

EN BANC

A.M. No. 17-07-05-SC 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

Promulgated:

July 3, 2018

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CONCURRING OPINION

LEONARDO-DE CASTRO, J.:

I fully concur with the *ponencia* of Honorable Justice Marvic M.V.F. Leonen which is firmly grounded on the Constitution and several Court Resolutions which Justice Leonen exhaustively and painstakingly discussed in his *ponencia*. This separate concurring opinion only expresses my brief response to the separate opinions of Honorable Justices Presbitero J. Velasco, Jr. and Alfredo Benjamin S. Caguioa.

Justices Velasco and Caguioa are of the view that Atty. Brenda J. Mendoza's appointment is valid as the power of appointment to the position of Philippine Judicial Academy (PHILJA) Chief of Office for the Philippine Mediation Center, a third level position that is highly technical and/or policy determining, has been delegated to the Chief Justice and the Chairpersons of the Divisions by virtue of the Court *en banc* Resolutions in A.M. No. 99-12-08-SC (Revised) dated May 1, 2003 and A.M. No. 10-4-13-SC dated August 10, 2010, as well as the Supreme Court Human Resource Manual (SC-HRM), approved by the Court *en banc* in A.M. No. 00-6-1-SC dated January 31, 2012, in relation to A.M. No. 05-9-29-SC dated September 27, 2005.

Section II(a) of A.M. No. 99-12-08-SC (Revised) dated May 1, 2003 referred to the Chief Justice and Chairpersons of the Divisions for appropriate action or resolution, for and in behalf of the Court *en banc*, administrative matters relating to or in connection with the appointment of "regular (including coterminous), temporary, casual, or contractual personnel in the Supreme Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts (including Sharia'h courts), the PHILJA, and

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Judicial and Bar Council (JBC); officers and members of existing committees; and consultants.”

I cannot subscribe to the overbroad interpretation of the term “personnel” in Section II(a) of A.M. No. 99-12-08-SC (Revised) as to refer to all employees of the Judiciary, even including those in third level positions. Such interpretation will result in the absurd situation in which the Chairpersons of the Divisions are considered vested with the delegated power of appointment over all positions in the Supreme Court below the Chief Justice and Associate Justices, that would include even the positions of PHILJA Chancellor, Vice Chancellor, and Assistant Chancellor; Court Administrator, Deputy Court Administrator, and Assistant Court Administrator; Clerk of Court, Assistant Clerk of Court, Division Clerk of Court, and Assistant Division Clerk of Court.

I completely agree with Justice Leonen’s pronouncements in his *ponencia* that:

Any ambiguity or vagueness in the delegation of powers must be resolved in favor of non-delegation. To do otherwise is to permit an abdication of the “duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another.” This is demonstrated by the requirement for a valid delegation of legislative power that both the completeness and sufficient standard tests must be passed.

Here, the delegation of the power of appointment by this Court to the Chairpersons of the Divisions in A.M. No. 99-12-08-SC (Revised), while seemingly broad as to encompass all appointments of personnel in the judiciary, is contradicted by this Court’s Resolutions and practices, both prior to and following its adoption. Several third-level positions within the Judiciary, such as the Court Administrator, Deputy Court Administrators, and Assistant Court Administrators, as well as third-level PHILJA officials, continue to be appointed by the Court *En Banc*, and not by the Chairpersons of the Divisions.

A.M. No. 05-9-29-SC dated September 27, 2005 merely classified all third level positions in the Supreme Court, including the Office of the Court Administrator (OCA), PHILJA, JBC, and Mandatory Continuing Legal Education Office (MCLEO), with Salary Grade 26 and above as highly technical or policy determining. It contains no provision at all on the delegation by the Court *en banc* of its power to appoint to said third level positions. Hence, the said Resolution cannot be used as a basis to remove from the Court *en banc* the constitutional authority of appointment to third level positions classified as highly technical or policy determining.

Chapter Two, Section II(A) of the SC-HRM, approved on January 31, 2012, providing the Procedure in Filling Career Positions – which stated that “[t]he selection of appointees to third-level positions which have been classified by the Court as highly technical and/or policy determining

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pursuant to A.M. No. 05-9-29-SC dated September 27, 2005 shall be made by the Chief Justice with the concurrence of the Chairmen of the Divisions pursuant to A.M. No. 99-12-08-SC” – applies only to personnel in the Judiciary whose appointments must be screened by the **Supreme Court Selection and Promotion Board** as mentioned in the said SC-HRM provisions. It is not applicable to the PHILJA Chief of Office for the Philippine Mediation Center, whose appointment is governed particularly by Administrative Order No. 33-2008 of the Court *en banc*. Under said Administrative Order, it is the PHILJA Board of Trustees which screens and recommends to the Court *en banc* the appointment of the PHILJA Chief of Office for the Philippine Mediation Center.

I stress once more that the SC-HRM is a mere compilation of laws, issuances, and circulars governing personnel and records management for the Judiciary and it is not intended to repeal, modify, or set aside existing rules, regulations, or resolutions specifically adopted by the Court *en banc*. Despite the reference by the SC-HRM to A.M. No. 99-12-08-SC (Revised) and A.M. No. 05-9-29-SC, there is nothing in said Resolutions to support the purported delegation by the Court *en banc* to the Chief Justice and the Chairpersons of the other Divisions of its power to appoint to third level positions in the Judiciary classified as highly technical and/or policy determining and those which are covered by specific law like Presidential Decree No. 842 (1975) creating the office of the Court Administrator and the Court *en banc* issuances.

To conclude, I wholly concur with the disposition of this case in the *ponencia* of Justice Leonen, which I have intended to be done by the Court, when I filed my Memorandum subject of this Administrative Matter, to forestall the diminution of the appointing power of the Court *en banc* under the Constitution, by the misinterpretation or the unintended overbroad application of Court Resolutions. I quote below the pertinent part of the dispositive portion of the Resolution which will now clarify the limits of the appointing power delegated to the Chief Justice and the Chairpersons of the Divisions:

The delegation to the Chief Justice and the Chairpersons of the Divisions in A.M. No. 99-12-08-SC (Revised) of the power of appointment and revocation or renewal of appointments of personnel in this Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts including the Sharia'h courts, the Philippine Judicial Academy, and the Judicial and Bar Council shall not be deemed to include personnel with salary grades 29 and higher, and those with judicial rank.


TERESITA J. LEONARDO-DE CASTRO

Associate Justice

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court