the end of the preceding year; or**
  - (3) **within thirty (30) days after separation from the service, statements of which must be reckoned as of his last day of office.**
- (Boldfacing and underscoring supplied)

CSC Resolution No. 06-0231<sup>9</sup> dated 1 February 2006 further clarified the procedure for the filing of the SALN by amending Rule VIII of the Rules. CSC Resolution No. 06-0231 reads in part:

I. Rule VIII is hereby amended to read, as follows:

Rule VIII. Review and Compliance Procedure in the Filing and Submission of the Statements of Assets, Liabilities and Networth and

<sup>8</sup> Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees <<http://www.csc.gov.ph/2014-02-21-08-28-23/pdf-files/category/168-ra-6713-code-of-conduct-and-ethical-standards.html>> (visited 2 May 2018).

<sup>9</sup> Review and Compliance Procedure in the Filing and Submission of the Statement of Assets, Liabilities and Net Worth and Disclosure of Business Interests and Financial Connections.

## Disclosure of Business Interests and Financial Connections

Section 1. Filing and Submission of SALN on Time and to the Proper Official

a. **All public officials and employees, except those who serve in an official honorary capacity, without service credit or pay, temporary laborers and casual or temporary and contractual workers, shall file under oath their SALNs and Disclosure of Business Interests and Financial Connections with their respective Chief or Head of the Personnel/Administrative Division or Unit/Human Resource Management Office (HRMO), to wit:**

1. **Within thirty (30) days after assumption of office, statements of which must be reckoned as of his/her first day of service;**
2. On or before April 30 of every year thereafter, statements of which must be reckoned as of the end of the preceding year; and
3. Within thirty (30) days after separation from the service, statements of which must be reckoned as of his/her last day of office.

b. Public officials and employees under temporary status are also required to file under oath their SALNs and Disclosure of Business Interests and Financial Connections in accordance with the guidelines provided under these rules.

c. Public officials and employees are strictly required to fill in all applicable information and/or make a true and detailed statement of their SALNs.

Section 2. Duties of the Chief/Head of the Personnel/Administrative Division or Unit/HRMO

Upon receiving the SALN forms, the Chief/Head of the Personnel/Administrative Division or Unit/HRMO shall evaluate the same to determine whether said statements have been properly accomplished. A SALN is deemed properly accomplished when all applicable information or details required therein are provided by the filer. Items not applicable to the filer should be marked N/A (not applicable).

The Chief/Head of the Personnel/Administrative Division or Unit/HRMO shall submit a list of employees in alphabetical order, who: a) filed their SALNs with complete data; b) filed their SALNs but with incomplete data; and c) did not file their SALNs, to the head of office, copy furnished the CSC, on or before May 15 of every month. (Boldfacing and underscoring supplied)

The requirement of filing a SALN aims to suppress any questionable accumulation of wealth which usually results from non-disclosure of such matters.<sup>10</sup> As held in *Office of the Ombudsman v. Racho*,<sup>11</sup> the rationale for requiring all public officers and employees to make a complete disclosure of

<sup>10</sup> *Daplas v. Department of Finance*, G.R. No. 221153, 17 April 2017.

<sup>11</sup> 656 Phil. 148, 160 (2011).



their assets, liabilities and net worth is to suppress and avoid the unlawful acquisition of wealth, and is aimed at curtailing and minimizing the opportunities for official corruption in order to maintain a standard of honesty in the public service. Citing *Carabeo v. Court of Appeals*,<sup>12</sup> the Court elucidated:

“Unexplained” matter normally results from “non-disclosure” or concealment of vital facts. SALN, which all public officials and employees are mandated to file, are the means to achieve the policy of accountability of all public officers and employees in the government. By the SALN, the public are able to monitor movement in the fortune of a public official; it is a valid check and balance mechanism to verify undisclosed properties and wealth.

In *Casimiro v. Rigor*,<sup>13</sup> the Court stated that the filing of SALN promotes transparency in the civil service and serves as an effective mechanism to verify undisclosed wealth, thus:

The requirement of filing a SALN is enshrined in the Constitution to promote transparency in the civil service and serves as a deterrent against government officials bent on enriching themselves through unlawful means. By mandate of law, every government official or employee must make a complete disclosure of his assets, liabilities and net worth in order to avoid any issue regarding questionable accumulation of wealth. The importance of requiring the submission of a complete, truthful, and sworn SALN as a measure to defeat corruption in the bureaucracy cannot be gainsaid. Full disclosure of wealth in the SALN is necessary to particularly minimize, if not altogether eradicate, the opportunities for official corruption, and maintain a standard of honesty in the public service. Through the SALN, the public can monitor movement in the fortune of a public official; it serves as a valid check and balance mechanism to verify undisclosed properties and wealth. The failure to file a truthful SALN reasonably puts in doubt the integrity of the officer and normally amounts to dishonesty.

Considering that the requirement of filing a SALN within the period prescribed by law is enshrined in the Constitution, the non-filing of SALN within the prescribed period clearly constitutes a violation of an express constitutional mandate. **The repeated non-filing of SALN therefore constitutes culpable violation of the Constitution and betrayal of public trust, which are grounds for impeachment under the Constitution.**

Culpable violation of the Constitution must be understood to mean “willful and intentional violation of the Constitution and not violations committed unintentionally or involuntarily or in good faith or through an honest mistake of judgment.”<sup>14</sup> The framers of the Constitution, particularly

<sup>12</sup> 622 Phil. 413, 429-430 (2009), citing *Ombudsman v. Valeroso*, 548 Phil. 688, 698 (2007).

<sup>13</sup> 749 Phil. 917, 929-930 (2014).

<sup>14</sup> J. Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* 1112 (2003 Edition), citing II ARUEGO, *THE FRAMING OF THE PHILIPPINE CONSTITUTION* 590 (1930); Report of the Special Committee on the Impeachment of President Quirino, IV CONGRESSIONAL RECORD,

the Committee on Accountability of Public Officers, “accepted the view that [culpable violation of the Constitution] implied ‘deliberate intent, perhaps even a certain degree of perversity for it is not easy to imagine that individuals in the category of these officials would go so far as to defy knowingly what the Constitution commands.’”<sup>15</sup>

Betrayal of public trust, on the other hand, refers to acts “less than criminal but must be attended by bad faith and of such gravity and seriousness as the other grounds for impeachment,” as the Court held in *Gonzales III v. Office of the President of the Philippines*,<sup>16</sup> thus:

Betrayal of public trust is a new ground for impeachment under the 1987 Constitution added to the existing grounds of culpable violation of the Constitution, treason, bribery, graft and corruption and other high crimes. While it was deemed broad enough to cover any violation of the oath of office, the impreciseness of its definition also created apprehension that “such an overarching standard may be too broad and may be subject to abuse and arbitrary exercise by the legislature.” Indeed, the catch-all phrase betrayal of public trust that referred to “all acts not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in office” could be easily utilized for every conceivable misconduct or negligence in office. However, deliberating on some workable standard by which the ground could be reasonably interpreted, the Constitutional Commission recognized that human error and good faith precluded an adverse conclusion.

x x x x

The Constitutional Commission eventually found it reasonably acceptable for the phrase betrayal of public trust to refer to “acts which are just short of being criminal but constitute gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism, and gross exercise of discretionary powers.” **In other words, acts that should constitute betrayal of public trust as to warrant removal from office may be less than criminal but must be attended by bad faith and of such gravity and seriousness as the other grounds for impeachment.** (Emphasis supplied)

Since the repeated failure to file the SALN constitutes culpable violation of the Constitution and betrayal of public trust, it is immaterial if the failure to file the SALN is committed before appointment to an impeachable office. However, it is up to Congress, which is the constitutional body vested with the exclusive authority to remove impeachable officers, to determine if the culpable violation of the Constitution or betrayal of public trust, committed before appointment as an impeachable officer, warrants removal from office considering the need to

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HOUSE OF REPRESENTATIVES 1553 (1949).

<sup>15</sup> J. Bernas, *The Intent of the 1986 Constitution Writers* 765 (1995 Edition), citing II RECORD at 278.

<sup>16</sup> 694 Phil. 52, 100-101 (2012).



maintain public trust in public office. For instance, if an impeachable officer is discovered to have committed treason before his appointment, it is up to the impeachment court to determine if the continuance in office of the impeachable officer is detrimental to national security warranting removal from office.

## *II. Period Required to Maintain SALN Records*

Under Section 8 (C) (4) of RA 6713, the SALNs shall be available to the public in the custodian's office for 10 years from filing, after which period, the SALNs may be destroyed unless needed in an ongoing investigation. Since the government custodian is required to keep the SALNs for only 10 years, government employees cannot be required to keep their SALNs for more than 10 years. Thus, applicants for government positions, in particular judicial positions, should not be required to submit SALNs more than 10 years prior to the application. Incidentally, the vacancy for the Chief Justice post in 2012 was the first and only time that the JBC required applicants to submit all the SALNs they filed while in government service prior to the application. Thereafter, the JBC only required the submission of SALNs for two years prior to the application.

## *III. Penalty and Prescription of the Offense of Failure to File SALN*

RA 3019 states that as an administrative offense, the failure to file the SALN **“shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution is instituted against him.”**<sup>17</sup> RA 6713 provides a more specific penalty which is **“a fine not exceeding the equivalent of six (6) months salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense.”** Section 11 of RA 6713 reads:

Section 11. Penalties. – (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with **a fine not exceeding the equivalent of six (6) months salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency.** If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter

<sup>17</sup> Section 9(b) of RA 3019 states:

Section 9. Penalties for violations. – x x x

(b) Any public officer violating any of the provisions of Section 7 [Statement of assets and liabilities] of this Act shall be punished by a fine of not less than one thousand pesos nor more than five thousand pesos, or by imprisonment not exceeding one year and six months, or by both such fine and imprisonment, at the discretion of the Court.

The violation of said section proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution is instituted against him. (As amended by BP Blg. 195, 16 March 1982)

statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (₱5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

**(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.**

x x x x (Emphasis supplied)

The imposition of penalty for failure to file the SALN was clarified in CSC Resolution No. 06-0231:

Section 4. Sanction for Failure to Comply/Issuance of a Show-Cause Order

Failure of an official or employee to correct/submit his/her SALN in accordance with the procedure and within the given period pursuant to the directive in Section 3 hereof shall be a ground for disciplinary action. The Head of Office shall issue a show-cause order directing the official or employee concerned to submit his/her comment or counter-affidavit; and if the evidence so warrants, proceed with the conduct of the administrative proceedings pursuant to the Uniform Rules on Administrative Cases in Civil Service (CSC Resolution No. 99-1936 dated August 31, 1999). The offense of failure to file SALN is punishable under Rule IV, Section 52 (B) (8) thereof, with the following penalties:

1<sup>st</sup> offense – Suspension for one (1) month and one (1) day to 6 months

2<sup>nd</sup> offense – Dismissal from the service

Section 5. Transmittal of all submitted SALNs to the concerned agencies on or before June 30.

The Chief/Head of the Personnel/Administrative Division or Unit/HRMO shall transmit all original copies of the SALNs received, on or before June 30 of every years, to the concerned offices, as specified below:

x x x x

Clerk of Court of the Supreme Court – Justices of the Supreme Court, Court of Appeals, Sandiganbayan and Court of Tax Appeals

x x x x

On 24 January 2013, CSC Resolution No. 1300174<sup>18</sup> was promulgated amending Section 3 (first paragraph) and Section 4 of CSC Resolution No. 06-0231 to read as follows:

Section 3. Ministerial Duty of the Head of Office to Issue Compliance Order.

Within five (5) days from receipt of the aforementioned list and recommendation, it shall be the ministerial duty of the Head of Office to issue an order requiring those who have incomplete data in their SALN to correct/supply the desired information and those who did not file/submit their SALN to comply within a non-extendible period of thirty (30) days from receipt of the said Order.

Section 4. Sanction for Failure to Comply/Issuance of a Show Cause Order.

Failure of an official or employee to correct/submit his/her SALN in accordance with the procedure and within the given period pursuant to the directive in Section 3 hereof shall be a ground for disciplinary action. The Head of Office shall issue a show-cause order directing the official or employee concerned to submit his/her comment or counter-affidavit; and if the evidence so warrants, proceed with the conduct of the administrative proceedings pursuant to the Revised Rules on Administrative Cases in Civil Service (RRACCS), CSC Resolution No. 1101502 dated November 8, 2011. The offense of failure to file SALN is punishable under Section 46(D)(8) of Rule X thereof, with the following penalties:

First Offense – Suspension for one (1) month and one (1) day to six (6) months

Second Offense – Dismissal from the service

Public officials and employees who fail to comply with the thirty (30) day period required under Section 3 hereof or who submit their SALNs beyond the said period shall be considered as not having filed their SALNs, and shall be made liable for the offense of Failure to File SALN with a penalty of suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense.

Heads of agencies/offices who fail to comply with the provisions of CSC Resolution No. 06-0231 dated February 1, 2006, as amended, shall be liable for Simple Neglect of Duty, which shall be punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense.

The offense of failure to file the SALN prescribes in 20 years, as provided under Section 11<sup>19</sup> of RA 3019. However, Section 11 of RA 3019

<sup>18</sup> Amendment to the Review and Compliance Procedure in the Filing and Submission of the Statement of Assets, Liabilities and Net Worth and Disclosure of Business Interests and Financial Connections (CSC Resolution No. 060231 dated 1 February 2006).

<sup>19</sup> Section 11 of RA 3019, as amended by RA 10910, states that "All offenses punishable under this



should be read in conjunction with Section 2 of Act No. 3326<sup>20</sup> which specifically provides when prescription shall begin to run for offenses penalized by special laws, thus:

SEC. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at that time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

In the case of *PCGG v. Desierto*,<sup>21</sup> the Court ruled that when it is impossible for the State to have known when the offense or violation took place, the prescriptive period should be computed from the discovery of the commission thereof and not from the day of such commission. The Court held:

The case before us is not of first impression. On all fours is *Presidential Ad Hoc Fact Finding Committee on Behest Loans vs. Hon. Aniano A. Desierto, et al.*, also involving a complaint filed with the Office of the Ombudsman for an alleged behest loan obtained by the Philippine Seeds, Inc. during the Marcos administration. We ruled therein that since the law alleged to have been violated is Section 3 of Republic Act No. 3019, the applicable rule in the computation of the prescriptive period is Section 2 of Act No. 3326, as amended, cited earlier. Under Section 2 of this Act, there are two (2) rules for determining when the period of prescription shall commence: *First*, on the day of the commission of the violation, if such commission is known. *Second*, if the commission of the violation is not known at the time, then, from discovery thereof and institution of judicial proceedings for investigation and punishment.

In this case, it was obviously impossible for the State, the aggrieved party, to have known when the questioned transactions took place. Clearly, the prescriptive period for the offense charged should be computed *from the discovery of the commission thereof* and not from the day of such commission.<sup>22</sup> (Italicization in the original)

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Act shall prescribe in twenty years.” RA 10910 lapsed into law on 21 July 2016 without the signature of the President in accordance with Section 27(1), Article VI of the Constitution. However, for offenses committed prior to 21 July 2016, the 15-year prescriptive period under the law prior to the amendment applies. (See *Amar v. Odiaman*, 109 Phil. 681 [1960]; *Quetulio v. De la Cuesta*, 130 Phil. 494 [1968]; *Kiamco v. Court of Appeals*, 286 Phil. 260 [1992]).

<sup>20</sup> AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL LAWS AND MUNICIPAL ORDINANCES, AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN.

<sup>21</sup> 484 Phil. 53 (2004).

<sup>22</sup> *Id.* at 60-61.



#### *IV. Effect of Certification by Custodian of SALN*

Section 1, Rule 131 of the Rules of Court provides that the “[b]urden of proof (*onus probandi*) is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.” In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence.<sup>23</sup> In administrative cases, the burden of proof lies with the complainant, who is required to prove his case by substantial evidence.<sup>24</sup> Once the plaintiff or complainant has established his case, by *prima facie* evidence, the burden of evidence shifts to the defendant or respondent, who, in turn, has the burden to establish his defense.<sup>25</sup>

*Prima facie* evidence is defined as:

Evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party’s claim or defense, and which if not rebutted or contradicted, will remain sufficient. **Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence.**<sup>26</sup> (Emphasis supplied)

In cases involving the requirement of filing the SALN, a certification duly issued by the official custodian that no SALN of a government employee is on file in the custodian’s office constitutes *prima facie* proof of non-filing of the SALN. Such certification satisfies the burden of proof, and shifts the burden of evidence to the government employee to prove otherwise. The government employee must present countervailing evidence to shift back the burden of evidence. In the absence of countervailing evidence, the government employee can be held liable for non-filing of the SALN on the basis of the certification by the official custodian that no SALN is on file.

#### *V. Respondent Chief Justice Sereno’s Situation*

##### A. Effect of Certification of UP HRDO

In the present case, the burden of proof lies with the Republic which is the party that initiated the present *quo warranto* petition. Thus, the OSG,

<sup>23</sup> Section 1, Rule 133 of the Rules of Court; *Republic of the Philippines v. De Borja*, G.R. No. 187448, 9 January 2017; *Sps. De Leon v. Bank of the Philippine Islands*, 721 Phil. 839 (2013).

<sup>24</sup> Section 5, Rule 133 of the Rules of Court; *Concerned Citizen v. Divina*, 676 Phil. 166, 176 (2011), *Montemayor v. Bundalian*, 453 Phil. 158, 167 (2003).

<sup>25</sup> *Sps. De Leon v. Bank of the Philippine Islands*, 721 Phil. 839 (2013).

<sup>26</sup> *Wa-acon v. People*, 539 Phil. 485, 494 (2006), citing H. Black, et al., BLACK’S LAW DICTIONARY 1190 (6th ed., 1990).

representing the Republic, must present evidence to prove its allegation that respondent repeatedly failed to comply with the constitutional and statutory requirement of filing the SALN.

There is no dispute that respondent was a faculty member of the UP College of Law from 1986 to 2006.<sup>27</sup> Being a government employee at the time, respondent was required to file the SALN annually.

The OSG claims that respondent “deliberately failed to file her SALN with her [government] employer, UP, eleven times in her twenty years as a law professor.”<sup>28</sup> To prove its claim, the OSG submitted a Certification<sup>29</sup> from the UP HRDO which stated that “based on the 201 files of [respondent] under the custody of the Information Management Section of the [UP HRDO], it was found that between the period 2000-2009 the SALN submission on file is as of December 31, 2002.” Further, in a Letter addressed to the OSG dated 6 March 2018, UP HRDO Director Escoto stated that only the SALNs of respondent for the years 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002 were found in the UP HRDO records.<sup>30</sup> The OSG likewise submitted a Certification from the Office of the Ombudsman Central Records Division which stated that “there is no SALN filed by MS. MARIA LOURDES A. SERENO for calendar years 1999 to 2009 except SALN ending December 1998 x x x.”<sup>31</sup>

The submission by the OSG of the UP HRDO Certification and Letter and the Ombudsman Certification constitutes *prima facie* proof of respondent’s non-filing of her SALNs for a certain number of years during her employment at the UP College of Law. In other words, the OSG successfully satisfied the burden of proof by submitting the UP HRDO and Ombudsman Certifications which constituted *prima facie* evidence that respondent did not file her SALNs for the years 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005, and 2006, during which respondent was employed as a UP College of Law Professor.<sup>32</sup> Thus, if uncontradicted, this *prima facie* evidence is considered sufficient to sustain respondent’s liability for non-filing of her SALNs. It is therefore incumbent upon respondent to rebut and overthrow the OSG’s *prima facie* evidence by presenting her own evidence to the contrary. In short, the burden of evidence now shifted to respondent to disprove the OSG’s evidence against her.

In her 23 July 2012 letter to the JBC, respondent stated:

As I had noted in my Personal Data Sheet, after my resignation from

<sup>27</sup> Respondent’s Memorandum, p. 6.

<sup>28</sup> Petitioner’s Memorandum, p. 50.

<sup>29</sup> Petitioner’s Memorandum, Annex “B.”

<sup>30</sup> Petitioner’s Memorandum, Annex “O.”

<sup>31</sup> Petitioner’s Memorandum, Annex “C.”

<sup>32</sup> Respondent furnished the Court a photocopy of her 1989 SALN but it was not a certified true copy.

government service in 2006, as a professor at the University of the Philippines, I became a full-time private practitioner. Hence, when I was nominated for the position of Associate Justice of the Supreme Court in 2010, my nomination was considered as that of a private practitioner, and not as a government employee. Thus, the requirements imposed on me in connection with the consideration of my name were those imposed on nominees from the private sector, and my earlier-terminated government service, did not control nor dominate the kind of requirements imposed on me.

Considering that most of my government records in the academe are more than fifteen years old, it is reasonable to consider it infeasible to retrieve all of those files.

In any case, the University of the Philippines has already cleared me of all academic/administrative responsibilities, money and property accountabilities and from administrative charges as of 01 June 2006. Since it is the ministerial duty of the Head of the Office to ensure that the SALNs of its personnel are properly filed and accomplished (CSC Resolution No. 060231 dated 01 February 2006 and CSC Memorandum Circular No. 10-2006 dated 17 April 2006), this clearance can be taken as an assurance that my previous government employer considered the SALN requirements to have been met. A copy of the Clearance dated 19 September 2011 issued by the University of the Philippines is hereby attached.

x x x. Hence, in compliance with the documentary requirements for my candidacy as Chief Justice, I submitted only the SALNs from end of 2009 up to 31 December 2011, since I am considered to have been returned to public office and rendered government service anew from the time of my appointment as Associate Justice on 16 August 2010.

x x x x<sup>33</sup>

Based on this letter, respondent made it appear that she had filed her SALNs with the UP HRDO during her employment as a UP College of Law Professor but she could no longer find her personal copies of her SALNs. Respondent manifested to this Court in her Memorandum that she “religiously filed her SALNs.”<sup>34</sup> If indeed she had religiously filed her SALNs but her personal copies were lost, she could easily have secured a Certification from the UP HRDO that she had filed her SALNs. The requirement to submit SALNs was announced through advertisement in a newspaper by the JBC. Respondent never secured a certification from the UP HRDO as to her SALNs on file in that office. Her failure to secure such certification exposes as a misrepresentation her claim that she could not find her SALNs. For how could she find her personal copies of her SALNs when there is no record that she filed her SALNs for the years 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005, and 2006 with the UP HRDO?

<sup>33</sup> Respondent’s Memorandum, Annex “11.”

<sup>34</sup> Respondent’s Memorandum, p. 8.

Clearly, respondent failed to adduce satisfactory evidence to rebut and overthrow the OSG's *prima facie* evidence of her failure to file her SALNs for several years while she was teaching in the UP College of Law. Respondent conveniently alleges that she *religiously filed* her SALNs without presenting any evidence to prove such allegation. Suffice to state, mere allegation is not proof.<sup>35</sup> This means that the OSG's *prima facie* evidence establishing respondent's repeated failure to file her SALNs remains uncontradicted, and thus, respondent can be held liable for her repeated non-filing of SALNs while she was employed as a UP College of Law Professor.

#### B. Effect of Respondent's Failure to File SALN within 30 days from Assuming Office

In her Memorandum, respondent manifested that the SALN she filed with the JBC when she was applying as an Associate Justice of the Supreme Court was "not [the] required SALN as it is understood in law. x x x. Rather, it was a measuring tool which happened to be on a SALN form, requested by the JBC to test the veracity of her declarations in her ITRs."<sup>36</sup> Respondent testified during the Oral Arguments, thus:

JUSTICE DE CASTRO:

Okay. So, let's go now with the SALN that you filed which so far has been located and particularly those which you submitted to the Judicial and Bar Council. When you applied for Associate Justice of the Supreme Court, you were required to submit a Sworn Statement of Assets and Liabilities, and that was in 2010. So, you submitted a Statement of Assets and Liabilities which you signed in July 27, 2010 and you wrote a letter stating that yesterday, you wrote a letter to the JBC, yesterday, that was, your letter is dated, was dated July 28. Yesterday, you submitted your Statement of Assets and Liabilities as of 2006. You deliberately did not use the word Sworn Statement of Assets and Liabilities because what you submitted is a Statement of Assets and Liabilities for 2006 which was not signed, which was not notarized. So, you omitted the word "Sworn," you agree to that or you want to see the document?

CHIEF JUSTICE SERENO:

The JBC did not require from me my 2006 SALN. They requested me to give my Statement of Assets regardless of whether it's sworn or not as of the time of application. Now, the form there, the only form I used there was a downloadable form as of 2006 but if you can look at the signature portion, it is 2010. So, it is a metric tool that was used by the JBC and they explained it to me intimately that it had to do with the measurement of the banks, deposits and the income tax return. **So, that SALN is not the SALN contemplated by law but it is another**

<sup>35</sup> *Brodeth v. People of the Philippines*, G.R. No. 197849, 29 November 2017; *Dr. De Jesus v. Guerrero III*, 614 Phil. 520, 529 (2009); *V.V. Soliven Realty Corp. v. Ong*, 490 Phil. 229, 237 (2005), citing *Workers of Antique Electric Coop., Inc. v. NLRC*, 388 Phil. 847 (2000).

<sup>36</sup> Respondent's Memorandum, p. 11.



**measurement tool of the JBC.**

JUSTICE DE CASTRO:

Will you explain why you dated, why you mentioned in that ...

CHIEF JUSTICE SERENO:

I came from the private sector, Justice De Castro, so, it is a 2010 Statement of Assets unsworn during the time of my application. It is not that specified under the ... SALN law.

x x x x

**It's not the SALN required by law.** I had to find a form I could easily file because I was being asked to immediately send it by fax. So, the only downloadable form was what was available in the website. I downloaded it, I filled it up, I sent it.<sup>37</sup> (Emphasis supplied)

True, the SALN form referred to by respondent when she applied for the Associate Justice post in 2010 is not the SALN form specified by and required under the law. It has been an accepted practice of the JBC to allow applicants for judicial positions from the private sector to accomplish and submit such SALN as part of the documentary requirements. Accordingly, there was nothing irregular attending respondent's submission to the JBC of her unsworn SALN on 27 July 2010 when she was applying for the Associate Justice position.

However, when respondent was appointed as Associate Justice of the Supreme Court and assumed such position on 16 August 2010, respondent was duty-bound to submit a SALN in the prescribed form and within the period specifically required by the Constitution, law, and rules.

Again, the following are the relevant provisions on SALN filing:

**Section 17, Article XI of the Constitution**

A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit **a declaration under oath** of his assets, liabilities, and net worth. (Emphasis supplied)

**Section 7, RA 3019**

Section 7. *Statement of assets and liabilities.* – Every public officer, **within thirty days after assuming office**, thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of department or Chief of an independent office, with the Office of the President, a true, detailed **sworn statement of assets and liabilities**, including a statement

<sup>37</sup> TSN, 10 April 2018, pp. 34-35.

of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: *Provided*, That the public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of the said calendar year. (Emphasis supplied)

### **Section 8, RA 6713**

Statements and Disclosure - Public officials and employees have an obligation to accomplish and submit **declarations under oath** of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

x x x x

#### **The documents must be filed:**

- (a) **within thirty (30) days after assumption of office;**
- (b) on or before April 30, of every year thereafter; and
- (c) within thirty (30) days after separation from the service.

All public officials and employees required under this section to file the aforestated documents shall also execute, within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their assets, liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible, the year when they first assumed any office in the Government. (Emphasis supplied)

### **Administrative Code of 1987, Book 1, Chapter 9, Section 34**

A public officer or employee shall upon assumption of office and as often thereafter as may be required by law, submit **a declaration under oath** of his assets, liabilities, and net worth. (Emphasis supplied)

### **CSC Rules**

Section 1. Filing and Submission of SALN on Time and to the Proper Official

a. All public officials and employees, except those who serve in an official honorary capacity, without service credit or pay, temporary laborers and casual or temporary and contractual workers, shall file under oath their SALNs and Disclosure of Business Interests and Financial Connections with their respective Chief or Head of the Personnel/Administrative Division or Unit/Human Resource Management Office (HRMO), to wit:

1. **Within thirty (30) days after assumption of office, statements of which must be reckoned as of his/her first day of service;**



2. On or before April 30 of every year thereafter, statements of which must be reckoned as of the end of the preceding year; and
3. Within thirty (30) days after separation from the service, statements of which must be reckoned as of his/her last day of office.

b. Public officials and employees under temporary status are also required to file under oath their SALNs and Disclosure of Business Interests and Financial Connections in accordance with the guidelines provided under these rules.

c. Public officials and employees are strictly required to fill in all applicable information and/or make a true and detailed statement of their SALNs. (Emphasis supplied)

Since respondent took her oath and assumed her position as Associate Justice of the Supreme Court on 16 August 2010, she was required to file under oath her SALN within thirty (30) days after assumption of office, or until 15 September 2010, and the **statements must be reckoned as of her first day of service, pursuant to the relevant provisions on SALN filing.**

However, respondent failed to file a SALN containing sworn statements reckoned as of her first day of service within thirty (30) days after assuming office. **While she allegedly submitted an “entry SALN” on 16 September 2010,<sup>38</sup> it was unsubscribed<sup>39</sup> and the statements of her assets, liabilities and net worth were reckoned as of 31 December 2009, and not as of her first day of service, or as of 16 August 2010.** This is clear from the following quoted portions of respondent’s testimony during the Oral Arguments, to wit:

JUSTICE DE CASTRO:

Okay, now, let’s go to, so, after that you were appointed Associate Justice, after that you were appointed Associate Justice of the Supreme Court, and upon assumption within thirty (30) days, you should file a SALN as of the date of your assumption to office. As you mentioned in, as you mentioned, you resigned on June 1<sup>st</sup>, 2006. So, you were no longer, you were no longer a government official as of December 31, 2009, and this is now no longer a printed date. The date depicts zero, nine (09) after two zero (00) was handwritten, so that, when you assumed office in August of 2010, and you need to follow the law to require, which requires you to file a SALN within thirty (30) days from your assumption to duty, you filed your SALN, September 2010, okay? So, with respect to the date, that is

<sup>38</sup> Respondent’s Memorandum, p. 111. Since the last day for filing her SALN was 15 September 2010, the “entry SALN” filed by respondent was belatedly filed.

Respondent’s 31 December 2009 SALN which is attached to petitioner’s Memorandum shows that it was received by the Supreme Court’s Office of the Clerk of Court on 28 June 2012. On page 111 of respondent’s Memorandum, she stated that “[t]he 2009 SALN is an entry SALN which the Chief Justice originally filed on 16 September 2010, within thirty (30) days after her assumption of office as an Associate Justice of the Supreme Court. It was not ‘belatedly filed.’ The revised 2009 SALN which has the annotation ‘revised as of 22 June 2012’, is a revised version executed in June 2012 to more accurately reflect the acquisition cost of certain assets declared in 2010.”

<sup>39</sup> *Ponencia*, pp. 7, 110; Petitioner’s Annexes to the Memorandum, pp. 25-26.

within thirty (30) days but look at the date of your Sworn Statement of Assets and Liabilities, that is your Sworn Statement of Assets and Liabilities, that is your Sworn Statement of Assets and Liabilities as of December 31, 2009, when the law requires you to reckon your Statement of Assets and Liabilities when you assumed office? So, it should have been dated between, between August and September 2010, but no, you did not do that. You submitted a sworn declaration of Assets and Liabilities dated December 31, 2009, when you are no longer a government employee at that time?

May I know your answer?

CHIEF JUSTICE SERENO:

**This is the entry SALN after having taken my oath and the requirement is as of the end of the preceding year.**

JUSTICE DE CASTRO:

No...

CHIEF JUSTICE SERENO:

**So, it must be as of end of December 2009 even if it is 2010.**

JUSTICE DE CASTRO:

No, it's, I read to you the law, I read to you the provision of law and the rules, it says there, that when you assumed office, **your SALN must be reckoned as of the date of your assumption to office.** So, it cannot be several months before because if it is several months before, from December 31, 2009 up to September 2010, there could have been assets and liabilities between that period of time which cannot be found in your September 2010 SALN. There is a gap ...

x x x x

CHIEF JUSTICE SERENO:

Your Honor, the law only says that it must be within thirty (30) days after assumption of office. Nowhere can I say that it must be the Statement of Assets within that month. So, it is not wrong for me to have even given government a better chance and better tools to assess whether I will be hiding any ill-gotten wealth because I'm giving the government even more information than you are proposing. Because the law only says within thirty (30) days, it doesn't say as of that date.

x x x x

CHIEF JUSTICE SERENO:

Your Honor, my proposal is this. This is a unique reading by you of the IRR while I am reading the law itself. You know, in September, my husband and I would have already accumulated income from January 1 up to September when I filed within the reglementary period. Within that period, we cannot measure our assets and liabilities accurately because of the tax implication of those incomes that we have reviewed. That is why, in fact, the mandatory requirement for annual filing of SALNs is after computation of taxes. What I have provided the government is, in fact, a better way of assessing because anyway, from September 20 up to December 31, 2010, Justice De Castro, I filed again another SALN. So,



there's even more data that government can mine to find out if I have hidden anything. The law is clear, within thirty days, it does not say, ah, it does not say as of reckoned as of what date. So, I followed what has been government regulation, it was OAS of the Supreme Court, Atty. Vidal, who said it must be as of end of December 2009.

x x x x

CHIEF JUSTICE SERENO:

August 16 ... So, I assumed office, I entered into the functions of my office, August, same day. How can I? We were preparing for the oral arguments, then following day was the Hacienda Luisita, I have to have bank certifications of all my bank records. I have to force my husband to compute our estimated tax liabilities, I have to make a run down of all the debts that are due me and have not been paid. I have to, at the same time, find out if I owe anybody anything. And then if I have to find out that valuation of all my properties, how can you do that in a matter of three weeks, Justice De Castro? This is the most absurd, oppressive interpretation ever. What I am offering the government is a good database from which to assess whether I'm violating the SALN law. I have end 2009, I have end 2010, government can run after me if I have any ill-gotten wealth. In the first place, the SolGen has not made any case that I have violated anything of any kind.

x x x x

JUSTICE DE CASTRO:

You are not required by law to submit a SALN as of December 31, 2009, because you mentioned that from June 1, 2006 up to the time that you assumed office on August 2010, you were no longer in government. So, why is it that you have a SALN for December 31, 2009? What is that for?

CHIEF JUSTICE SERENO:

Your Honor, if there had been any problem with my SALN, Chief Justice Corona should have called my attention because he is the head of the Judiciary. Under the procedures, he should have called my attention, "mali iyong entry SALN mo, bakit masyadong maaga? Bakit December 2009? **Eh, ang reading ko ng batas, kung end 2009 pwede na iyon sa entry SALN kasi iyon naman usually at iyon naman ang sinabi sa akin, end 2009.** Iyon ang hiningi talaga."<sup>40</sup> (Emphasis supplied)

**The Constitution, law, and rules clearly require that the sworn entry SALN "must be reckoned as of his/her first day of service" and must be filed "within thirty (30) days after assumption of office."** Evidently, respondent failed to file under oath a SALN reckoned as of her first day of service, or as of 16 August 2010, within the prescribed period of thirty (30) days after her assumption of office. In other words, respondent failed to file the required SALN upon her assumption to office, which is a clear violation of Section 17, Article XI of the Constitution. In light of her

<sup>40</sup> TSN, 10 April 2018, pp. 42-46, 68.

previous failure to file her SALNs for several years while she was a UP College of Law Professor, her failure to file her SALN upon assuming office in 2010 as Associate Justice of this Court constitutes culpable violation of the Constitution, **a violation committed while she was already serving as an impeachable officer.**

### *VI. Jurisprudence on Failure to File SALN*

Respondent harps on the case of *Concerned Taxpayer v. Doblada, Jr.*<sup>41</sup> to justify her claim that she is not liable for non-filing of SALN since she religiously filed her SALNs while she was teaching in UP.

In *Doblada*, the Office of the Court Administrator (OCA) issued a certification that Doblada had no SALNs on file for certain years, including for 2000. Doblada claimed he filed all his SALNs through the Clerk of Court. Doblada presented a letter from the Clerk of Court certifying that the latter transmitted to the OCA Doblada's SALN for 2000. The Clerk of Court is tasked to forward all SALNs filed with his office to the OCA which is the custodian of SALNs for lower courts. The Clerk of Court merely collects for the OCA. The Court held that the OCA certification is not conclusive, and Doblada could not be held liable for non-filing of his SALNs.

In *Doblada*, the OCA certification satisfied the burden of proof that Doblada did not file his SALNs for a number of years, and thus, the burden of evidence shifted to Doblada. However, the Clerk of Court letter, a countervailing evidence submitted by Doblada, was sufficient to shift back the burden of evidence because the Clerk of Court letter cast doubt on the record keeping of the OCA insofar as Doblada's SALNs were concerned. In short, the OCA Certification did not constitute conclusive evidence that Doblada did not file his SALNs, precisely because it was discredited by the Clerk of Court letter, and thus, Doblada could not be held liable for non-filing of his SALNs.

In the present case, the *Doblada* doctrine cannot apply because respondent did not file any countervailing evidence to cast doubt on the record keeping of the UP HRDO. Respondent should have presented a certification from the Secretary of the UP College of Law that she submitted all her SALNs with the College Secretary during her entire employment with the UP College of Law. The Secretary of the UP College of Law forwards to the UP HRDO whatever SALNs are submitted to the Secretary. What the UP HRDO has on file are only the 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002 SALNs of respondent. Respondent failed to shift the burden of evidence as to her failure to file her 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005, and 2006 SALNs.

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<sup>41</sup> 498 Phil. 395 (2005).

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To repeat, *Doblada* is inapplicable here since respondent failed to present any certification, which could attest clearly that she submitted her SALNs with the UP College of Law Secretary, who collects the SALNs and forwards the same to the UP HRDO.

### ***VII. Jurisdiction to Remove an Impeachable Officer***

Section 2, Article XI of the Constitution provides:

SECTION 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

According to the *ponente*, “the language of Section 2, Article XI of the Constitution does not foreclose a *quo warranto* action against impeachable officers. x x x. To construe Section 2, Article XI of the Constitution as proscribing a *quo warranto* petition is to deprive the State of a remedy to correct a ‘public wrong’ arising from defective or void appointments.”<sup>42</sup>

The *ponente* posits that “while impeachment concerns actions that make the officer unfit to continue exercising his or her office, *quo warranto* involves matters that render him or her ineligible to hold the position to begin with.”<sup>43</sup>

This is erroneous.

Section 2, Article XI of the Constitution expressly provides the mode of removal from office of “the President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman.” Removal from office of these public officers shall only be by impeachment, and not through any other mode. In *Lecaroz v. Sandiganbayan*, the Court held:

**x x x [T]he above provision proscribes removal from office of the aforementioned constitutional officers by any other method; otherwise, to allow a public officer who may be removed solely by impeachment to be charged criminally while holding his office with an offense that carries the penalty of removal from office, would be violative of the clear mandate of the fundamental law.<sup>44</sup> (Boldfacing and underscoring supplied)**

<sup>42</sup> *Ponencia*, pp. 58, 61.

<sup>43</sup> *Ponencia*, pp. 63-64.

<sup>44</sup> 213 Phil. 288, 294 (1984).

The provision mandating removal only by impeachment is “**the Constitution’s strongest guarantee of security of tenure. The guarantee effectively blocks the use of other legal ways of ousting an officer.**”<sup>45</sup> Thus, in *In re First Indorsement from Hon. Gonzales*,<sup>46</sup> the argument that a sitting member of this Court may be subjected to disbarment proceedings, which could possibly result in the sitting Justice being disbarred and thus not qualified for the position, was rejected by this Court, thus:

x x x. A public officer who under the Constitution is required to be a Member of the Philippine Bar as a qualification for the office held by him and **who may be removed from office only by impeachment**, cannot be charged with disbarment during the incumbency of such public officer. Further, such public officer, during his incumbency, cannot be charged criminally before the *Sandiganbayan* or any other court with any offence which carries with it the penalty of removal from office, or any penalty service of which would amount to removal from office. (Boldfacing and underscoring supplied)

The Court explained the important underlying reason for this rule in the same case of *In re First Indorsement from Hon. Gonzales*, to wit:

The above rule rests on the fundamental principles of judicial independence and separation of powers. The rule is important because judicial independence is important. Without the protection of this rule, Members of the Supreme Court would be vulnerable to all manners of charges which might be brought against them by unsuccessful litigants or their lawyers or by other parties who, for any number of reasons might seek to affect the exercise of judicial authority by the Court.<sup>47</sup>

A sitting impeachable officer can be removed from office *only* through impeachment by Congress. As I have stated in a Dissenting Opinion,<sup>48</sup> the sole disciplining authority of all impeachable officers, including members of this Court, is Congress.

Under the Constitution, the *sole* disciplining authority of all impeachable officers, including Justices of this Court, is Congress. Section 3(1), Article XI of the Constitution provides that, “The House of Representatives shall have the **exclusive power** to initiate all cases of impeachment.” Likewise, Section 3(6) of the same Article provides that, “The Senate shall have the **sole power** to try and decide cases of impeachment.” These provisions constitute Congress as the **exclusive authority to discipline all impeachable officers** for any impeachable offense, **including “betrayal of public trust,”** a “catchall phrase” to cover any misconduct involving breach of public trust by an

<sup>45</sup> J. Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* 1111 (2003 Edition).

<sup>46</sup> *In re First Indorsement from Hon. Gonzales*, 243 Phil. 167, 170 (1988).

<sup>47</sup> *Id.* at 172.

<sup>48</sup> *In the Matter of the Charges of Plagiarism, etc., against Assoc. Justice Mariano C. Del Castillo*, 657 Phil. 13, 80-81 (2011).



**impeachable officer.** (Emphasis supplied)

The House impeaches, and the Senate convicts. This is the *only* method allowed under the Constitution to remove a member of this Court. To allow any other method is to re-write the Constitution. To permit this *quo warranto* petition to remove an incumbent member of this Court is to violate the Constitution.

The grounds for impeachment are: culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, and betrayal of public trust.

The catch-all phrase “betrayal of public trust” covers every conceivable misconduct by an impeachable officer, whether committed while in government service before the appointment, at the time of application for the office, or after appointment to office. **Any misrepresentation on material matters at the time of application for office is an integrity issue subsumed under the phrase “betrayal of public trust.”**

As I pointed out earlier, the repeated failure to file SALNs constitutes culpable violation of the Constitution and betrayal of public trust, grounds for removing an impeachable officer. While the failure to file SALNs may also raise questions on the integrity, and thus the qualification, of an applicant for Justice of the Supreme Court, the relevant applicable violation, for purposes of removing such impeachable officer once already in office, is culpable violation of the Constitution and betrayal of public trust. Only Congress, through the impeachment process, can remove an impeachable officer on these grounds.

If a court finds that an impeachable officer has committed an impeachable act, the court should refer the matter to Congress, for Congress to exercise its exclusive mandate to remove from office impeachable officers. No court, not even this Court, can assume the exclusive mandate of Congress to remove impeachable officers from office. As I have expressed in a Dissenting Opinion:<sup>49</sup>

This Court may conduct an investigation of an administrative complaint against a sitting Justice to determine if there is basis in recommending to the House of Representatives the initiation of an impeachment complaint against the sitting Justice. This Court may also conduct an investigation of an administrative complaint against a sitting Justice to determine if the complaint constitutes contempt of this Court. However, this Court has no power to decide on the guilt or innocence of a sitting Justice in the administrative complaint because such act is a usurpation of the exclusive disciplinary power of Congress over

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<sup>49</sup> Id. at 83-84.



impeachable officers under the Constitution. Any decision by this Court in an administrative case clearing a sitting Justice of an impeachable offense is void for want of jurisdiction and for violation of an express provision of the Constitution.

Such a decision will put this Court on a collision course with Congress if subsequently an impeachment complaint for plagiarism is filed with Congress against the sitting Justice. Incidentally, an impeachment complaint has already been filed in the House of Representatives involving the same complaint subject of this administrative case. If the House of Representatives decides to take cognizance of the complaint and initiates an impeachment based on the same administrative complaint that this Court had already dismissed as baseless, then this Court would have created a constitutional crisis that could only weaken the public's faith in the primacy of the Constitution.

Thus, this Court should treat the present *quo warranto* petition as an administrative investigation by this Court of one of its members. The resolution of this Court should be to refer its findings and recommendation against respondent to Congress.

**ACCORDINGLY**, I vote to **DISMISS** the petition and to refer to the Congress of the Philippines for possible inclusion of the acts constituting culpable violation of the Constitution and betrayal of public trust, as found in the present case, in the ongoing impeachment proceedings against respondent Chief Justice Maria Lourdes P. A. Sereno.



**ANTONIO T. CAPIO**  
Associate Justice