Establishing a Legal Framework for the Development of a Mechanism for the Judicial Responsibility of an Incumbent Supreme Court Justice: Judicial Independence and Judicial Accountability in Light of Recent Jurisprudence and Legal Developments

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I. INTRODUCTION

The Supreme Court (SC) has always been placed on a pedestal, its justices admired as the models for brilliance and their work respected for its vigor. The Filipino people have always perceived the institution to be one of the most trustworthy government entities. This has undoubtedly served the SC well; the trust and approval of the people is vital in the operation of the SC. In general, public perception plays a key role in the efficient performance of the Judiciary. The "continued consent of the governed" is necessary for the pronouncements of the SC to carry weight.[1]

The Court has had this consent for most of its existence but half of the past decade has been witness to efforts to chip the ivory tower of the

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1. Stephen B. Burbank, Judicial Independence, Judicial Accountability and Interbranch Relations (An unpublished article accepted for inclusion in Scholarship at the University of Pennsylvania) 6, *available at* http://lsr.nellco.org/cgi/viewcontent.cgi?article=1106&context=upenn_wps&sei-redir=1&referer=http%3A%2F%2Fwww.google.com.ph%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Djudicial%2520independence%252C%2520judicial%2520accountability%2520and%2520interbranch%2520relations%2520penn%2520law%26source%3Dweb%26cd%3D3%26ved%3D0CCcQFjAC%26url%3Dhttp%253A%252F%252Flsr.nellco.org%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1106%2526context%253Dupenn_wps%26ei%3DAzW-TomaE-qpiAeVn9mgBQ%26usg%3DAFQjCNGtBVWJ1T_aSnZdcNc_xlcKox0vMA%26sig2%3DpOCtY_BgaIA_zDxUsXWXCQ#search=%22judicial%20independence%2C%20judicial%20accountability%20interbranch%20relations%20penn%20law%22 (last accessed Nov. 15, 2011).

Judiciary. In fact, the SC has been mired with much controversy lately. In 2007, before many of these controversies littered the broadsheets, the Author had already taken notice of the absence of a formal mechanism for Judicial Accountability. In 2009, the Author undertook efforts to reconcile the concepts of Judicial Accountability and Judicial Independence.

In the midst of these efforts, several controversies — the *Limkaichong* decision leak,[2] the deliberations leak and subsequent Brion death threat,[3] the Midnight Appointment controversy,[4] the Shadow of Doubt book release,[5] and most recently the Corona Impeachment[6] — highlighted certain concepts vital to its discussion and brought to life issues that were to be addressed in this Note. Before the impeachment controversy, the SC was not left callous to the situation. They finally began to address the issues through the promulgation of their Internal Rules.[7] This action simply reaffirmed the significance of efforts such as this one. Yet even with these well-publicized troubles and institutional responses, the solutions to the institutional deficiencies elude the general public and to a large extent the members of the legal community.

A. Legal Issue

A review of the related literature has revealed that the matter before this Note is rooted in the struggle for balance between Judicial Independence and Judicial Accountability.[8] Judicial Independence is absolute. Authorities

2. In Re: Undated Letter of Mr. Louis C. Biraogo, 580 SCRA 106 (2009).

3. William B. Depasupil, *Drug lords eyed in Brion death threat*, MANILA TIMES, Mar. 18, 2010, *available at* http://archives.manilatimes.net/national/2009/july/04/yehey/top_stories/20090704top6.html (last accessed Nov. 15, 2011).

4. FSGO, law students protest CJ 'midnight appointment', *available at* http://www.abs-cbnnews.com/nation/02/08/10/fsgo-law-students-protest-cj-midnight-appointment (last accessed Nov. 15, 2011).

5. Ranhilio Callangan Aquino, Doubting 'A Shadow of Doubt', MANILA STANDARD TODAY, Apr. 5, 2010, *available at* http://www.manilastandardtoday.com/insideOpinion.htm?f=2010/april/5/ranhilioaquino.isx&d=2010/april/5 (last accessed Nov. 15, 2011).

6. Cynthia D. Balana & Gil C. Cabacungan, Jr., *188 solons impeach CJ Corona*, PHIL. DAILY INQ., Dec. 13, 2011, *available at* http://newsinfo.inquirer.net/109793/188-solons-impeach-cj-corona (last accessed Dec. 19, 2011).

7. Supreme Court, The Internal Rules of the Supreme Court, A.M. No. 10-4-20-SC (May 4, 2010) [hereinafter Internal Rules].

8. *See generally* Charles Gardner Geyh, *Rescuing Judicial Accountability from the Realm of Political Rhetoric*, 56 CASE W. RES. L. REV. 911, 912 (2006); Gretchen Helmke, *Checks and Balances by Other Means: Strategic Defection and Argentina's Supreme Court in the 1990s*, 35 COMP. POL. 213-30 (2003); Robert M. Howard

do not even essay a contest.[9] Then again, so is Judicial Accountability. As public officers, it is undeniable that Members of the Court must answer to the people. Even with the classification as impeachable officers, the Constitution never deigned to cloak any officer with immunity from this accountability. The crux of the matter is the manner by which both concepts may be reconciled.

The impeachable nature of the post is not contested but after much inquiry, it has become apparent that such is not an impediment to the exercise of supervisory powers over the Members of the Court. The prevailing school of thought requires the initiation of impeachment proceedings before Congress prior to the institution of any other action to address complaints involving SC Justices. Successful impeachment proceedings are a rare sight — it is a political process that requires maneuvering witnessed only at the most dismal of circumstances and even after smoothly being initiated, the trial could possibly spin out into the realm of tabloid-level sensationalism that would leave no one but the politicians satisfied.[10]

The empty halls of the legislative branch have become fodder for political satirists. Experienced and adept legislators are the white Bengal tigers of the State. In the past, for the average solon, the possibility of being placed at the receiving end of the Court's disdain serves as a motivator to attend a session entertaining such a complaint just as much as the promise of a root canal would.

Although obstacles in this numbers game were seemingly overcome in the swift collection of signatures for the impeachment of Chief Justice Renato C. Corona,[11] many other questions as to the overall effects of the

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& Jeffrey A. Segal, *A Preference for Deference? the Supreme Court and Judicial Review*, 57 POL. RES. Q. 131-43 (2004); Pamela S. Karlan, *the Irony of Immunity: the Eleventh Amendment, Irreparable Injury, and Section 1983*, 53 STAN. L. REV. 1311 (2001); Kent A. Kirwan, *the Use and Abuse of Power: the Supreme Court and Separation of Powers*, 537 ANNALS AM. ACAD. POL. & SOC. SCI. 76-84, *Ethics in American Public Service (1995); John C. Knechtle, If We Don't Know What It Is, How Do We Know if It's Established?*, 41 BRANDEIS L. J. 521, 528 (2003).

9. *See* Shirley S. Abrahamson, *Thorny Issues and Slippery Slopes: Perspectives on Judicial Independence*, 64 OHIO ST. L. J. 3, 10 (2003); Erwin Chemerinsky, *Against Sovereign Immunity, Symposium: Shifting the Balance of Power? The Supreme Court, Federalism, and State Sovereign Immunity*, 53 STANFORD L. REV. 120-24 (2001); Viet D. Dinh, *Threats to Judicial Independence, Real and Imagined*, 95 GEO. L. J. 929, 931 (2007); Pilar Domingo, *Judicial Independence: The Politics of the Supreme Court in Mexico*, 32 J. LATIN AM. STUD. 705-35 (2000).

10. *Cf.* CHARLES GARDNER GEYH, WHEN COURTS & CONGRESS COLLIDE: THE STRUGGLE FOR CONTROL OF AMERICA'S JUDICIAL SYSTEM 113-70 (2006).

11. *See* Balana & Cabacungan, Jr., *supra* note 6.

Congress' concerted efforts surfaced.[12] Even with the looming trial, doubts as to the validity of this political process as a means to determine whether a court officer is guilty of reprehensible acts and whether such acts are punishable, remain. Any and all assurances of the lawmakers' noble intentions and speed-reading skills cannot quiet the unprecedented speed at dispensing with any matter before this co-equal body.[13]

The Court consistently recognizes the necessity of coursing complaints through Congress and Congress once recognized that the Court has exclusive supervision over all courts and personnel.[14] To its credit, the Court has undertaken its own investigation into certain controversies, but for the most part, these proceedings consist of internal arrangements and rules created *ad hoc*.[15] Court resolutions and circulars are sprinkled with policies that are of public concern and that affect Judicial Accountability, yet they remained scattered. The Court recognized the need to consolidate these policies and streamline its internal workings when it formulated its Internal Rules — a first for the SC. These Rules, however, touch on matters of greater importance than simple office policies.

There is a legal fissure between the Codes of Conduct and actual accountability. The friction between the two factions advocating either side has led to the popular belief of their innate incompatibility.[16] But as often cited, these two concepts are two sides of the same coin.[17] The absence of a mechanism reconciling them is not a void created by their diametrical opposition; rather it is a product of the dominance of an archaic legal framework.

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12. Fr. Joaquin G. Bernas, S.J., *What to expect in the Corona impeachment*, PHIL. DAILY INQ., Dec. 19, 2011, *available at* http://opinion.inquirer.net/19383/what-to-expect-in-the-corona-impeachment (last accessed Dec. 19, 2011); Andy Bautista, *Sovereignty of the people*, PHIL. STAR, Dec. 17, 2011, *available at* http://www.philstar.com/Article.aspx?articleId=759287&publicationSubCategoryId=64 (last accessed Dec. 19, 2011); Jose C. Sison, *Dangerous signs*, PHIL. STAR, Dec. 16, 2011, *available at* http://www.philstar.com/Article.aspx?articleId=758985&publicationSubCategoryId=64 (last accessed Dec. 19, 2011).

13. Sollita Collas-Monsod, *Two wrongs don't make a right*, PHIL. DAILY INQ., Dec. 16, 2011, *available at* http://opinion.inquirer.net/19299/two-wrongs-don%E2%80%99t-make-a-right (last accessed Dec. 19, 2011).

14. PHIL. CONST. art. VII, § 6.

15. Illustrations of these instances are tackled in Part Four of this Note.

16. *Cf.* James L. Gibson, Gregory A. Caldeira, & Lester Kenyatta Spence, *Measuring Attitudes toward the United States Supreme Court*, 47 AM. J. POL. SCI. 354-67 (2003).

17. Stephen B. Burbank, *the Architecture of Judicial Independence*, 72 S. CAL. L. REV. 315, 339 (1999).

First, in order to counteract the residual prejudices left by the reigning school of thought, the Author accepts the premises that Judicial Independence is absolute and that SC Justices are accountable. The Constitution was formulated upon the same premise and had envisioned that the separation of powers would be sufficient in keeping the doctrine of checks and balances in place.

Second, it is often speculated whether the SC may create a body to investigate and recommend sanctions against an incumbent SC Justice. Also, to what extent may the SC impose sanctions and on what grounds may these sanctions be imposed? Some have speculated that at most, this body could recommend that the House of Congress institute impeachment proceedings against the erring justice; however, experience in foreign jurisdictions, such as the United States (U.S.), suggests that where the charges do not warrant removal, the SC, upon investigation, may impose minor sanctions. Would these measures be inconsistent with the constitutionally guaranteed Judicial Independence and in excess of the SC's jurisdiction, notwithstanding that it forms part of Judicial Accountability?

Third, what principles of Judicial Accountability did the SC lay when it decided the case against Justice Reyes[18] and acted in the face of the charges against Justice Hugo E. Gutierrez, Jr.[19] and Justice Fidel P. Purisima?[20] In the wake of Justice Reyes' sentence, a legal issue has come to surface. Since "[a]ll public officers and employees shall take an oath or affirmation to uphold and defend this Constitution,"[21] then a violation of this oath must be considered punishable. Given that even the retirement of a justice was not seen as a bar to holding an impeachable officer liable for his misdeeds, then it is but wondered what is required. As harped on by the Court, the rule of *stare decisis* holds steadfast in this jurisdiction.

Fourth, is the creation of an Ethics Committee[22] consisting only of members of the SC (past and present) consistent with the concept of Judicial Accountability? There is adequate support for the method of "peer review" by justices as provided in the Internal Rules.[23] This is common practice in

18. *See generally* In Re: Undated Letter of Mr. Louis C. Biraogo, 580 SCRA 106 (2009).

19. *See generally* LORRAINE CARLOS SALAZAR, GETTING A DIAL TONE: TELECOMMUNICATIONS LIBERALIZATION IN MALAYSIA AND THE PHILIPPINES 232 (2007).

20. *See generally* Donna S. Cueto, *Justice Purisima faces sanctions*, PHIL. DAILY INQ., Mar. 22, 2000, at 1 & 18.

21. PHIL. CONST. art. IX-B, § 4.

22. *See* Internal Rules, § 13.

23. *See generally* Internal Rules.

the U.S., the United Kingdom (U.K.), Australia, Sweden, etc.[24] International Law even sets it as a model practice when various instruments provided that a committee of judges[25] should conduct the disciplinary inquiry against the judges of superior courts.

Finally, what amendments must be made to the Internal Rules for the creation of a stable in-house mechanism for accountability? Should the process of investigation precede the framing of charges and the inquiry commence only after framing the charges? Should the investigating justices be different from the justices who conduct the inquiry?

B. Objectives

The SC has held some of its members accountable for improprieties. Though there are few that have made headlines, such is consistent with the general judicial culture of confidentiality. The manner each impropriety has been handled has largely depended upon the sitting Chief Justice's preferences, though there are common threads to the procedures undertaken once the matter is made public. Yet, there remains to be a void as to an actual system for Accountability.

The recent decision on the case of former Justice Reyes may seem to simply have an effect on the security of tenure of a duly appointed justice of the SC.[26] But the decision is a landmark case in terms of the liability of justices as well. This Note aims to examine the currents of change underlying the gleaming surface of the supposedly upright decision of the SC. In deciding against one of its peers and standing up for the rule of law, it is submitted that justices have admitted to administrative liability.

In an attempt to arm the Codes of Conduct with enough teeth to secure the proper balance between Judicial Independence and Accountability, this Note proposes an addition to the Internal Rules of the SC that would include the specification of the mechanics for dealing with complaints against sitting SC Justices and the accompanying minor sanctions if the charges are proven to be true.

C. Theoretical Framework and Significance of the Study

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24. Law Commission of India, 195th Report on the Judges (Inquiry) Bill, 2005, (A Report on the proposed draft of the "Judges (Inquiry) Bill, 2005") 34, *available at* http://lawcommissionofindia.nic.in/reports/Report195.pdf (last accessed Nov. 15, 2011).

25. As discussed in Part III, the term "Judges" is used to refer to all members of the Judiciary including those who would be granted the title "Justice" in the Philippines.

26. *See generally* In Re: Undated Letter of Mr. Louis C. Biraogo, 580 SCRA 106 (2009).

The definition of "Public Officers" allows for the classification of the justices of the SC as public officers. The Constitution and the Administrative Code, however, have placed the administrative supervision over all courts and its personnel under the exclusive jurisdiction of the SC.[27] So though the laws relating to the conduct of public officers are theoretically applicable, no institution other than the SC has the legal authority to implement them.

Although there has been much debate as to when Judicial Independence ends and Judicial Accountability begins, it is safe to say that everyone is in agreement that even the Members of the SC are accountable to the people.[28] Thus, it is in this paradigm that the Author tackles this subject matter.

The checks and balances set in place by the Constitution are to ensure that all three branches of government work in tandem for the benefit of society. Each has a delegated role that is subject to abuse. Therefore, though each is independent of the other in their daily workings, there is a basic overlap in certain functions that will enable one branch to examine whether the other is functioning as it should.[29] Hence, the Executive and Legislative have certain allowable overlaps in their powers and functions, which the Judiciary is charged with policing. When the Executive exceeds its rule-making powers, the Judiciary strikes this out as *ultra vires*. At times, the Executive may even exceed its quasi-judicial functions, which the Court is free to overturn. For these two encroachments, the Executive has relinquished certain functions to both branches. For example, the SC is given the freedom to appoint all officials and employees of the Judiciary and exercise complete administrative supervision over them.[30] Also, the House is given the luxury of determining its own rules as well as complete administrative supervisions over its own departments as well.[31]

27. PHIL. CONST. art. VIII, § 6; Instituting the "Administrative Code of 1987" [Administrative Code of 1987], Executive Order No. 292, bk. II, ch. 4, § 20.

28. *See generally* Lee Epstein, Thomas G. Walker, & William J. Dixon, *the Supreme Court and Criminal Justice Disputes: A Neo-Institutional Perspective*, 33 AM. J. POL. SCI. 825-841(1989); John A. Ferejohn & Larry D. Kramer, *Independent Judges, Dependent Judiciary: Institutionalizing Judicial Restraint*, 77 N.Y.U. L. Rev. 962, 973 (2002); Noel P. Fox, *the King Must Do No Wrong: A Critique of the Current Status of Sovereign and Official Immunity*, 25 WAYNE L. REV.177, 187 (1979); Ronald M. George, *Challenges Facing an Independent Judiciary*, 80 N.Y.U. L. REV. 1345 (2005).

29. Francisco, Jr. v. Nagmamalasakit na mga Mananganggol ng mga Manggagawang Pilipino, Inc., 415 SCRA 44, 105 (2003).

30. PHIL. CONST. art. VIII, §§ 5 (6) & 6.

31. PHIL. CONST. art. VI, § 16 (3).

The trouble comes when the independence granted by the ceded powers metamorphose into supremacy.[32] Some have referred to the acts of the Judiciary as Judicial Activism while others have ventured so far as to label it as Judicial Tyranny. But the Court has recognized that while it does maintain the honor and privilege of interpreting the law as its wisdom deems fit, it, too, must do so within the limits of the Constitution.[33] There has simply been an ongoing tug-of-war between the advocates of Judicial Independence and Judicial Accountability.

This Note shall reconcile the two concepts and endeavor to resurrect the defunct and politically-colored impeachment process through a two-pronged approach. Taking into consideration the existing rules and systems, the Author makes use of the mechanisms in place and transforms them using a legal framework on Judicial Responsibility to produce a feasible proposal. As a supplement to the existing Internal Rules of the SC and the Rules of Procedure in Impeachment Proceedings,[34] two instruments are presented. These documents are intended to work in tandem while respecting the separation of powers and Judicial Independence.

The first instrument is an amendment to the Internal Rules, providing for the complaint procedure and its resulting reports. The second instrument is an amendment to the Rules of Procedure, committing Congress to take cognizance of the resulting report of the Ethics Committee thereby presenting a more efficient option as a catalyst for impeachment.

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32. *See generally* Carl E. Stewart, *Contemporary Challenges to Judicial Independence*, 43 LOY. L. REV. 293, 298- 300 (1997); M. Taylor, *Why No Rule of Law in Mexico? Explaining the Weakness of Mexico's Judicial Branch*, 27 NEW MEXICO LAW RELVIET 142-66 (1997); Kelly J. Varsho, *In the Global Market for Justice: Who is Paying the Highest Price for Judicial Independence?*, 27 N. ILL. U. L. Rev. 445, 452 (2007); Clifford Wallace, *An Essay on Independence of the Judiciary: Independence from What and Why*, 58 N.Y.U. ANN. SURV. AM. L. 241, 247 (2001); J. Clifford Wallace, *Resolving Judicial Corruption While Preserving Judicial Independence: Comparative Perspectives*, 28 CAL. W. INT'L L.J. 341, 345 (1998); Frances Kahn Zemans, *the Accountable Judge: Guardian of Judicial Independence*, 72 S. CAL. L. REV. 625, 646-47 (1999); Jeffrey A. Segal & Harold J. Spaeth, *the Influence of Stare Decisis on the Votes of United States Supreme Court Justices*, 40 AM. J. POL. SCI., 971-1003 (1996); Jonathan R. Siegel, *Waivers of State Sovereign Immunity and the Ideology of the Eleventh Amendment*, 52 DUKE L. J. 1167-1243 (2003).

33. *Francisco, Jr.*, 415 SCRA at 214 (J. Vitug, concurring opinion).

34. H. Rules of Procedure in Impeachment Proceedings [H. Rules on Impeachment], 13th Cong. (Aug. 1, 2005).

II. JUDGING JUSTICE: ACCOUNTABILITY OF SUPREME COURT JUSTICES AS PUBLIC OFFICERS

Public office is a public trust.[35] Hence, because of this principle laid down by law, public officers are expected "to perform their duties with utmost responsibility, integrity, competence[,] and loyalty, and with patriotism and justice, lead modest lives, and uphold public interest over personal interest."[36]

A. Scope of "Public Officers"

1. The Evolution of the Definition of "Public Officers"

Existing laws delineate those who are "Public Officers." The Act Declaring Forfeiture of Ill-gotten Wealth of Public Officers and Employees[37] is one of the oldest existing laws that attempted to determine those who should fall under the rubric "Public Officer." This definition highlights the manner the person was placed in the position but is broad enough to include those who work in government-owned and controlled corporations.[38]

The Anti-Graft and Corrupt Practices Act[39] provides a broad definition as well but does not distinguish based on the manner the position was granted, the tenure of the officer, the nature of the work, or the amount of compensation.[40] Later, "Public Officers" are referred to in An Act Punishing the Receiving and Giving of Gifts of Public Officials and Employees.[41] The allusion to "Public Officers" made it appear that there is no distinction between the term "official" and "employee" and that this category

35. PHIL. CONST. art. 11, § 1.

36. Office of the Court Administrator v. Fuentes, 247 SCRA 506, 517 (1995) (citing 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 [CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES], Republic Act No. 6713, § 2 (1989)).

37. An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Procedure Therefor, Republic Act No. 1379 (1955).

38. *Id.* § 1 (a).

39. Anti-Graft and Corrupt Practices Act, Republic Act No. 3019 (1960).

40. *Id.* at § 2 (b).

41. An Act Making Punishable for Public Officials and Employees to Receive, and for Private Persons to Give Gifts on Any Occasion Including Christmas, Presidential Decree No. 46 (1972).

encompasses national as well as local officials.[42] The definition in the Code of Conduct and Ethical Standards for Public Officials and Employees[43] differs from the previous one in that it explicitly includes career and non-career employees as well as military and police personnel.[44] This refined definition, however, was obscured by the subsequent definition in the Anti-Plunder Act.[45] This definition broadened the scope of the "Public Officers" to the point of obscurity.[46]

The Spanish Penal Code[47] gave a concise description, which was unfortunately omitted in the Revised Penal Code (RPC). In its place, a "Public Officer" was identified in the RPC as:

> any person who, by direct provision of the law, popular election[,] or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent[,] or subordinate official, of any rank or class.[48]

Both these definitions were limited to the application of the RPC provisions relating to public officers.[49]

Jurisprudence found that public officers are individuals invested with the "right, authority, and duty created and conferred by law, by which, for a given period[,] either fixed by law or enduring at the pleasure of the creating power," to exercise some portion of sovereign functions of the state for the benefit of the citizenry.[50] The essential characteristic of a public officer, as

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42. *Id.* ¶ 4.

43. 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 [CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES], Republic Act No. 6713, § 2 (1989).

44. *Id.* § 2 (b).

45. An Act Defining and Penalizing the Crime of Plunder, Republic Act No. 7080 (1991).

46. *Id.* § 1 (a).

47. CÓDIGO PENAL [C.P.] art. 401 (Spain).

48. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 203 (1932).

49. *Id. See also* C.P. art. 401.

50. Fernandez v. Sto. Tomas, 242 SCRA 192, 201 (1995) (citing Appari v. Court of Appeals, 127 SCRA 231 (1984); Oliveros v. Villaluz, 57 SCRA (1974); Fernandez v. Ledesma, 117 Phil. 630 (1963); Alba v. Evangelista, 100 Phil. 683 (1957)).

distinguished from private persons and public employees, is the exercise of sovereign function with the employment of his or her own discretion.[51] A public officer must take an oath and is thereby bound to preserve the dignity and integrity of his post for which he must be held accountable to.[52] And since a public officer holds a position of public trust, and is discharged for the benefit of the people, it is claimed that the office is not protected by the due process clause and may be changed or abolished at the will of Congress unless protected as a constitutional office.[53] A public officer is still protected by the due process clause in the sense that he cannot be deprived of his office without an explicit legislative mandate.[54]

American jurisprudence, on the other hand, provides that a "Public Official" is a:

> person who, upon being issued a commission, taking the required official oath, enters upon, for a fixed tenure, a position called an office where he or she exercises, in his or her own right, some of the attributes of the sovereign he or she serves, for the benefit of the public.[55]

In connection to this, "Public Office" is often described as having the following characteristics — "(1) authority conferred by law, (2) fixed tenure of office, and (3) power to exercise some portion of sovereign functions of government ... [The] key element of such test is that the 'officer' is carrying out a sovereign function."[56]

This public office should have been created by the Constitution, a law, or an authority designated by law.[57] Sovereign power should have been appropriated to the position.[58] Congress or any designated authority needs to (directly or impliedly) define its powers and duties.[59] Then, these duties and powers must be performed independently with only the law as a supervising power.[60] This position must have some permanency or continuity.[61]

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51. ADMINISTRATIVE CODE OF 1987, Introductory Provisions, § 2 (14); FLOYD R. MECHEM, A TREATISE ON THE LAW OF PUBLIC OFFICERS AND OFFICERS, §§ 4-10 (1890).

52. Throop v. Langdon, 40 Mich. 673, 682 (1879) (U.S.).

53. *See generally* PHIL. CONST. art. XI, § 1; National Land Titles and Deeds Registration Administration v. Civil Service Commission, 221 SCRA 145, 151 (1993).

54. *See generally* Segovia v. Noel, 47 Phil. 543, 547 (1925).

55. Macy v. Heverin, 44 Md. App. 358, 361-62 (1979) (U.S.).

56. Spring v. Constantino, 168 Conn. 563, 568-69 (1975) (U.S.).

57. State ex rel. Eli Lilly and Co. v. Gaertner, 619 S.W.2d 761, 764 (1981) (U.S.).

58. *Id.*

59. *Id.*

60. *Id.*

2. Justices as Public Officers

Lawyers are not considered to be public officers but officers of the court unless performing specific duties falling under the quasi-judicial system of the State.[62] SC Justices, however, by virtue of the manner by which they obtain their titles and the duties and responsibilities that come with it, are public officers. In a simple world, this would mean that they are subject to the same standards and procedures other public officers are. To a certain extent this is true; they must also comply with the requirement to make known their assets and liabilities.[63] They are even subject to a more rigorous selection process than some other public officers. One would think that this also means that they would be subject to even more stringent checks during their incumbency.

Contrary to these kinds of assumptions — even if after amendments to the jurisdiction of the *Sandiganbayan* in Republic Act No. 8249[64] where the SC was not technically removed from its jurisdiction[65] — in order to reconcile this with the prevailing interpretation of the Constitution, "the [SC] must be allowed to administratively deal with these erring personnel of the courts."[66] The *Sandiganbayan* has yet to hear a case against an incumbent justice because the law does not allow for the determination of criminal and civil liability during the justice's tenure. Therefore, the Members of the Court have not been treated as any other public officer.

3. Accountability of Justices

This would not be so much of a problem if the SC did deal with erring justices. The problem is that the Court does not consistently do so. The Court has recognized that its Members are not immune from liability for violations of the Canons of Judicial Ethics[67] or "other supposed

61. *Id.*

62. FLOYD R. MECHMEN, A TREATISE ON THE LAW OF PUBLIC OFFICERS AND OFFICERS, § 39 (1890); Tadlip v. Borres, 474 SCRA 441, 454 (2005).

63. CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, § 8.

64. An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes, Republic Act No. 8249 (1997).

65. *Id.* § 4 (a) (3).

66. Jose P. Tejada Jr., A Critique of the Jurisprudence on the Matter of Supreme Court's Administrative Supervision, at 11 (2002) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

67. Department of Justice, Canons of Judicial Ethics, Administrative Order No. 162 [A.O. No. 162] (Aug. 1, 1946).

misbehavior."[68] Yet, it set impeachment proceedings as a procedural prerequisite for this liability to materialize.[69]

In interviews with sitting SC Justices, it was admitted that circulars and the wisdom of the Chief Justice guide the procedures undertaken to deal with controversies involving one of their own.[70] It is an accepted practice. The integrity of the Judiciary is more often than not left in the hands of the Chief Justice. Yet, the only manner a Member of the Court may be removed against his or her will is through impeachment.

In a paradox ironic for the apex of legal reasoning and logic, sans a successful impeachment, incumbent justices are considered to satisfy the requirements of good behavior, mental fitness, and physical fitness thereby placing that ground for impeachment out of the people's grasp.[71] A justice can therefore sit snuggly in his or her position regardless of performance until the 70th candle on his or her cake is lit.

The focus is set on the judge's immunity from civil suit but phrased in a broad manner as the Doctrine of Judicial Non-Liability.[72] Although it is explained as the inapplicability of Tort Law on official acts of a judge, the label alone deceives the majority of people who choose not to look further into the matter. Therefore, a measure that was created to ensure that judges are protected in order to freely dispense justice without fear of prosecution[73] is often cited as the free pass for Members of the apex Court to act as they will.

4. Checking-up on Justices

There have been attempts to hold justices accountable via other processes but the SC has always been quick to shoot these down in an effort to stay true to the Constitution. When it was suggested that a justice could be subject to disbarment proceedings, the Court explicitly dispelled any such notion stating that:

> [a] public officer who under the Constitution is required to be a Member of the Philippine Bar ... who may be removed from office only by impeachment, cannot be charged with disbarment during [his]

68. In Re: Raul M. Gonzales, 160 SCRA 771, 776 (1988).

69. *Id.* at 777.

70. These Justices granted the Author these interviews on the condition that their names be withheld.

71. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 884 (1996 ed.).

72. J. Lucas P. Bersamin, *Doctrine of Judicial Non-Liability*, COURT OF APPEALS J., Feb.-Apr. 2009, at 5.

73. *Id.* (citing Scott v. Stansfield, 3 L.R. Ex. 220 (1868) (U.S.)).

> incumbency. ... [He cannot even be] charged criminally before the *Sandiganbayan* or any other court with any offense which carries with it the penalty of removal from office, or any penalty service of which would amount to removal from office. ... Should the tenure of the [SC] justice be thus terminated by impeachment, he may then be held to answer either criminally or administratively.[74]

Judicial Independence was used as the rationale behind such a rule,[75] but as tackled in this Note, Judicial Independence is not necessarily threatened by holding justices liable even without impeachment proceedings.

Previous works have attempted to lump matters involving SC Justices with matters of justices of the Court of Appeals, *Sandiganbayan*, judges of lower courts, etc.[76] It has even been suggested that matters must first be referred to the Office of the Court Administrator (OCA). But the cases cited simply impress upon the public the exclusivity of the Court's jurisdiction over administrative matters. They do not elucidate the proper process when an administrative matter involves an impeachable officer like an SC Justice. The cases also, however, found that cases involving a violation of the Code of Judicial Conduct and pertinent SC Circulars are administrative matters.[77] Any crime or felony would necessarily be a violation of The New Code of Judicial Conduct for the Philippine Judiciary thereby eliminating any possibility of resolving the matters through any other body but the SC.[78]

In a review of cases involving individuals checking up on SC Justices and their performances, it was found that the current system in the SC is one that promotes silence.[79] It punishes those who dare criticize its Members and dismisses any efforts to bring justices to justice. It is harshest upon anyone who dares disturb its pristine façade claiming the necessity for independence but refuses to exhibit the integrity this independence is intended to preserve.

It is a mystery to the Author how the Dangerous Tendency Test or the Balancing of Interest Test was used to establish that public order would be disturbed if accountability was enforced and the freedom of expression exercised or that a lawyer's right to criticize the judiciary is of less weight

74. *In Re: Gonzales*, 160 SCRA at 774 & 776-77.

75. *Id.* at 777.

76. *See* Tejada Jr., *supra* note 66, at 33 (citing Maceda v. Vasquez, 221 SCRA 464 (1993); Dolaslas v. Office of the Ombudsman-Mindanao, 265 SCRA 819 (1996); Caoibes, Jr. v. Ombudsman, 361 SCRA 395 (2001)).

77. *Dolaslas*, 265 SCRA at 822.

78. *See* Tejada Jr., *supra* note 66, at 40.

79. Martin C. Subido, Immunity from Criticism: the Ultimate Perk for Supreme Court Justices, at 78 (2001) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

than his or her duty to maintain the integrity of the judiciary — what of the Court's duty to do so?[80] How does questioning the acts of the Judiciary affect its integrity if it truly did no wrong? The strength of the Court's integrity should lie with the strength of its performance, not with the weakness of its opponents' claims.

III. TRACING GLOBAL TRENDS IN JUDICIAL ETHICS

Throughout this Part the word "Judge" should be taken to include those officials who are of the same rank as those who would carry the title "Justice" in the Philippines. International Law has broadly defined "Judge" to mean "any person exercising judicial power, however designated."[81]

A. International Law

Contrary to popular belief, it is not unheard of to sanction incumbent SC Justices and uphold the standard of Judicial Responsibility. International Law and laws of other states around the world are replete with instruments setting the framework for accountability in the apex of the Judiciary. Abuse of power cuts across all borders and cultures and has bound together great minds to sew together a fabric of Judicial Independence and Judicial Accountability through which their co-existence has been proven possible. And though jurisprudence from countries like the U.S. are not controlling, they are persuasive in the Philippines. Other states are much older than the Philippines and it would be wise to take whatever is possible from the mistakes of their past so as not to repeat them in the Philippines' future. What may be gleaned from the experiences of other states is that the impeachability of an officer does not hinder the administration of justice in all levels including the topmost — it is the brittle grasp of those in power that diminishes the strength of the gavel.

1. Generally

At its earliest stages, Judicial Independence was referred to as the concept of an "independent and impartial tribunal."[82] Various fundamental instruments of international human rights alluded to it but never truly dissected the idea. The Universal Declaration of Human Rights included it as one of the

80. *Id.* at 66.

81. Judicial Group on Strengthening Judicial Integrity, Round Table Meeting of Chief Justices, Peace Palace, Hague, Nov. 25-26, 2002, *Bangalore Principles of Judicial Conduct*, Definitions.

82. Francois-Xavier Bangamwabo, the right to an independent and impartial tribunal: A comparative study of the Namibian judiciary and international judges 245, *available at* http://www.kas.de/upload/auslandshomepages/namibia/Independence_Judiciary/bangamwabo.pdf (last accessed Nov. 15, 2011).

inviolable rights of a human being.[83] The International Covenant on Civil and Political Rights[84] and the European Convention on Human Rights and Fundamental Freedoms basically said the same thing.[85]

The manner of appointment of a tribunal's members, their terms of office, the existence of guarantees against outside pressures, and the appearance of independence have all been used as factors when the European Court of Human Rights weighs the validity of a tribunal.[86]

2. International Commission of Jurists: Syracuse Draft Principles

The international movement to develop the concept of Judicial Independence, as this Note has come to use it, began with the United Nations (UN) Draft of the Principles of Independence of the Judiciary (Syracuse Principles).[87] And one of the very first bones of contention was the composition of a judicial disciplining board. The stature of judges often commands reverence. With this reverence comes a culture of impunity and yet there were still those who believed that non-judges should have a place in this body. The sanctions contemplated at this point also varied in that it ran the gamut from simple censure or reprimand to removal. At this early stage it was even suggested that when the act of a judge did not merit removal, then the Chief Justice should privately institute other disciplinary procedures.[88]

3. Tokyo Principles on the Independence of the Judiciary

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83. Universal Declaration of Human Rights, G.A. Res. 217A, art. 10 (Vol. III), UN Doc. A/810, at 71 (Dec. 10, 1948).

84. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 UNT.S. 171.

85. European Convention on Human Rights and Fundamental Freedoms, art. 6 (1), 33 I.L.M. 943 (1994).

86. Bryan v. United Kingdom, 21 E.H.R.R. 342, 358, ¶ 37 (1995) (U.K.). *See also* Professor Dr. Jutta Limbach (Chair), Professor Dr. Pedro Cruz Villalón, Mr. Roger Errera, the Rt. Hon. Lord Lester of Herne Hill QC, Professor Dr. Tamara Morschtschakowa, the Rt. Hon. Lord Justice Sedley, & Professor Dr. Andrzej Zoll, Judicial Independence: Law and Practice of Appointments to the European Court of Human Rights, *available at* http://www.lhr.md/images/appointment.pdf (last accessed Nov. 15, 2011).

87. International Commission of Jurists, Draft Principles on the Independence of the Judiciary, Syracuse, Sicily, May 25-29, 1981, *Syracuse Principles*, arts. 13-16.

88. *See* SHIMON SHETREET & JULES DESCHÊNES, JUDICIAL INDEPENDENCE: THE CONTEMPORARY DEBATE 414-40 (1985); LAWASIA: the Law Association for Asia and the Western Pacific, Tokyo, July 17-18, 1982, *Tokyo Principles on the Independence of the Judiciary in the Lawasia Region.*

The Lawasia Human Rights Standing Committee met in Tokyo, Japan to discuss the Asian application of the concept of Judicial Independence a year later.[89] The meeting was attended by a number of chief justices, judges, lawyers, and professors.[90] This particular instrument is of note for its recognition of the various methods employed by the Executive to intimidate and control the Judiciary.[91]

4. Minimum Standards of Judicial Independence

The International Bar Association Project on Minimum Standards of Judicial Independence was initiated in 1980 but only completed in 1982.[92] Professor Shimon Shetreet of the Hebrew University of Jerusalem was appointed General *Rapporteur* of the Project, and Chief Justice Leonard King of South Australia was appointed General Coordinator.[93] Reports from leading jurists from 30 countries were submitted and considered in its drafting.[94] Several working conferences were held in Lisbon (1981), in Jerusalem (March 1982), and in New Delhi (October 1982), and were attended by judges, lawyers, and scholars from all around the world.[95] It was in New Delhi that the Minimum Standards were finally adopted.[96]

The general rule that proceedings against a judge be held *in camera* was set in this instrument.[97] Public hearings were made available only upon request of the judge.[98] But what stands out is the explicit option to publish all judgments.[99] Also, the proviso allowed for the removal of a judge in cases of the commission of criminal acts, gross or repeated neglect, physical or mental incapacity, or when the judge has shown to be unfit to hold the position.[100]

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89. *See* SHETREET & DESCHENES, *supra* note 88, at 441.

90. *Id.*

91. *Tokyo Principles on the Independence of the Judiciary in the Lawasia Region*, *supra* note 88, ¶ 12.

92. *See* SHETREET & DESCHENES, *supra* note 88, at 382-413; International Bar Association, 19th Biennial Conference, New Delhi, India, Oct. 1982, *Minimum Standards of Judicial Independence*.

93. *See* SHETREET & DESCHENES, *supra* note 88, at 382-413.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Minimum Standards of Judicial Independence*, *supra* note 92, ¶ 28.

98. *Id.*

99. *Id.*

100. *Id.* ¶ 30.

In practice, only judgments affecting lower courts are freely published. And though removal may include the enumerated grounds for lower courts, the instances enumerated in the constitution are usually strictly construed to preserve the justice's security of tenure.

5. World Conference on the Independence of Judiciary

As concepts of discipline evolved, jurists also began to propose provisions that would counteract any ill-effects. Judges were protected with assurances of the opportunity to be heard at length and job security that went beyond the tenure in their existing positions. Though the earlier mentioned concepts regarding the discipline and removal of judges were, for the most part, repeated in this World Conference, there were a few innovations. Here, a judge is guaranteed a *full* hearing and judges are assured of a job even if the courts are abolished.[101]

6. UN Basic Principles on Judicial Independence

A consensus was reached in 1985 to adopt the Basic Principles on the Independence of the Judiciary (BPIJ).[102] Subsequently, the UN General Assembly endorsed the BPIJ to all governments — even encouraging them to respect them within their own legislative practices.[103]

The BPIJ outlined seven basic principles: (1) states should guarantee independence through their constitutions and laws; (2) judiciaries should base their decisions on facts without any restrictions or improper influences; (3) judiciaries have exclusive jurisdiction over all matters of a judicial nature; (4) judicial processes shall not be interfered with but shall be subject to judicial review; (5) everyone shall have the right to be tried by ordinary courts; (6) judiciaries must ensure fair judicial proceedings and secure the rights of all parties; and (7) states must provide judiciaries with all the resources necessary to carry out these principles.[104] From there the BPIJ goes on to enumerate various principles common to many judiciaries, such as the freedom of expression and association, keeping in mind the place of a judge in society,[105] the qualifications of a judge including integrity and ability and

101. First World Conference on the Independence of Judiciary, Montreal, June 10, 1983, *Universal Declaration on the Independence of Justice.*

102. Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, Aug. 26-Sep. 6, 1985, *Basic Principles on the Independence of the Judiciary*, A/CONF.121/22/Rev.1, at 59 (1985).

103. G.A. Res. 40/146, UN GAOR (Dec. 13, 1985); G.A. Res. 40/32, UN GAOR (Nov. 29, 1985).

104. *Basic Principles on the Independence of the Judiciary*, *supra* note 102, ¶¶ 1-7.

105. *Id.* ¶¶ 8 & 9.

their independent manner of selection,[106] the security of tenure,[107] the secrecy required of the profession,[108] and the immunity from civil suit that must come with it — adding however the reservation for any disciplinary procedures established by the State.[109]

Most importantly, the BPIJ outlined principles for the discipline of judges. The rights of the judges accused, though protected, did not block or hinder the possibility of holding them accountable for any misdeed — what was set forth was that they too must be afforded due process. The established standards of judicial conduct are also presented as the basis for any disciplinary, suspension, or removal proceedings.[110]

To give teeth to these Resolutions, the UN established a procedure that would require an update every five years beginning 1988 to the UN Secretary General of the progress and obstacles met in the effort to integrate these principles on a national level.[111] The Lusaka Seminar simply reiterated the basic tenets of Judicial Independence as they had been phrased the decade before and explicitly directed all states to apply all the previously agreed upon Principles on a national level.[112]

7. Singhvi Declaration on Independence of Judiciary

Dr. Laxmi Mall Singhvi was a well-respected jurist who was tasked with the preparation of a report on the independence and impartiality of the Judiciary, jurors, and assessors, and the independence of lawyers. As Special *Rapporteur*, he submitted incremental reports for three years before presenting his final work at the 38th session of the Sub-Commission. After it was circulated, revisions were made and submitted in the 39th session.[113]

106. *Id.* ¶ 10.

107. *Id.* ¶¶ 11-14.

108. *Id.* ¶ 15.

109. *Id.* ¶ 16.

110. *Basic Principles on the Independence of the Judiciary*, *supra* note 102, ¶¶ 17-20.

111. UN Econ. & Soc. Council, *Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary*, Procedure 7, G.A. Res 1989/60 (May 24, 1989); G.A. Res 44/162, UN GAOR (Dec. 15, 1989).

112. Centre for Independence of Judges and Lawyers and the International Commission of Jurists, Lusaka, Nov. 10-14, 1986, *Seminar on the Independence of Judges and Lawyers*, ¶ 45.

113. UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, *UN Draft Declaration on the Independence of Justice, Singhvi Declaration*, UN Doc. E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1 (1985).

It states that charges or complaints against judges have to be processed and during this process, the judge must be given a fair hearing.[114] Here, the confidentiality of the initial proceedings is the accused-judge's prerogative.[115] The acts that may be used as grounds on which the judges may be charged are limited to those that affect their official duties.[116] And whether these acts are substantial enough to merit action is gauged upon the "established standards of judicial conduct."[117] Finally, the Declaration suggests that when the decision on the matter is not by the highest tribunal of the land then such should be open to review.[118]

After the draft was appreciated, it was endorsed to all governments for their compliance.[119] Finally, the Draft Universal Declaration on the Independence of Justice (UDIJ) was born.[120]

The first few provisions of the UDIJ dealt with standard matters.[121] The subsequent paragraphs provide support for this Note's proposal for the SC to establish an in-house mechanism for dealing with misdemeanors of its sitting justices. The UDIJ codifies the right of collective action for the purpose of securing their independence;[122] this is precisely what a mechanism for accountability would do. Not only is it in line with the global trend of holding even the highest members of the Judiciary accountable for their actions but it also does so while respecting Judicial Independence. As usual, UDIJ provides for the security of a judge's tenure;[123] however, it also opens the floor for discussion of a body other than the Executive or Legislative sanctioning members of the Judiciary.[124]

8. Beijing Statement of Principles of Independence of the Judiciary

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114. *Id.* ¶ 28.

115. *Id.* ¶ 26 (a).

116. *Id.* ¶ 30.

117. *Id.* ¶ 27. In 2002, the international community came together and finally established these standards in the Bangalore Principles as discussed above.

118. *Id.* ¶¶ 17-20.

119. *See* UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, G.A. Res. 1988/25; UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, G.A. Res. 1989/32.

120. UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Draft Universal Declaration on the Independence of Justice*, UN Doc. E/CN.4/Sub.2/1985/18/Add.5/Rev.1 (1988).

121. *Id.* ¶¶ 2-6.

122. *Id.* ¶ 7.

123. *Id.* ¶¶ 16-19.

124. *Id.* ¶¶ 26-31.

The Beijing Statement recognized the earlier efforts of the United Nations in securing Judicial Independence in its rawest form.[125] The four popular international instruments for Judicial Independence were taken as a starting point for its assertions and experiences from these conferences were used to determine its direction. The resulting document stated that insulation from improper externalities and exclusivity of jurisdiction over judiciable matters were determined as essential to Judicial Independence.[126]

Judicial Independence was framed as a vital element in a free society governed by the Rule of Law.[127] Even with this emphasis on independence, the support and respect of the other branches of government in judicial reforms were seen as essential to the successful delivery of services.[128] In order for these reforms to be born, the Judiciary must be given the authority to take all the necessary steps, provided with resources,[129] and only restrained by the limits of the law.[130] This then leaves the Judiciary with no excuse for any lack of mechanisms for accountability. Unlike in the policy historically observed in the Philippines, the mere fact that the subject of an inquiry is a justice of the SC is not permitted to influence the proceedings. Although their security of tenure[131] may be repeatedly guarded, such security is not allowed to mutate into the monstrosity of impunity. When removal *via* parliamentary procedures is not available, the Judiciary is given the opportunity to establish its own procedures using established standards, such as those set out in these international instruments, as its yardstick.[132]

When the Beijing Statement was first adopted in August 1997, 20 Chief Justices placed their mark on it. After seven more conferences refining its principles, 32 Chief Justices throughout the Asia Pacific region approved of the principles in a culminating event in Manila in 1997.[133] So far as principles relating to Judicial Independence, tenure, and disciplinary action, they are substantially the same as those passed before (referred to above).

9. Latimer House Principles and Guidelines for the Commonwealth

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125. LAWASIA: the Law Association for Asia and the Pacific, Manila, Aug. 28, 1997, *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region*, pmbl.

126. *Id.* ¶ 3.

127. *Id.* ¶ 4.

128. *Id.* ¶ 5.

129. *Id.* ¶ 41.

130. *Id.* ¶ 6.

131. *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region*, *supra* note 125, ¶ 18.

132. *Id.* ¶ 24.

133. *Id.* intro.

As Judicial Accountability grew in popularity, the need to safeguard the concept from abuse also arose. Bodies began to outline the procedural rights of judges as well as the allowable grounds for removal and discipline. The Latimer House Principles took this a step further by limiting the allowable sanctions to private admonitions by the Chief Judge in instances not calling for removal.[134]

10. Bangalore Principles of Judicial Conduct

The Bangalore Principles do not deal with the procedure for discipline;[135] it is the instrument adopted officially by the SC of the Philippines nearly in its entirety. The Principles established standards for ethical judicial conduct. As a framework for the regulation of conduct, it illuminated the general public's understanding of a very domineering branch of government. It takes on as a basic assumption that "judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge."[136]

The Principles tackle impartiality, integrity, propriety, equality, competence, and diligence.[137] It leaves the creation of mechanisms to implement these principles up to the various states adopting them.[138] The inception of these mechanisms are driven by this international mandate and facilitated by the Court's official adoption of these rules through Administrative Matter Number 03-05-01-SC on the New Code of Judicial Conduct for the Philippine Judiciary.[139]

B. Comparative Law

In the U.K., the U.S., Canada, and Germany, the bodies charged with Judicial Accountability have been empowered "to impose a variety of 'minor measures' such as (i) issuing advisories, (ii) request for retirement, (iii)

134. Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Magistrates' and Judges' Association and Commonwealth Parliamentary Association, Latimer House, U.K., June 15-19, 1998, *Parliamentary Supremacy, Judicial Independence … Towards a Commonwealth Model*, ¶ V (1) (a).

135. *Bangalore Principles*, *supra* note 81, pmbl.

136. *Id.*

137. *Id.*

138. *Id.* Implementation.

139. Supreme Court, Re: New Code of Judicial Conduct for the Philippine Judiciary, SC Administrative Matter No. 03-05-01-SC [A.M. No. 03-05-01-SC] (June 6, 2006).

stoppage of assignment of judicial work for a limited time[,] (iv) warning, [and] (v) censure or admonition (public or private)."[140]

Table 3.1 Different Mechanisms of Accountability

	INVESTIGATIVE BODY	QUALIFICATIONS	AUTHORITY TO REMOVE
Australia	Judicial Commission (Conduct Division)	Judges	Parliamentary
Canada	Two oversight commission members and appointee of Justice Minister	Judges	Legislature
New Zealand	Judicial Conduct Panel	Lawyers	Governor-General
Sweden	Supreme Court	Judges	Supreme Court
U.K. (England and Wales)	Judicial Appointments Commission & Ombudsmen	Lay person with no legal experience	Legislature
U.S.	Judicial Council	Judges	Judiciary and Legislature
Hong Kong	Tribunal	Judges	Chief Executive
India	Inquiry Committee	Judges and eminent jurist	Legislature
Singapore	Tribunal	Judges (retired included)	President

C. Trends of the West

1. Australia and the Two Methods

Much like in the Philippines, the process of impeachment protects SC Justices in Australia. Only the Governor in Council on address from both Houses of the Parliament may remove federal judicial officers.[141] This must be done in the same session upon prayer for removal on the ground of proven misbehavior or incapacity.[142] It is unclear whether such would be

140. Law Commission of India, *supra* note 24, at 6-7.

141. AUSTL. CONST. § 72 (ii).

142. AUSTL. CONST. § 72 (ii).

subject to judicial review but previous debates on the provision indicate an intention to bar review by the High Court.[143] It was, however, discussed during such debates that the High Court could review a removal and quash it where the evidence did not disclose matters which could amount to misbehavior. And though not binding, the Governor General would most likely act in accordance with the address and its recommendations upon ministerial advice.

In the past, when the conduct of a High Court Justice, Lionel K. Murphy, was examined, the statutory Parliamentary Commission of Inquiry and two Senate Committees were tasked with the investigations.[144] This, however, was seen as a matter left up to the House's discretion and the final determination of the justice's guilt had to be left up to Parliament.

The in-house mechanism of the SC only comes in because of the requirement that the charges be proven. An Inquiry Committee or Select Committee is then delegated with the function of finding the facts of *prima facie* misbehavior.[145] The Houses are then given the option to adopt the proceeding followed by the courts or adopt an inquisitorial mode.[146] If there is no need to conduct an investigation, the House is free to base its decision on the evidence available.[147]

Between Federal Judges and State Judges, the method for their removal is different: "the removal on a parliamentary address provision ... is the only method of removal of federal judges. But in Queensland, Western Australia, South Australia, and Victoria, judges can also be removed under the *quamdiu se bene gesserint* method."[148] The restrictive constitutional grounds for removal, however, do not lay any hold over the States other than New South Wales.[149]

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143. PARLIAMENT OF AUSTRALIA, ODGERS' AUSTRALIAN SENATE PRACTICE 514 (12th ed. 2008).

144. Parliamentary Commission of Inquiry Bill 1986, Bills Digest No. 98 (Aug. 19, 1986) (Austl.), *available at* http://www.aph.gov.au/library/pubs/bd/1986/1986bd098.pdf (last accessed Nov. 15, 2011).

145. Law Commission of India, *supra* note 24, at 185-86.

146. *Id.* at 186.

147. *Id.*

148. Patrick Harding Lane, Constitutional Aspects of Judicial Independence, *available at* http://www.judcom.nsw.gov.au/publications/education-monographs-1/monograph1/fblane.htm (last accessed Nov. 15, 2011). "*Quamdiu se bene gesserint*" is defined as "As long as he shall behave himself well; during good behavior ... during the pleasure of the grantor." BLACK'S LAW DICTIONARY WITH PRONUNCIATIONS 1241 (6th ed. 1991).

149. Lane, *supra* note 148.

The Judicial Officers Act 1986[150] is explicitly applicable to SC Justices.[151] It governs the actions when the head of that particular jurisdiction is of the opinion that a justice may have an impairment that affects his or her performance of judicial or official duties.[152] The complaint should not relate to "(a) a matter arising before the appointment of the judicial officer to the judicial office then held, or (b) a matter arising before the commencement of this Act, unless it appears ... that the matter, if substantiated, could justify parliamentary consideration of the removal of the officer from office."[153] The complainant must identify himself or herself.[154]

The Judicial Commission must conduct a preliminary examination before referring the matter to the Conduct Division.[155] If it is frivolous, vexatious, or trivial; or is too remote in point of time; or if there is another remedy or redress; or where it relates to the exercise of a judicial or other function that is or was subject to adequate appeal or review rights; or where the person against whom the complaint is made is no longer a judicial officer; or where generally the complaint is not justified, the Commission is empowered to summarily dismiss it.[156]

If it is not dismissed, then it will be referred to the Conduct Division.[157] The Division will then investigate the allegations in the complaints under the strict rule of confidentiality.[158] However, the hearings, if necessary, may be done in public when the complaint is serious enough.[159] Any person who makes a publication in contravention of the direction of the Division will be guilty of an offense punishable by fine, imprisonment up to one year, or both.[160] Even the members or officers of the Commission or the Conduct Division are prohibited from disclosing information except (a) where

150. An Act Relating to the Tenure of Judicial Office; To Constitute A Judicial Commission of New South Wales; To Confer on the Commission Functions Relating to Sentencing Consistency, Judicial Education and Certain Other Matters; To Provide for the Examination of Complaints Against Judges and Other Judicial Officers; to Provide for their Suspension, Removal and Retirement in Certain Circumstances; and for Other Purposes [Judicial Officers Act 1986], N.S.W. Act No. 100 (2009) (Austl.).

151. *Id.* § 3 (1) (a).

152. *Id.* § 15.

153. *Id.* § 15 (3).

154. *Id.* § 17.

155. *Id.* § 18.

156. Judicial Officers Act 1986, §§ 20 & 38.

157. *Id.* § 21.

158. *Id.* § 23.

159. *Id.* § 24.

160. *Id.* § 36.

consent is given by the source of the information; (b) in connection with the administration or execution of the Act (except Sections 8 and 9); (c) for purposes of legal proceedings arising out of the Act or any report; or (d) for any other lawful excuse.[161]

At the hearing, the justice may even be represented by a legal practitioner.[162] Evidence on oath or affirmation may even be received, giving the justice the very same rights any other individual faced with charges would have. This is a prime example of how an in-house mechanism specifically provided for by written statutes or rules protects both the public and the institution of the Court as represented by the justice.

The Division may dismiss the complaint or proceed to submit its recommendation to the Minister for the proper sanctions, such as an endorsement of the complaint for the parliamentary consideration of removal.[163] This report should narrate the Division's findings of fact and the opinion.[164] At all times, the justice is given a copy of all the reports.[165]

Upon request, the Judicial Commission may investigate the matter.[166] If the complaint is substantiated and found to be proper, then the proper action is undertaken. If the matter "could justify parliamentary consideration of the removal of a judicial officer from office;" or a judicial officer is "charged in New South Wales with an offense that is punishable by imprisonment for 12 months or upwards;" or "charged elsewhere than in New South Wales with an offense that if committed in New South Wales would be an offense so punishable;" or "convicted in New South Wales or elsewhere of such an offense," the appropriate authority may suspend the officer.[167]

The justice, however, may not be removed from office without a report of the Conduct Division to the Governor under the Act.[168] The report must clearly indicate "the Division's opinion that the matters referred to in the report could justify parliamentary consideration of the removal of the judicial officer on the ground of proved misbehavior or incapacity."[169]

During the suspension, the justice is prohibited from exercising any judicial functions or those connected with the judicial office, except to

161. *Id.* § 37.

162. Judicial Officers Act 1986, § 24.

163. *Id.* § 29.

164. *Id.*

165. *Id.*

166. *Id.* § 14.

167. *Id.* § 40.

168. Judicial Officers Act 1986, § 41.

169. *Id.*

"exercise functions for the purpose of completing any specified matter or class of matters."[170]

Although removal must still be done via address before the Legislature,[171] the fact remains that other mechanisms are in place to ensure that administrative supervision is strictly carried out. The body that carries out any disciplinary action against an erring SC Justice consists of three judicial officers, but one may be a retired judicial officer.[172]

Victoria similarly only allows the removal of justices upon address of its Legislature.[173] This cannot be changed by any other mode but through legislation.[174] Much like the Philippines, it was then presented with a constitutional roadblock to accountability. This, however, did not prevent them from putting into place some sort of mechanism to hold even their highest court officials accountable for their actions.[175] Amendments to their constitution still held intact the security of a Member of the SC's security of tenure.[176]

The constitution created a Judicial Panel consisting of seven persons (retired members of the Federal Court of Australia, Family Court of Australia, Family Court of Western Australia, Supreme Court of a State other than Victoria, Supreme Court of Australian Capital Territory or the Northern Territory) appointed by the Attorney General to monitor the accountability of judges.[177] If the Attorney General believes that there is reason to look into the allegations of misbehavior or incapacity that would warrant removal, an Investigation Committee is created.[178] This Committee would consist of three of the members of the Judicial Panel recommended by the most senior of the members of the Panel. This Committee then must reach a conclusion as to the fitness of the justice for the position.[179]

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170. *Id.* § 42.

171. An Act to Consolidate the Acts Relating to the Constitution [Constitution Act 1902], N.S.W. Act 1902 No. 32, § 53 (1995) (Austl.).

172. Judicial Officers Act 1986, § 22.

173. Constitution Act 1975, § 77 (1) & 77 (4) (a) (2005) (Austl.).

174. *Id.* § 18 (2).

175. Courts Legislation (Judicial Conduct) Act 2005, Act No. 16/2005, § 87AAA (2005) (Austl.).

176. *Id.* § 87AAB.

177. *Id.* § 87AAC.

178. *Id.* § 87AAD.

179. *Id.* § 87AAE.

In order to carry out its functions, the Committee is given the powers of a regular court.[180] The problem is that the accused in this case is not assured of the right to counsel and the Committee is not bound by the rules on evidence.[181]

A report on the conduct, findings, and conclusions of the Committee is then submitted to the Attorney General.[182] The report must state conclusions as to "whether facts exist that could amount to proved misbehavior or incapacity such as to warrant removal of the office holder."[183] The Attorney General may, if he or she considers it appropriate to do so, provide each House of Parliament with a copy of the report.[184]

Queensland similarly provides that the term of any present/future judge of the said SC shall continue in force during his or her good behavior and is only removed *via* address of the Parliamentary Assembly.[185] Removal through the *quamdiu se bene gesserint* method is also available.[186]

In the past, there was a Parliamentary Commission of Inquiry, composed of three retired SC Judges.[187] Though the Commission found no misconduct in the accused judge's carrying out of his duties of office as a judge, they did find that he had indiscretions relating to defamation and taxes.[188] The State Parliamentary Assembly took these as sufficient bases for its address to the Governor.[189] In June 1989, the Governor removed him on account of the address.[190]

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180. *Id.* § 87AAF.

181. Courts Legislation (Judicial Conduct) Act 2005, § 87AAG.

182. *Id.* § 87AAH.

183. *Id.*

184. *Id.*

185. Law Commission of India, *supra* note 24, at 206 (citing An Act to Make Better Provision for the Trial of Civil and Criminal Causes, and to Consolidate Certain Provisions About the Supreme Court, and for Other Purposes, Supreme Court Act 1995 (Queensl.), § 195 (Austl.)).

186. Law Commission of India, *supra* note 24, at 206 (citing An Act to Consolidate the Laws Relating to the Constitution of the State of Queensland, Constitution Act 1867 (Queensl.), § 15 (Austl.)).

187. Law Commission of India, *supra* note 24, at 206-7 (citing McLawley v. Vasta Judge of Queensland Supreme Court (Austl.))

188. Law Commission of India, *supra* note 24, at 207.

189. *Id.*

190. *Id.*

Western Australia, South Australia, and Tasmania all provide for the removal by address as well.[191]

2. Canada and the Judges Act

Canada's SC Judges are protected much like the Philippines' SC Justices. Their constitution ensures their security of tenure and only permits the removal of an erring judge by the Governor General upon address of the Senate and House of Commons.[192] Though this process has never actually been used to remove a judge of the SC, this is not to say that none of them were ever in breach of their Code of Conduct. Rather, the judges typically preempted any formal action against them through early retirement or resignation.[193] The Judicial Council is, however, given the option of expressing its disappointment in a judge's conduct — thereby sanctioning any misconduct insufficient to warrant removal.[194] The greatest safeguard adopted by Canada is the requirement of naming the accused.[195] This ensures that the process is not utilized as a tool to garner media attention and disrupt judicial processes.

The Judicial Council, as they are often called in other states, is the source of the panel, which tackles matters of discipline. The panel may consist of three or five members including a Chairperson.[196] The composition does not necessarily include Puisne Judges[197] but may include

191. *See* An Act to Consolidate and Amend Certain Acts Relating to the Supreme Court [Supreme Court Act 1935], Act No. 36 of 1935, § 9 (1) (1935) (Austl.); An Act to Confer a Constitution on Western Australia, and to Grant a Civil List to Her Majesty [Constitution Act of 1889], W. Austl. Repr. Acts, §§ 54-55 (Austl.); An Act to Provide for the Constitution of the State; and for Other Purposes [Constitution Act 1934], S. Austl. Stat., §§ 74-77 (Austl.); An Act to Amend the Supreme Court Act 1831, and to Make Provision for the Appointment of Additional Judges of the Supreme Court [Supreme Court Act 1887], Act No. 36 of 1887, § 5 (Austl.); An Act for Better Securing the Independence of the Judges of the Supreme Court [Supreme Court (Judges Independence Act) Act 1857], Act No. 7 of 1857 (1857) (Austl.).

192. Law Commission of India, *supra* note 24, at 169 (citing CANADA CONST. § 99 (1) (1867); An Act Respecting the Supreme Court of Canada [Supreme Court Act], R.S.C. 1985, c. S-26, § 9 (1) (Can.)).

193. Law Commission of India, *supra* note 24, at 169.

194. *Id.*

195. *Id.*

196. Law Commission of India, *supra* note 24, at 181 (citing Canadian Judicial Council, Complaints Procedure, w.e.f. 1.1.2003, § 9 (Can.)).

197. Junior Justices of the Supreme Court (in other words, any other Justice other than the Heads of the Divisions or the Chief Justice). *See* Supreme Court of

one or two of them.[198] These justices are "chosen from among a roster of judges established for this purpose, provided that the Chairperson and a majority of a panel shall be members of the Council."[199] The panel cannot include any judges from courts to which the subject judge is also a member.[200]

3. New Zealand and the Judicial Conduct Panel

New Zealand judges are also protected like in all the other states previously mentioned.[201] A mechanism to investigate complaints against even judges of the SC that observes the concept of Judicial Independence was created in order to enhance public confidence in the Judiciary as well as to protect its integrity and impartiality.[202]

The mechanism in place is known as the Judicial Conduct Panel, headed by a Commissioner appointed by the Attorney General in consultation with the Chief Justice of the SC.[203] The Commissioner is at the frontline of the battle for Judicial Accountability in that a Judicial Panel is only created if he or she recommends that the matter be further investigated.[204] The matters before the Commissioner are related to the "conduct of a Judge regardless of whether the subject matter of the complaint arises in the exercise of the Judge's judicial duties or otherwise."[205]

Written complaints by any person or official identifying both the complainant and the accused as well as the specific acts complained of are first acknowledged by the Commissioner and dealt with without delay.[206] The Judge concerned is furnished with a copy of the complaint, then — when a member of the SC is involved — the Chief Justice is consulted. This is to afford the Chief Justice the opportunity to deal with the matter himself or to offer any reason for the proceedings to end there. If the Commissioner is not satisfied with the consultation then a preliminary examination is

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Canada, About the Judges, *available at* http://www.scc-csc.gc.ca/court-cour/ju/about-apropos-eng.asp (last accessed Nov. 15, 2011).

198. Law Commission of India, *supra* note 24, at 181 (citing Canadian Judicial Council, Complaints Procedure, w.e.f. 1.1.2003, § 9 (Can.)).

199. *Id.*

200. Law Commission of India, *supra* note 24, at 181.

201. *Id.* at 240 (citing NEW ZEALAND CONST. part 4, art. 23).

202. Judicial Conduct Commissioner and Judicial Panel Act 2004, 2004 S.N.Z. No. 38, §§ 4 & 5 (2004) (N.Z.).

203. *Id.* §§ 7 & 21 (2).

204. *Id.* § 8.

205. *Id.* § 11 (1).

206. *Id.* §§ 12-14.

conducted. It is at this juncture that the accused may first be given an opportunity to be heard.[207] It is from this examination that an opinion must be made on whether the complaint warrants removal or should simply be dismissed. This is followed by other appropriate steps depending on the outcome of the investigation such as the gathering of documents from the various judicial bodies or recommending the appointment of a Judicial Conduct Panel.[208]

Judicial Panels are not permanent and are only created for the purposes of investigating a particular case.[209] The Panel inquires into the matter by conducting a hearing and reports any findings to the Attorney General.[210] The Panel is given the same powers as Commissions of Inquiry to ensure that no toothless tigers are created and that efforts at investigations are not rendered futile.[211]

During these hearings, the accused may be heard and represented by counsel.[212] The reasonable costs of representation are borne by the Office of the Commissioner.[213] The general rule is that these hearings are public unless in the interest of justice it must be heard in private.[214]

Insufficient, frivolous, vexatious, bad faith, or trivial complaints are supposed to be dismissed — so are complaints regarding judicial decisions.[215] The complainant must be informed of any decision to dismiss the complaint as well as the grounds of such an action.[216] However, publication of such or any other report or account of the proceedings may be prohibited when it is in the interest of any person or the public that this be so. Any person, however, may move to revoke these orders, upon application, at any time.[217]

4. Sweden and its Mighty Supreme Court

Sweden presents a different case all together. Unlike most of the surveyed countries around the world, the constitution of Sweden entrusts the removal

207. *Id.* § 14-19.

208. Judicial Conduct Commissioner and Judicial Panel Act 2004, § 14-19.

209. *Id.* § 21.

210. *Id.* § 24.

211. *Id.* § 26.

212. *Id.* § 27.

213. *Id.* § 27.

214. Judicial Conduct Commissioner and Judicial Panel Act 2004, § 29.

215. *Id.* § 16.

216. *Id.*

217. *Id.* § 30.

of its judges wholly to the SC.[218] The same provision also allows for lesser sanctions such as suspension from duty or mandatory medical examinations. There is no need to examine any other laws or analogously apply certain provisions of International Law since the fundamental law of that land explicitly places the discipline of members of the SC under the exclusive jurisdiction of the SC.

5. United Kingdom and the Judicial Correspondence Unit

In the U.K., Parliament's power to remove judges of superior courts through Address is "not subject to any statutory limitations."[219] But when the judges' behavior does not constitute a criminal offense and does not particularly pertain to his official duties, then the superior courts, and not Parliament, have jurisdiction. Though in the past Common Law gave the Monarch the authority to suspend judges as a minor sanction, this power was considered to have dissipated with the advent of the Act of Settlement.[220]

Tradition in the U.K. is highly influential in the manner certain matters are dealt with, so the inability of the Monarch to impose minor sanctions upon a SC Judge has not led to the flagrant impunity existing in other territories. In practice, these judges take a leave of absence during the pendency of the matter before the appropriate bodies.[221] This self-imposed sanction is seen as imperative to the maintenance of public trust in court proceedings since it would be unreasonable to expect any person to trust proceedings before a magistrate of dubious character.[222] And if the judge refuses to act in accordance with tradition, then administrative arrangements are made to ensure that no cases be assigned to him or her.[223] The withholding of a caseload, however, does not diminish the judge's powers and he may still carry on with his other duties and resolve other matters placed before him. He retains his title and continues to be remunerated.[224]

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218. SWEDEN CONST. ch. 12, art. 8.

219. Law Commission of India, *supra* note 24, at 144 (citing SHIMON SHETREET, JUDGES ON TRIAL: A STUDY OF THE APPOINTMENT AND ACCOUNTABILITY OF THE ENGLISH JUDICIARY 90–115 (1976)).

220. Law Commission of India, *supra* note 24, at 145 (citing SHETREET, *supra* note 88, at 111).

221. Law Commission of India, *supra* note 24, at 145–46 (citing Judge Kernich K.S. 1825, 13 Parliamentary Debates 1138, art. 1149 (2000)).

222. *Id.*

223. Law Commission of India, *supra* note 24, at 146 (citing SHETREET, *supra* note 88, at 112).

224. Law Commission of India, *supra* note 24, at 146 (citing SHETREET, *supra* note 88, at 113).

In this territory, misbehavior has been considered to include drunk driving, violent offenses, dishonesty, moral turpitude, religious or racial discrimination, and sexual harassment.[225] Since there were recorded complaints of judges falling asleep, making impatient gestures, interrupting excessively, being incompetent, and making comments on a case before the press,[226] the Lord Chancellor eventually created the Judicial Correspondence Unit.

This Unit considers complaints on the "personal conduct" of judges and never on judicial decisions. Personal conduct includes all the matters considered as misbehavior. Complaints are either directly sent to the Unit or passed through a Member of Parliament.[227] The complainant must be willing to face the accused and the subject of the complaint must be relatively recent since the accused is not expected to recall incidents of the far past. Once these requisites are satisfied, a letter is sent to the accused requesting for remarks within 10 days.[228] Depending on the gravity of the accusation, the Lord Chancellor may be immediately apprised of the matter. An investigation is then undertaken and an evaluation is made on the weight of the complaint. All throughout this, the complainant is kept abreast of the developments of the investigation.[229] The heaviest sanction the Lord Chancellor may impose is a public rebuke. The Lord Chief Justice may now issue an advice, a formal warning or reprimand, or even suspend a judge of superior courts.[230]

6. United States and the United States Act of 2002

The U.S. presents us with a different situation. Although it has a system in place for the accountability and liability of SC Justices, this system does not cover the Federal SC.

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225. EDDEY, PENNY & K.J. DARBYSHIRE, ENGLISH LEGAL SYSTEM 289 (7th ed. 2001).

226. RODNEY BRAZIER, CONSTITUTIONAL PRACTICE: THE FOUNDATIONS OF BRITISH GOVERNMENT 289 (3d ed. 1999).

227. Law Commission of India, *supra* note 24, at 150-51.

228. *Id.*

229. *Id.*

230. An Act to Make Provision for Modifying the Office of Lord Chancellor, and to Make Provision Relating to the Functions of That Office; To Establish A Supreme Court of the United Kingdom, And to Abolish the Appellate Jurisdiction of the House of Lords; To Make Provision About the Jurisdiction of the Judicial Committee of the Privy Council and the Judicial Functions of the President of the Council; To Make Other Provision About the Judiciary, Their Appointment and Discipline; and for Connected Purposes [Constitutional Reform Act 2005], part 4, ch. 3 (2005) (U.K.).

Each state in the U.S. has a SC. Since each state has its own set of independent laws, this court is considered to be the highest authority in that territory only. It interprets that state's laws and administers the judiciary and the bar within its geographical jurisdiction. The justices of State SCs are selected for life by various means depending on the state's constitution. They may be elected or selected. In some states, popular elections are held to determine who should fill the post while in others the state legislature[231] is given this privilege. Some states provide for partisan elections[232] while some others do not.[233] The states that have opted for the selection method often leave it up to the governor to make such determinations of merit.[234] There has been an effort to implement a hybrid of these methods — The Missouri Plan.[235] The Judicial Conduct and Disability Act of 1980,[236] however, reins in their tenure through the delineation of behavior that would merit its end.

For federal laws, there is also a Federal SC, which is the highest authority with regard to that. Yet, the Federal SC has authority that extends far beyond the interpretation of federal laws. With this great power comes great security. They may only be removed from office on impeachment for conviction of treason, bribery, or other high crimes and misdemeanors.[237] Of the 15 cases that reached the trial stage in the Senate, 12 involved Federal Judges. But many of these were dismissed since the complaint did not constitute an impeachable offense. The impeachment process was therefore deemed inefficient for keeping the Judiciary in check, and Judicial Councils were created as, among many other things, a mechanism for administrative

231. South Carolina, Virginia.

232. Alabama, Illinois, Louisiana, New Mexico, Pennsylvania, Texas, and West Virginia.

233. Arkansas, Georgia, Idaho, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nevada, North Carolina, North Dakota, Ohio, Oregon, South Dakota, Washington, and Wisconsin.

234. Delaware, Hawaii, Maine, Maryland, New Jersey, New York, Massachusetts, and New Hampshire.

235. Alaska, Arizona, California, Colorado, Connecticut, Indiana, Iowa, Kansas, Missouri, Nebraska, Oklahoma, Utah, Wyoming, Florida (the Florida Judicial Nominating Commissions), Rhode Island (the Rhode Island Judicial Nominating Commission — justices serve for life term after nomination by governor and approval by state legislature), Tennessee (the Tennessee Plan), and Vermont (retention vote every 6 years by a majority vote of state legislature instead of electorate).

236. Judicial Councils Reform and Judicial Conduct and Disability Act 1980, 28 U.S.C. § 372 (1980).

237. U.S. CONST. art. II.

self-improvement.[238] The machinery was even used to order district judges to speed up their work and sanction him through admonition and other methods if he failed to comply.[239]

Justice John Marshall Harlan in *Chandler v. Judicial Council*[240] stated that the constitution does not prohibit the imposition of minor sanctions; therefore, the Judicial Council could impose sanctions other than removal in the exercise of its intra-judiciary supervision powers. He specifically considered the withholding of a caseload from a judge as a valid sanction. It was in his analysis that entrusting the discipline of judges to any other body would violate the principle of separation of powers;[241] therefore, in consideration of the deliberations on the related legislation and the powers of the court, the Judicial Council's act of withholding case assignments was valid.

In an attempt to simplify matters, the Judicial Conduct and Disability Act of 1980 was passed.[242] This Act was clearly intended to provide a mechanism for the disability or misconduct of Federal Judges. It is grounded on the principle of self-determination and the Judiciary's right to "keep its own house in order."[243]

The Act permits the Judicial Council to take any action necessary for the effective and expeditious administration of court business.[244] Any person is free to file a complaint relating to conduct prejudicial to the effective and expeditious administration of court business;[245] however, it is dismissed by the Chief Judge if it is found to be frivolous or directly relating to a judicial decision.[246] If the complaint survives this first round of scrutiny, then a

238. An Act to Provide for the Administration of the U.S. Courts and For Other Purposes, 28 U.S.C. § 332 (1939).

239. *Id.* § 332 (d) (2).

240. Chandler v. Judicial Council, 398 U.S. 74 (1970) (U.S.). *See also* Hastings v. Judicial Conference of US, 829 F. 2d 91 (1987) (U.S.); In re Matter of Complaints Under Investigation, 783 F. 2d. 1988 (1980) (U.S.); Mackeigan v. Hickman, 2 S.C.R. 796 (1989) (Can.); Justice Paul Cosgrove v. AG of Ontario, 2005 FC 1954 (Can.); Gratton v. Canadian Indian Council, 2 FC 769 (1994) (Can.).

241. *Chandler*, 398 U.S. at 104-05.

242. Judicial Councils Reform and Judicial Conduct and Disability Act 1980.

243. In re Charge of Judicial Misconduct, 62 F. 3d 320, (1995) (U.S.) (citing S. Rep. No. 362, at 2, 96th Cong., 1st sess. (1979) (U.S.)).

244. Judicial Councils Reform and Judicial Conduct and Disability Act 1980, § 354 (a) (1) (C).

245. *Id.* § 351 (a).

246. *Id.* § 352 (b) (1) (A).

Special Committee is created to investigate the matter and a comprehensive report is filed with the Judicial Council.[247]

If the complaint is substantiated by the finding of the Committee, the Judicial Council may request that the judge to (1) voluntarily retire; (2) be publicly or privately censured or reprimanded; (3) temporarily be prevented from receiving any cases; (4) any other appropriate action; or (5) be subject to impeachment proceedings thus to be endorsed to the Judicial Conference.[248]

After a review of the implementation of the Act, several amendments were made.[249] In the event that there is a change in the status or death of the members of the Special Committee members, a new member may be appointed or the member may choose to continue to see the case through.[250]

Though both Acts are not applicable to the justices of the Federal SC, many lessons may be derived from its provisions. But it must be remembered that the limitations of the Acts refer only to the *removal* of judges and this Note does not propose to create a mechanism of removal but one of self-regulation that promotes Judicial Responsibility *via* the imposition of minor sanctions which is supported as valid even in the absence of a constitutional provision explicitly providing for such.

D. Trends of the East

1. Hong Kong

Removal of Hong Kong Judges and the Chief Justice of the Court of Final Appeal, however, simply requires the endorsement of Parliament but is implemented by the Chief Executive.[251] A Tribunal composed of at least three Lord judges or five local judges is tasked with investigating the matter before any such action is taken.[252]

2. India and the Judges (Inquiry) Act

India has a similar experience. The Indian Constitution provides for removal of High Court and SC Judges:

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247. *Id.* § 353 (a) & (c).

248. *Id.* § 354 (a).

249. *Id.* §§ 351-364.

250. Judicial Councils Reform and Judicial Conduct and Disability Act 1980, § 353 (b).

251. H.K. CONST. art. 89 (2).

252. H.K. CONST. arts. 89 (1) & (2).

> [a] Judge of [SC] shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total number of membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.[253]

The difference is that their High Court Judges are given the same treatment as SC Justices. They may only be removed from office *via* impeachment proceedings.[254] They have a separate law which determines the process of impeachment.[255]

The Act states that Parliament is the only one who may initiate the proceedings against a judge or justice.[256] This is done through a motion addressed to the President of India, which must be signed by at least 100 members of the House of the People (*Lok sabha*) or 50 members of Council of States (*Rajya Sabha*).[257] Even if the motion is accepted, the presiding officer of the House has to constitute a five-judge committee to again inquire into the matter.[258] After receiving the report, the motion will be put to voting, which requires a two-thirds majority.[259]

Although many of the laws theoretically penalize corrupt practices of judges, when these acts are done in the discharge of official duty, sanction is required from the SC in order to prosecute that public official.[260] After the Prevention of Corruption Act was enacted, laws were tightened in favor of protecting the State.[261] Though judges are included in the Penal Code's definition of a "public servant," the mechanisms in place successfully insulate the judges like no other public servant.[262]

In 1991, the SC released a directive stating:

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253. INDIA CONST. ch. IV, art. 124 (4).

254. INDIA CONST. ch. IV, art. 217 (1) (b).

255. An Act to Regulate the Procedure for the Investigation and Proof of the Misbehaviour or Incapacity of a Judge of the Supreme Court or of a High Court and for the Presentation of an Address by Parliament to the President and for Matter Connected Therewith [Judges (Inquiry) Act, 1968], Act No. 51 (1968) (India).

256. *Id.* § 3 (1).

257. *Id.* § 3 (1) (a) & (b).

258. *Id.*

259. *Id.*

260. CODE CRIM. PROC., Act No. V of 1898, § 197 (1989) (India).

261. An Act for the More Effective Prevention of Bribery and Corruption [Prevention Of Corruption Act, 1947], No. 11 of 1947, (1947) (India).

262. PEN. CODE, § 21 (India).

> that no criminal case shall be registered under Section 154, against a judge of the high court, chief justice of the high court or judge of the [SC] unless the chief justice of India is consulted in the matter. ... [D]ue regard must be given by the government to the opinion expressed by the chief justice. If the chief justice is of the opinion that it is not a fit case for proceeding under the act, the case shall not be registered.[263]

This statement gave the Chief Justice double veto powers. He could either stop it at its tracks before the matter is even investigated or could just hold off that decision till time came to prosecute. Although the judges admitted that there exists no law providing protection for judges from criminal prosecution, they claimed that the SC "has been a lawmaker" and "a problem solver in the nebulous area."[264]

There were but two judges who reminded the court that such directives should only be done by Parliament and would constitute an act of "naked usurpation of legislative power" by judges.[265] Assumption of judicial infallibility undermines judicial discipline. The remedy of impeachment should not be taken as a bar to any other proceedings. Impeachment proceedings in India can be launched even for "misbehaviour" which does not constitute a criminal offense. However, impeachment involves Parliament and it is politicians who run it, and this is where the trouble is said to lie.

Similar to the Philippine situation, this process has been criticized as granting impunity to the justices. Again, Judicial Independence is cited as the rationale for such processes.[266] They trace their processes to that of England where judges were appointed by the Sovereign but maintained office on the basis of their good behavior — as opposed to those who were appointed and served at the pleasure of His Majesty.[267]

Their concept of Judicial Independence could be traced to the constitutions of the U.S. and Russia.[268] Russia took it one step further when its constitution declared that, "[j]udges shall possess immunity and criminal proceedings may not be brought against a Judge except as provided for by federal law."[269]

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263. K. Veeraswami v. Union of India, 3 S.C.C. 655, 708-09 (1991) (India).

264. *Id.*

265. *Id.*

266. Om Prakash Yadav, Impeachment of Judges, *available at* http://www.scribd.com/doc/18937109/Impeachment-of-Judges-More-Difficult-Than-Removal-of-Govt (last accessed Nov. 15, 2011).

267. *Id.*

268. U.S. CONST. art. III; RUSS. CONST. ch. 7, §§ 120-122.

269. RUSS. CONST. ch. 7, § 124.

This concept and that of Judicial Supremacy are enshrined in their constitution through the appointment of judges, the impeachment process, and judicial review power.[270] Their SC and High Court became more powerful than the Philippines could have ever imagined when they established a procedure for appointments in 1993. The SC determined that the recommendations for appointment should be made by collegiums of five judges and shall bind the government.[271] This tipped the balance of powers as the Executive was left with practically no discretionary powers in judicial appointments. This move resulted in the creation of judicial dynasties — a far cry from any semblance of impartiality and independence.[272]

Some argued that the legal existence of the impeachment process could still be considered a sufficient safeguard. However, India's history shows that the only thing kept safe by the law is the tenure of the judges. The 1991 impeachment proceedings against Justice V. Ramaswami were abandoned because of abstention in the voting.[273]

A Motion in the *Lok Sabha* was made on 28 February 1991; after admitting the motion, the Speaker of the House created the Justice P.B. Sawant Committee on 12 March 1991.[274] The Committee reported its findings on 20 July 1992 — stating that some charges were proven. But before the Committee started functioning, the ninth *Lok Sabha* was dissolved and it was contended that the Motion in the House lapsed.[275] The SC rejected this plea.[276] It was later raised that the judge was entitled to a copy of the report before it was submitted to the House. The SC also rejected this.[277] The SC held that the judge can question the report only when the President orders his removal. After this case, there were two more judgments promulgated by the SC concerning him.[278] Even after the lengthy

270. INDIA CONST. part I, art. 13 & part V, ch. IV, arts. 124-127 & 137.

271. Supreme Court Advocates-on-Record Associations (S.C.A.O.R.A.) v. Union of India, Suppl. 2 S.C.R. 659 (1993) (India).

272. Yadav, *supra* note 266.

273. A.G. Noorani, Corruption & judges, *available at* http://dir.groups.yahoo.com/group/discussing_religion/message/32207 (last accessed Nov. 15, 2011).

274. *See* Press Trust of India, Sen will be second judge to face impeachment process, *available* http://www.ndtv.com/article/india/sen-will-be-second-judge-to-face-impeachment-process-65564&cp (last accessed Nov. 15, 2011).

275. *Id.*

276. Sub-Committee of Judicial Accountability v. Union of India, 2 S.C.R. 741 (1991) (India).

277. Mrs. Sarojini Ramaswami v. Union of India & Ors., 4 S.C.C. 506 (1992) (India).

278. Krishna Swami v. Union of India, 4 S.C.C. 605 (1992) (India); Ms. Lily Thomas v. Speaker, Lok Sabha, 4 S.C.C. 434 (1993) (India).

procedures undertaken, when push came to shove, the Committee did not have enough support in the *Lok Sabha* and the Motion for Removal failed.

Then there was the case against former Chief Justice A.M. Bhattacharjee of the Bombay High Court.[279] There, the SC decided that in cases involving public interest, the Judiciary should lay the groundwork for an in-house "peer review" procedure to correct misbehavior or deviant behavior.[280] Also, when the allegations do not warrant removal of a judge by address of the Houses, it is permissible for the in-house mechanism to impose "minor measures."[281] These minor measures are precisely what this Note proposes to put into place.

There have been many other instances, which should have merited some sort of sanction for the erring justice but did not receive much attention from the court. When former Chief Justice of India Y.K. Sabarwal was embroiled in a scandal when the decision he promulgated benefitted his sons,[282] a newspaper reported on the incident, and rather than sparking an investigation on the matter, the Report resulted in the reporter's punishment in a *suo moto* contempt.[283] This illustrates how the Contempt of Courts Act[284] has been used to insulate the court from the backlash of its acts.

At another point in their history, the Vigilance Department of the UP Police uncovered the misappropriation of Ghaziabad Civil Court funds.[285] It was discovered that the amount was distributed in cash and kind to 36 sitting and retired judicial officers, including High Court judges, and a sitting SC judge.[286] The case would not be pursued since the SC required that their consent be given to question the judges.[287] This requirement, however, cannot be found in any law.

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279. C. Ravichandran Iyer v. Justice A.M. Bhattacharjee, 5 S.C.C. 457 (1995) (India).

280. *Id.*

281. *Id.*

282. Campaign for Judicial Accountability & Judicial Reforms, Judge Watch on Justice Y.K. Sabharwal, *available at* http://judicialreforms.org/justice_yk_sabharwal.htm (last accessed Nov. 15, 2011).

283. Salar M.Khan, INDIA: Judicial Accountability: No Adjournment, Please!, *available at* http://www.hrsolidarity.net/mainfile.php/2007vol17n005/2576/ (last accessed Nov. 15, 2011).

284. The Contempt of Courts Act, No. 70 of 1971, INDIA CODE, *available at* http://indiacode.nic.in (last accessed Nov. 15, 2011).

285. V. Venkatesan, Evidence in peril, *available at* http://frontlineonnet.com/fl2623/stories/20091120262312100.htm (last accessed Nov. 15, 2011).

286. *Id.*

287. *Id.*

One case that has been referred to the Central Bureau of Investigation by the SC involves two judges of the Haryana High Court.[288] In this particular case, a law officer, Haryana Additional Advocate General Sandeep Bansal, was found to have sent Rs15 Lakh[289] (approximately ₱1,450,821.52)[290] to the judges.[291] Much like many cases around the world, only the persons delivering the money were charged, leaving the High Court judges untouched.[292]

Some advocates have proposed that the Right to Information Act[293] should be amended to apply to the Judiciary. Others are pushing for the passing of the Judges (Inquiry) Bill of 2006 but with a change in the provision concerning the authority conducting the inquiry, as it has been proven that having judges investigate their brethren is ineffective if not futile. Still more claim that a heavy gag will be removed from the mouths of the people if the Contempt of Court Act is amended to allow a healthy criticism of the institution. It is believed that by allowing criticisms to be aired with no fear of prosecution, the SC could bring about change for itself rather than await the coup of the people.[294]

On 31 January 2006, the Law Commission of India released a report on the proposed amendments to the 1968 Judges (Inquiry) Act.[295] As earlier mentioned, the procedure for removal of Judges of the High Court and SC is by way of address of the Houses of Parliament to the President.[296] The Judges (Inquiry) Bill of 1964 was formulated, laying down the procedure as contemplated by Article 124 (5), and the Bill was referred to a Joint Committee of the Houses. While the Act used to limit the actors who could admit complaints against a judge to the *Lok Sabha* Speaker or the *Raiya Sabha*

288. Haryana Addl AG sends Rs 15 lakh to HC Judge 'by mistake', *available at* http://www.indianexpress.com/news/haryana-addl-ag-sends-rs-15-lakh-to-hc-judge/349543/ (last accessed Nov. 15, 2011).

289. *Id.* A Lakh Rupee is one hundred thousand rupees.

290. *Id.* As of the exchange rates on 12 November 2011.

291. *Id.*

292. *Id.*

293. An Act to Provide for Setting Out the Practical Regime of Right to Information for Citizens to Secure Access to Information Under the Control of Public Authorities, In Order to Promote Transparency and Accountability In the Working of Every Public Authority, the Constitution of A Central Information Commission and State Information Commissions and For Matters Connected Therewith or Incidental Thereto [Right to Information Act, 2005], No. 22 of 2005, (2005) (India).

294. Yadav, *supra* note 266.

295. Law Commission of India, *supra* note 24.

296. INDIA CONST. art. 124 (4)(b) & art. 217 (1).

Chairman, and the complainants were limited to Members of Parliament, the Bill would allow anyone to initiate a complaint against any judge of the SC and the High Court (excluding the Chief Justice of the SC of India). There was the *reference procedure* wherein investigation and search for proof of misbehavior and incapacity of judges of the SC (including the Chief Justice of India), the Chief Justices, and judges of the High Courts are conducted after reference is made by the Speaker or the Chairman to a three-Member Committee following the admitting of a Motion initiated by a specified number of Members.[297] And with the Bill, a *complaint procedure* was created.[298] The National Judicial Council (NJC) is the mechanism that the Bill proposes to install for the handling of such complaints. In complaints involving Members of the SC, the NJC would consist of the Chief Justice of India and the four most senior judges of the Court.[299]

The NJC would submit verified complaints to the President of India who would in turn forward it to Parliament.[300] As a safeguard to this new freedom, the Bill proposes to punish vexatious complaints made in bad faith with one-year imprisonment and a fine of approximately ₱24,180.36.[301]

If the complaint merits minor sanctions (the complaint does not constitute an offense warranting removal), then the NJC is authorized to impose such sanctions. These sanctions include (1) issuing advisories; (2) request for retirement; (3) stopping the assignment of work for a limited time; (4) warning; and (5) private or public censure or admonition.[302]

3. Singapore

In a strange twist of powers, Singapore's SC Judges are removable by the President upon recommendation of the Prime Minister and the determination of a Tribunal appointed by the President.[303] This Tribunal, however, is composed of at least five persons who hold or have held office as a judge of the SC.[304] Therefore, though at first glance the procedure seems to be controlled by the Executive, the Executive still somewhat turns to the Judiciary for a form of self-regulation *via* its retired members.

297. Law Commission of India, *supra* note 24, at 3.

298. *Id.* at 5.

299. *Id.* at 26.

300. *Id.* at 359.

301. Indian Rupees 25,000.00, based on the exchange rates as of November 12, 2011. *Id.* at 453-54.

302. *Id.* at 501-02.

303. SING. CONST. part VIII, art. 98 (3).

304. SING. CONST. part VIII, art. 98 (4).

IV. JUSTICE HUGO E. GUTIERREZ, JR., JUSTICE FIDEL P. PURISIMA, AND JUSTICE RUBEN T. REYES: SETTING THE BAR FOR ACCOUNTABILITY

> *Above everything, there is a need to prove that in these changing times, the infusion of fresh blood into the veins of the legal profession has a transforming effect and would be like a ray of sunshine in a dark cave — never intrusive, just illuminating.*[305]

A. Facts of the Cases and the Actions of the Court

Upon further investigation, the Author discovered that the SC has dealt with the improprieties of incumbent SC Justices in a number of different ways. Though the details may differ and the results may vary, there are certain threads of procedures that remain the same. To lay the foundation for the framework and draft rules that this Note wishes to put forth, it is necessary to delve into the Court's other experiences and responses to the reported improprieties of their sitting justices.

1. The ghostwriter

Philippine Long Distance Telephone Company v. Eastern Telephone Philippines, Inc.[306] determined that no monopoly existed even with Philippine Long Distance Telephone Company's (PLDT) dominance in the telecommunications industry.[307] However, apart from the role of this case in free trade and telecommunications, *Philippine Long Distance Telephone Company* sparked the first public scandal the SC found itself in for this generation's lifetime.

The Philippine Center for Investigative Journalism (PCIJ) published a report the year after the decision on the corruption in the Judiciary and used this case as a prime example of its fallibility.[308] There were allegations that Justice Gutierrez passed, as *ponente*, a ruling that was written by Atty. Eliseo Alampay, a PLDT lawyer.[309] ETPI went so far as to hire Professor David Yerkes of Columbia University in New York, U.S. in order to identify the author of the decision.[310]

Yerkes is an expert at identifying the authorship of works in the English language through a comparative analysis of syntax, grammar, vocabulary,

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305. Hilario G. Davide, Jr., Ret. Chief Justice of the Supreme Court, Speech at the Oath Taking of the 1999 Bar Passers (May 3, 2000).

306. Philippine Long Distance Telephone Company (PLDT) v. Eastern Telephone Philippines, Inc., 213 SCRA 16 (1992).

307. *Id.* at 33.

308. SALAZAR, *supra* note 19.

309. *Id.*

310. *Id.*

structure, layout, etc.[311] Using these methods, he compared the previous decisions penned by Justice Gutierrez and the PLDT case.[312] He then compared the decision to the writings of Atty. Alampay. He found that, "the *PLDT vs. ETPI* decision contained partisan and rhetorical language that was inconsistent with the dispassionate and formal writing style of Justice Gutierrez. The decision ... 'looks, reads and sounds like the writings of PLDT's Counsel.'"[313]

Others took this statement as "concrete evidence of the corruption in the [J]udiciary."[314] The testimony was taken through an affidavit on 14 September 1992 but was only made public in January 1993.[315] Both Justice Gutierrez and Atty. Alampay denied the statements, yet four days after its release, Justice Gutierrez resigned from the SC.[316] It was on 31 March 1993 that Justice Gutierrez's resignation was made effective.[317] He was only 66 years old.[318]

This left the impression that the lack of transparency that had long eaten into the soul of the two other branches of government, had finally gnawed its way through the last vestiges of justice and "weakened the [J]udiciary."[319] It was comments like this that lead Chief Justice Andres R. Narvasa to order an investigation on the corruption of the Judiciary.[320] Also, the impact of the expose was great enough for Chief Justice Narvasa to comment that:

> the Yerkes 'revelations' spawned more public discussion and comment about the [J]udiciary and the [SC] itself, much of it unfavorable. There were calls for impeachment of the [J]ustices, for resignation of judges. There were insistent and more widespread reiterations of denunciations of incompetence and corruption in the [J]udiciary. Another derogatory

311. *Id.*

312. *Id.*

313. *Id.* (citations omitted).

314. SALAZAR, *supra* note 19.

315. *Id.*

316. *Id.*

317. Memorabilia Room Associate Justices' List, *available at* http://elibrary.judiciary.gov.ph/index2.php?justicetype=Associate%20Justice (last accessed Nov. 15, 2011).

318. *Id.* Justice Gutierrez was born on Jan. 29, 1927.

319. Hadi Salehi Esfahani, *The political economy of telecommunications sector*, *in* PHILIPPINES IN REGULATIONS, INSTITUTIONS, AND COMMITMENT: COMPARATIVE STUDIES OF TELECOMMUNICATIONS 197 (Brian Levy and Pablo T. Spiller eds., 1996).

320. Supreme Court, Creating an Ad Hoc Committee to Investigate Reports of Corruption in the Judiciary, SC Administrative Order No. 11-93 [SC A.O. No. 11-93] (Jan. 25, 1993).

> epithet for judges was coined and quickly gained currency: 'Hoodlums in Robes.'[321]

Even with this acknowledgement, however, the Court did not see fit to make public any investigation undergone on the part of Justice Gutierrez's alleged misdeeds. Rather, the opinion columnist — who just so happened to also be a member of the bar, Atty. Emiliano P. Jurado — was investigated for his supposed violations of the Philippine Journalist's Code of Ethics.[322] Although the decision of the Court regarding Atty. Jurado's misdeeds contained excerpts of affidavits from those who denied any involvement in the scandal of Justice Gutierrez, none actually tackled his misdeeds head on.[323] Maybe this was because of Justice Gutierrez's early retirement. Maybe they felt it moot. But as the years progressed, the Court seems to have opened its manner of viewing indiscretions committed by the Court and has adjusted its manner of approach.

2. A justice, a nephew, and the bar

In the year 2000, it was discovered that Associate Justice Fidel P. Purisima, the chair of the 1999 bar exams, had a nephew, Marcos Antonio Purisima, who had taken the 1999 bar examinations.[324] On 16 March 2000, Justice Purisima was relieved of his duties as chair and was replaced by Associate Justice Jose Bellosillo.[325]

Justice Purisima claimed to have been so set on his goal of releasing the Bar Examination results early that he did not notice other matters such as his nephew taking the exam.[326] He also claimed that he revealed to his peers that his nephew had taken the bar at its most crucial stage, which was the decoding and releasing of the bar results.[327] He rationalized his actions to avoid delay in the whole proceedings as he would probably have been replaced as a bar chair.[328] He further defended his actions by claiming that he only discovered that his nephew was taking the bar exams in January when an acquaintance told him so, therefore he did not do anything to "impair the integrity and accuracy of the results. Because ... I never told them how to

321. In Re: Emil P. Jurado, 243 SCRA 299, 314 (1995).

322. *Id.*

323. *Id.*

324. Cueto, *Justice Purisima*, *supra* note 20; Juliet L. Javellana, *Law Schools' Appeal: Lower bar passing grade*, PHIL. DAILY INQ., Apr. 25, 2000, at 3.

325. Donna S. Cueto, *Ateneo, UP grads share top spot in bar exams*, PHIL. DAILY INQ., Mar. 20, 2000, at 1 & 4.

326. Cueto, *Justice Purisima*, *supra* note 20, at 18.

327. *Id.*

328. *Id.*

correct. I never told them that I had a nephew."[329] It bears importance to note that Marcos Antonio was the son of his older brother and not a distant nephew.[330] He felt so certain of his lack of wrongdoing and his impeccable record that he invoked the name of God that the truth would prevail.[331] He even provided a timeline for all his actions involving the Bar Examinations to the point that he revealed that his daughter and son-in-law helped him encode the bar examination questions, which later became subject to even more controversy.[332]

Apparently, he offered to inhibit himself before the decoding of the bar results on 16 March 2000 as the Court was deliberating on the passing rate.[333] The SC was set on "forcing Purisima's resignation or early retirement."[334] On 21 March 2000, the SC *en banc* convened in Baguio City and decided that Justice Purisima's actions violated the Code of Judicial conduct, the Canons of Judicial Ethics, and was a conflict of interest.[335] Such violations, to them, merited sanctions.[336] They considered having him forfeit his retirement benefits and pay as the chair of the 1999 Bar Examinations or a censure.[337] It was claimed that this was a sign that "the [SC] was prepared to punish one of its own, if he erred and violated the rules of court and judicial ethics."[338] But this willingness to sanction one of their own was not supported by an iron will for they also gave him the option of resigning or retiring before 27 October 2000 in order for him to still receive some of his retirement benefits.[339] Purisima stated that he preferred to keep his post until 27 October 2000 when he turned 70.[340]

Sadly, on 23 March 2003, the SC saw that Justice Purisima's "deepest apology" sufficed to mete out a lower sanction — a censure by his peers along with forfeiture of half of his over half a million pesos fee as chair of the 1999 Bar Examinations Committee.[341] The Court claimed that they could

329. *Id.*

330. *Id.*

331. *Id.*

332. Cueto, *Justice Purisima*, *supra* note 20, at 18.

333. Cueto, *Ateneo*, *supra* note 325, at 4.

334. Cueto, *Justice Purisima*, *supra* note 20, at 18.

335. *Id.*

336. *Id.*

337. *Id.*

338. *Id.*

339. *Id.*

340. Cueto, *Justice Purisima*, *supra* note 20, at 18.

341. Donna S. Cueto, *'Error of Judgment': Justice censured, loses half of bar fee*, PHIL. DAILY INQ., Mar. 23, 2000, at 2.

not suspend or dismiss him because he was an impeachable official. In their review of the law, only Congress could move for his removal or forfeiture of retirement benefits amounting to five million pesos.[342] After the news broke out, Purisima even "said he believed what happened did not tarnish the image and integrity of the [C]ourt."[343]

Even one of the incumbent SC Justices thought that Purisima's protocol in handling the matter involving the bar examination was "terrible" and that by allowing his daughter and son-in-law to handle the questions, he allowed for a greater possibility of leakage to a three-time bar flunker like Marcos Antonio.[344] The same Justice even commented that Justice Purisima had "yet to be sanctioned for his breach of duty," which was an impeachable offense.[345] This, however, implied that the Justices then believed that their hands were indeed tied and that they could only look to Congress for any sort of commensurate sanction. Even if the SC accepted Justice Purisima's apology, it is said that they did not accept his explanation.[346] And even with Justice Purisima extolling his own supposed pristine record, it was leaked that there were earlier reports that he also violated the Code of Judicial Conduct and Canons of Judicial Ethics when he participated in deliberations or Court actions involving relatives.[347]

About a week after the SC accepted Justice Purisima's apology, evidence supporting the posture that he lied about the knowledge of his nephew taking the Bar Examination was revealed.[348] On 3 August 1999, a month before the controversial Bar Examinations, he signed a Resolution[349] that permitted the inclusion of his nephew as one of those 73 who had problems with pre-requisites and allowed them to take the Examinations.[350]

Former Senator Jovito R. Salonga and former Department of Justice Secretary Sedfrey A. Ordoñez cited at least three instances which were cause for concern over Justice Purisima's integrity: (1) a draft decision of *National Telecommunications Commission v. CA and Philippine Long distance Telephone*

342. *Id.*

343. *Id.*

344. Donna S. Cueto, *Nephew of censured justice passed bar*, PHIL. DAILY INQ., Mar. 29, 2000, at 1 & 19.

345. *Id.*

346. *Id.*

347. *Id.*

348. Donna S. Cueto, *Did Justice Purisima Forget?*, PHIL. DAILY INQ., Apr. 3, 2000, at 4.

349. *Id.* (citing Bar Matter No. 919, Aug. 3, 1999).

350. *Id.*

Co.[351] with his signature but not with the other justices found its way in the PLDT offices; (2) he admitted to leaking to Ombudsman Aniano A. Desierto information on how the individual SC Justices voted in cases wherein the Ombudsman was a respondent; and (3) he insisted on fast-tracking a draft decision in favor of the Philippine Amusement and Gaming Corporation in a case filed by Rep. Federico S. Sandoval (involving the operation of *jai-alai*) and reacted negatively to requests from other justices for more time to study the case.[352] The Integrated Bar of the Philippines agreed with the position of Salonga and Ordoñez but claimed that constitutional restraints prevented a greater sanction from being imposed.[353]

After the 660 bar passers took the Lawyer's Oath at the Philippine International Convention Center on 3 May 2000, it was reported that Chief Justice Hilario G. Davide, Jr. washed the Court's hands of the scandal when he referred the case "to a special commission composed of retired [J]ustices which would conduct a separate investigation to determine the extent of the 69-year-old jurist's liability."[354] The commission was headed by former Justice Ameurfina Melencio-Herrera with Justice Jose Y. Feria and Justice Camilo D. Quiazon, "whose integrity and reputation[s] are beyond doubt."[355] But the commission was not given a deadline to accomplish its work.[356]

Students from Ateneo de Manila University School of Law (Ateneo), University of Philippines Law School (UP), San Beda College of Law (San Beda), and the Far Eastern University School of Law met with Chief Justice Davide to demand an impartial probe.[357] But Chief Justice Davide emphasized that they had already censured Justice Purisima and disqualified Marcos Antonio, asking, "[i]f out of 100 percent, one percent (of the system) was found to be defective, would you condemn the entire justice system?"[358]

Again on 18 September 2000, law students, this time from Ateneo, UP, San Beda, and Lyceum, reached out to the Chief Justice asking him to

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351. NTC v. Court of Appeals, 311 SCRA 508 (1999).

352. Rocky Nazareno, *3 other cases cited against Purisima*, PHIL. DAILY INQ., Apr. 12, 2000, at 17.

353. *Id.*

354. Rocky Nazareno, *SC tosses Purisima case to probe body*, PHIL. DAILY INQ., May 4, 2000, at 3.

355. *Id.*

356. *Id.*

357. *Law students demand probe of SC justice in bar scandal*, PHIL. DAILY INQ., Sep. 14, 2000, at A5.

358. *Id.*

conduct an investigation of the case.[359] But even they did not ask for a harsher penalty, merely transparency in the findings of the commission created by the Chief Justice.[360] An *en banc* session was immediately convened in light of the petition by the students.[361] As one student said, "[t]his is actually a defining moment for the SC to prove that it is really impartial. We're closely watching the high court in its handling of this infraction because this is the system we signed up for."[362]

Students noted all the statements made by Justice Purisima in press conferences and in a book on his life written by his wife, Dr. Jesefina Purisima, entitled *Matarik Man ang Landas*.[363] They once again brought up the lack of an independent and impartial investigation and Justice Purisima's brazen acts of claiming innocence while narrating other improprieties — like the copying of questionnaires and booklets in his residence with his daughter and son-in-law — that should have resulted in a punishment greater than a mere slap on the wrist.[364]

But it seems that the only one who was initially punished for his actions was his nephew, Marcos Antonio.[365] On 13 April 2000, the Court released its *en banc* resolution disqualifying him for non-compliance with a basic requirement — submission of a certificate of completion of the pre-bar review course.[366] Apparently, Marcos Antonio declared that he took his pre-bar review course in the Philippine Law School (PLS) but PLS had not offered review courses since 1967. He, however, attributed his statement to "a clerical, typographical error."[367] He went so far as to point out that he "substantially complied" with the requirements while many completely failed to comply yet were not disqualified.[368] He saw the Court's decision as a move to "protect a retiring justice ... and the integrity of the court and the whole judicial system."[369] He revealed that he had already been reviewing

359. Michael Lim Ubac, *Law student to SC: Probe Purisima now*, PHIL. DAILY INQ., Sep. 27, 2000, at A1 & A18.

360. *Id.*

361. *Id.*

362. *Id.*

363. Donna S. Cueto, *SC heeds petition on Purisima case*, PHIL. DAILY INQ., Sep. 25, 2000, at A6.

364. *Id.*

365. Rocky Nazareno, *Young Purisima finds self in even deeper trouble*, PHIL. DAILY INQ., Apr. 15, 2000, at 3; Jerry Esplanada, *1999 bar examinee says SC made him 'sacrificial lamb,'* PHIL. DAILY INQ., Apr. 2, 2000, at A25 & A26.

366. Esplanada, *supra* note 365, at A26.

367. *Id.*

368. *Id.*

369. *Id.*

for an entire year when his uncle was appointed Chairman of the Bar Examinations:

> From the very start, (Fidel) knew I was taking the bar. But he wanted the bar chairmanship so badly. And because of that he closed his eyes and refused to admit that I was taking the bar. He refused to inhibit. *Kasi* to take the bar is my right. As long as I comply with all the requirements, nobody can stop me.[370]

Two short years later, in 2002, Marcos Antonio was permitted to take his oath as a lawyer when the Office of the Bar Confidant gave credit to the very same explanation earlier offered and recommended his admission into the bar.[371]

Justice Purisima's term in the SC was short-lived — less than three years — but it was long enough to stir up trouble and bring some of the Court's improprieties to the front page.

3. The undated letter

The controversy involving Justice Reyes began with the consolidated case, *Limkaichong v. Comelec*, *Villando v. Comelec*, *Biraogo v. Nograles and Limkaichong*, and *Paras v. Nograles*.[372] The SC *en banc* was deliberating the printed and circulated draft of the decision on this case.[373] There were several questions as to its legal reasoning. Many justices merely concurred in the result of the draft decision. Because of this Justice Antonio T. Carpio offered to share his reflections on the matter.[374] A review of Justice Carpio's reflections led to the need for oral arguments, scheduled on 26 August 2008.[375] However, upon Justice Reyes' request, the case was included in the agenda for 29 July 2008.[376]

As early as October 2008, reports of a leak were reported in a blind item by Jarius Bondoc — and once again in a column by Fel Maragay.[377]

On 9 December 2008, one of the petitioners in the case, Louis C. Biraogo, circulated a photocopy of the unpromulgated decision of Justice Reyes along with an undated letter signed by Biraogo in a press conference

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370. *Id.*

371. Re: 1999 Bar Examinations, Mark Anthony A. Purisima, Bar Matter Nos. 979 and 986, Dec. 10, 2002.

372. *Biraogo*, 580 SCRA at 107.

373. *Id.* at 109.

374. *Id.*

375. *Id.*

376. *Id.*

377. *Id.* at 127.

held in Manila.[378] The letter claimed that all the SC Justices were unlawfully withholding the promulgation of the decision. This act signified a breach in the sanctity of the Court's deliberations. Therefore, an investigation committee was formed.[379]

Senior Associate Justice Leonardo A. Quisumbing chaired the committee, with Associate Justice Consuelo Ynares-Santiago, and Associate Justice Antonio T. Carpio. Biraogo was ordered to explain himself and on 10 December 2008 he complied.[380] Attached to his Compliance was a photocopy of a letter, allegedly written by a "Concerned Employee," on the memo pad of Justice Reyes.[381]

Upon investigation, the Court discovered that on 15 July 2008, an employee of the Court, Rodrigo Manabat, Jr., was instructed to bring the draft decision to Justice Antonio Eduardo B. Nachura's office for signature.[382] The signed copy was eventually returned to the Office of the Chief Justice along with other standard attachments.[383] The following day Justice Reyes requested that these materials be retrieved as the promulgation of the decision, as earlier mentioned, had been put on hold.[384] This copy was placed in a sealed envelope and locked inside a drawer. The very same envelope was later searched for on 10 December 2008 but Justice Reyes had taken possession of it.[385] Since everyone knew how to operate the photocopying machine and had access to the unsigned drafts, there was some difficulty as to pinpointing the exact source of the leak.[386] It could not even be recalled who was the last person to sign the decision.[387]

Justice Reyes was steadfast in his denial of any wrongdoing, as he pointed out that he was never identified as the source of the leak and that it was not only his decision that was leaked but Justice Carpio's reflections and the 17 July 2008 agenda as well. He pointed a finger at a certain Atty. Rosel, who was allegedly connected to Justice Carpio, and demanded that the other Justices be investigated also.[388]

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378. *Biraogo*, 580 SCRA at 109.

379. *Id.*

380. *Id.*

381. *Id.*

382. *Id.*

383. *Id.*

384. *Biraogo*, 580 SCRA at 115.

385. *Id.*

386. *Id.*

387. *Id.* at 144.

388. *Id.*

Later, the Court also discovered that the copy of *Biraogo* bore differences from the Court's copy of the documents.[389] Further investigation revealed that there were other copies of the decision in Justice Reyes' possession.[390] When compared, it was concluded that Justice Reyes' copy and the copy of Biraogo were identical.[391] Justice Reyes attempted to avoid submitting his copy to the Committee but Justice Renato C. Corona took the decision from him.[392]

The Investigating Committee found that the photocopying of the decision occurred sometime between 15 July 2008, before it was brought to the Office of the Chief Justice or after it was retrieved on 16 July 2008, and 25 July 2008, when the Office of Justice Reyes caused the preparation of the new cover page.[393] They also determined that the leak was intentional, that the source was Justice Reyes' office, and that it was Justice Reyes himself who leaked it.[394] For all his acts he was held liable for Grave Misconduct as a Justice and fined half a million pesos (taken from his retirement benefits) and Gross Misconduct as a lawyer for which he was indefinitely suspended from the practice of law.[395]

The Court decided that Justice Reyes' retirement did not render the decision moot and academic. Neither was it necessary for a formal charge to be laid against him as "the Court may impose its authority upon erring judges whose actuations, on their face, would show gross incompetence, ignorance of the law, or misconduct."[396]

B. A Penchant for Peers

Although it may have been argued in the past that the SC has a tendency to whitewash the follies of their peers, this no longer seems to be the case. The Court explicitly applied doctrines regarding the accountability of public officers on a Member of the Court. Whereas in the past, the Court skirted around the issue and explained how such matters were to be left up to Congress through the process of impeachment, the Court's actions against Justice Reyes revealed the makings of an in-house mechanism for Judicial Responsibility.

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389. *Id.*

390. *Biraogo*, 580 SCRA at 144.

391. *Id.*

392. *Id.*

393. *Id.*

394. *Id.* at 146-47.

395. *Id.*

396. *Biraogo*, 580 SCRA at 151.

It held that so long as the controversy exists, it would act upon it.[397] But in order for the "most severe administrative sanctions" to be imposed, the erring justice must still hold power.[398] Originally, they claimed that retirement benefits of impeachable officers could not be touched; later, they went on to decrease one justice's benefits by half a million, and this was before any formal charges were even made. This is but a preview of a (hopefully) evolving Court. Although the Court did not elaborate on what the "most severe of administrative sanctions" are, it may be deduced that if a framework existed designating such sanctions, these would have been imposed. This is where this Note gains greater significance and pierces the fabric of the existing framework with its contribution.

V. EXISTING INSTRUMENTS OF DISCIPLINE: IMPEACHMENT VIS-À-VIS ADMINISTRATIVE SANCTIONS

A. Impeachment and Impeachable Officers

1. History

Impeachment is an avenue through which the public may probe into the conduct of those who hold constitutional offices. It is a tremendous effort that rarely comes into full bloom since those subject to the procedure belong to the upper echelon of the State. These seats of power are of such importance that care is given to secure the positions for anyone fortunate enough to be graced with them. This also means that the grounds for which such proceeding may be undertaken are also limited. The extra measures taken for the stability of the government, unfortunately, also serves as a protective mantle for those brazen enough to take advantage of it.

History has not been able to pinpoint the exact origin of impeachment.[399] There have been those who have attempted to connect it to the ancient Athenian process of the citizenry prosecuting a public official before the public official left office.[400] The concept of impeachment as we know it, however, has its origin in the English common law.[401] It was first

397. *Id.*

398. *Id.* at 152.

399. *Francisco, Jr.*, 415 SCRA at 190 (J. Puno, concurring and dissenting opinion).

400. *Id.* (citing J.D. Ferrick, *Impeaching Federal Judges: A Study of the Constitutional Provisions*, 39 FORDHAM L. REV. 1, 5 (1970)).

401. *Francisco, Jr.*, 415 SCRA at 190 (J. Puno, concurring and dissenting opinion) (citing Arthur M. Schlesinger, Jr., *Reflections on Impeachment*, 67 GEO. WASH. L. REV. 693 (1999)).

intended to function as a method of checking up on executive excuses.[402] Later, it developed into an accountability measure.[403]

Officers under King Edward III were the first to taste the consequences of any excesses at the hands of the House of Commons (who initiated the proceedings) and the House of the Lords (who tried the cases).[404] This method was not just limited to public officials but was used against private persons as well.[405] The resulting punishment was hardly limited and left up to the House to decide.[406] Whenever there was strife and right before revolutions, impeachment proceedings would increase in frequency.[407] The numbers would go down each time the system was seen to be instituting reforms.[408]

As a colony of England, the U.S. governors and judges served at the pleasure of the Crown.[409] The first state constitutions were modeled after colonial experience and almost all provided for impeachment.[410] The grounds, processes, and resulting punishments, however, differed from state to state.[411] The national government did not even contain a provision on impeachment until 1787.[412] At its earliest stages, it was even suggested that the SC be given the original jurisdiction over impeachment proceedings.[413] In the end, this proposal was rejected and the form of impeachment was finalized.[414]

This form is the limited form that was adopted by the Philippines in the 1935 Commonwealth Constitution.[415] Unlike its British origins, it could no longer be initiated against any erring individual; a specific list of public officials was rattled off and the grounds were likewise enumerated.[416] The

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402. *Id.*

403. *Id.*

404. *Francisco, Jr.*, 415 SCRA at 190 (J. Puno, concurring and dissenting opinion) (citing Ferrick, *supra* note 400).

405. *Id.*

406. *Id.*

407. *Id.*

408. *Id.*

409. *Id.*

410. *Francisco, Jr.*, 415 SCRA at 190 (J. Puno, concurring and dissenting opinion).

411. *Id.* at 191.

412. *Id.* at 192.

413. *Id.*

414. *Id.*

415. *Id.*

416. *Francisco, Jr.*, 415 SCRA at 192.

commonly complained of two-thirds vote was also first set in place by the U.S. as the British only required a simple majority.[417] Though the punishment was then limited to removal from office and perpetual disqualification from holding office, the King's freedom to pardon was now taken away from the President.[418] But unlike the original, criminal proceedings were separate and distinct from impeachment proceedings.[419] Finally, the most significant difference for the purposes of this Note is that the British provided for several methods of removal of judges while the U.S. Constitution limited it to impeachment,[420] thereby giving birth to the problem of accountability now faced by the nation.

For this Note, impeachment is only tackled as a mechanism for accountability.

2. Impeachable Officers and Grounds for Impeachment

The Constitution provides for a list of impeachable officers — the President, the Vice-President, the Justices of the SC, the members of Constitutional Commissions, and the Ombudsman.[421] This list is an expanded list from the ones enumerated in the previous constitutions.[422] But still the list remains strictly exclusive and may only be added to through an amendment of the Constitution. Therefore, granting of the same protection to the justices of the *Sandiganbayan* was dubious.[423] In fact, the impeachability of *Sandiganbayan* Justices is not recognized since the SC still declares that it is the only one with administrative supervision over all lower courts — the *Sandiganbayan* being one of them.[424] Otherwise, the intention of the Constitutional Commissioners to prevent the creation of the class of statutorily protected officials would be defeated.[425] This odious provision was subsequently amended, removing all references to impeachability.[426]

417. *Id.* (J. Puno, concurring and dissenting opinion).

418. *Id.*

419. *Id.*

420. *Id.*

421. PHIL. CONST. art. XI, § 2.

422. 1935 PHIL. CONST. art. IX, § 1 (superseded 1971).

423. Revising Presidential Decree No. 1486 Creating a Special Court to be Known as "Sandiganbayan" and for Other Purposes, Presidential Decree No. 1606, § 1, ¶ 4 (1978).

424. *In Re: Gonzales*, 160 SCRA at 774.

425. Committee Report No. 3, 2 RECORD OF THE CONSTITUTIONAL COMMISSION 356-57 (1986).

426. R.A. No. 8249, § 1.

The grounds for impeachment, however, have been considerably expanded. The addition of "graft and corruption" and "betrayal of public trust" created a basin of potential culpability. While "culpable violation of the Constitution," treason, bribery, and "other high crimes" were for the most part limited and constricted to definitions found in the Constitution and the RPC, "betrayal of public trust" leaves much room for its use and interpretation. It just cannot be used to hold the officer accountable for acts already punishable by criminal statutes.[427]

The Constitution left an open window for the removal of a justice upon a catch-all ground favored by any petition for impeachment — incapacity to discharge duties — when it said that:

> [t]he Members of the [SC] and judges of the lower court shall hold office during good behavior until they reach the age of seventy years or *become incapacitated to discharge the duties of their office.* The [SC] *en banc* shall have the power to discipline judges of lower courts, or order their dismissal by a vote of majority of the Members who actually took part in the deliberations on the issues in the case and voted in thereon.[428]

3. Procedure for Impeachment

The procedure remained the same for two constitutions.[429] But the procedure has changed since then. The Philippines and the U.S. have the same basic procedure. The Constitution simply requires that any Member of the House of Congress or endorsed citizen file a verified complaint for impeachment against the covered officers.[430] After calendaring the matter in the Order of Business within 10 session days, it is referred to the proper Committee within three session days.[431] The Committee then has 60 days to reach a majority vote on its report to the House with a corresponding resolution.[432] This resolution is then calendared for consideration within 10 session days from receipt.[433]

In order to proceed with the complaint, at least one-third of all the Members of the House have to approve the resolution. Time is saved when one-third of the Members of the House file the verified complaint as the process of Committee approval and all the calendaring would no longer be

427. ISAGANI A. CRUZ, PHILIPPINE POLITICAL LAW 326-28 (1991 ed.).

428. PHIL. CONST. art. VIII, § 11 (emphasis supplied).

429. 1935 PHIL. CONST. art. IX, §§ 2-4 (superseded 1973); 1973 PHIL. CONST. art. IX, §§ 2-4 (superseded 1987).

430. PHIL. CONST. art. XI, § 3 (2).

431. PHIL. CONST. art. XI, § 3 (2).

432. PHIL. CONST. art. XI, § 3 (2).

433. PHIL. CONST. art. XI, § 3 (2).

necessary.[434] Congress was tasked to promulgate rules for the effective implementation of the Constitution's purpose of impeachment.[435] On 28 November 2001, the 12th Congress of the House of Representatives adopted and approved the Rules of Procedure in Impeachment Proceedings, replacing the rules in place during the 11th Congress.[436] These procedures present any party interested in filing an impeachment complaint with an array of daunting requirements that may deter the threat of those seeking to affect the exercise of judicial authority by the Court, but it also hampers any efforts for Judicial Accountability.

B. Administrative Sanctions

The SC has exclusive jurisdiction over administrative matters involving all the Judiciary's members, officials, and employees.[437] This privilege is carefully guarded by the Court and fiercely defended in the face of controversy.[438] In deference to this privilege and constitutional right bestowed upon the Court, the Author suggests that the Court itself dispense with the administrative sanctions.

If the Court conducts the administrative proceedings and the sanctions that must necessarily come with findings of guilt, then the previous issues on encroachment of jurisdiction and threats to Judicial Independence are thrown out the window. For administrative proceedings to be lawful and valid, there must be (1) a hearing where all the parties are permitted to present their case; (2) consideration of the evidence presented; (3) a decision supported by the evidence; (4) substantial evidence supporting the conclusion of the decision, though the technical rules of evidence do not necessarily apply; (5) an opportunity for the parties to exercise their right to know and meet the case against them through materials such as a record of the proceedings presented to the parties on which the decision is based; (6) an independent consideration of the law and facts of the controversy; and (7) a decision rendered in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered.[439]

These proceedings cannot result in any other sanctions but administrative ones since the Court has held that these proceedings can in no

434. PHIL. CONST. art. XI, § 3 (3).

435. PHIL. CONST. art. XI, § 3 (8).

436. H. Rules of Procedure in Impeachment Proceedings [H. Rules on Impeachment], 12th Cong. (Nov. 28, 2001).

437. PHIL. CONST. art. VIII, §§ 2, 5 (5), 5 (6) & 6.

438. BERNAS, *supra* note 71, at 878.

439. Ang Tibay v. CIR, 69 Phil. 635 (1940).

way be conclusive upon a person's criminal liability.[440] Administrative sanctions of lower court judges and justices include dismissal, forfeiture of retirement benefits, disbarment, suspension, etc. SC Justices, however, have been endowed with security of tenure.[441] Therefore, any sanctions meted out cannot amount to ones that violate this security.

1. Common Minor Sanctions in Practice

Following the implementation of the New Code of Judicial Conduct for the Philippine Judiciary, the Court has promulgated many decisions meting out various sentences — from simple fines, admonitions, reprimands, and suspensions to disbarments.

Judge Maxwel S. Rosete, Acting Presiding Judge, Metropolitan Trial Court of San Juan, Metro Manila, Branch 58, was merely suspended from office without salary and other benefits for four months for allowing a member of his staff to talk with and show to the complainant copies of his draft decisions as well as meeting with litigants beyond office hours.[442]

Judge Antonia Corpuz-Macandog of Regional Trial Court (RTC) of Caloocan City, Branch 120, was dismissed from the service, with forfeiture of all retirement benefits and pay, and with prejudice to reinstatement in any branch of the government or any of its agencies or instrumentalities, after she was determined to be "mentally and morally unfit to remain in her office."[443] She committed several follies, one of which was admittedly succumbing to pressure in rendering her decision.

Judge Adriano R. Villamor, Jr. of RTC of Naval, Leyte, Branch 16, was likewise sentenced for falsifying in his Certificates of Service; being inexcusably negligent and grossly inefficient in connection with missing records in his sala; being utterly indifferent to the directives of the Court; having undue interest in a pending criminal case before a lower court over which he exercised supervision; lacking management capabilities required of a Presiding Judge; and being insensitive to the needs of the court.[444]

Judge Rosarito F. Dabalos was an Executive Judge of the RTC of Butuan who allowed himself to be swayed into issuing an order fixing bail for the temporary release of an accused charged with murder — who was his former employee — without a hearing, contrary to established

440. Garcia v. Dela Peña, 229 SCRA 766 (1994); Icasiano, Jr. v. Sandiganbayan, 209 SCRA 377 (1992); Bolalin v. Occiano, 266 SCRA 203 (1997).

441. PHIL. CONST. art VIII, § 11; BERNAS, *supra* note 71, at 884-88.

442. *See* Tan v. Rosete, 437 SCRA 581 (2004).

443. *See* Ramirez v. Corpuz-Macadog, 144 SCRA 462 (1986).

444. *See* Sabitsana v. Villamor, 202 SCRA 435 (1991).

principles of law.[445] The Court imposed a fine of ₱20,000.00 and issued a warning to exercise more care and diligence in his judicial functions, since the same or similar offense in the future would be dealt with more severely.[446]

In the well-publicized controversy involving the Manila Electric Company and the Government Service Insurance System, the SC sanctioned several Justices of the Court of Appeals for their involvement. Associate Justice Vicente Q. Roxas was found guilty of multiple violations of the canons of the Code of Judicial Conduct, grave misconduct, dishonesty, undue interest, and conduct prejudicial to the best interest of the service, and was dismissed from the service, with forfeiture of all benefits, except accrued leave credits if any, with prejudice to his re-employment in any branch or service of the government including government-owned and controlled corporations.[447]

Associate Justice Jose L. Sabio, Jr. was found "guilty of simple misconduct and conduct unbecoming of a justice of the Court of Appeals and is [suspended] for two (2) months without pay, with a stern warning that a repetition of the same or similar acts will warrant a more severe penalty."[448] Presiding Justice Conrado M. Vasquez, Jr. was "[severely reprimanded] for his failure to act promptly and decisively in order to avert the incidents that damaged the image of the Court of Appeals, with a stern warning that a repetition of the same or similar acts will warrant a more severe penalty."[449] Associate Justice Bienvenido L. Reyes was found "guilty of simple misconduct with mitigating circumstance and is [reprimanded], with a stern warning that a repetition of the same or similar acts will warrant a more severe penalty."[450] Associate Justice Myrna Dimaranan-Vidal was found "guilty of conduct unbecoming a Justice of the Court of Appeals and is ADMONISHED to be more circumspect in the discharge of her judicial duties."[451]

Below is a table comparing Impeachment and Administrative Sanctions.

445. *See* Libarios v. Dabalos, 199 SCRA 48 (1991).

446. *Id.*

447. *See* Orocio v. Roxas, Administrative Matter Nos. 07-115-CA-J and CA-08-46-J, Aug. 19, 2008.

448. *See* Re: Letter of Presiding Justice Conrado M. Vasquez, Jr. on CA-G.R. SP No. 103692, 564 SCRA 365, 434 (2008).

449. *Id.*

450. *Id.*

451. *Id.*

Table 5.1 Impeachment v. Administrative Sanctions

	IMPEACHMENT	ADMINISTRATIVE SANCTIONS
Authorized Body	House of Congress	Supreme Court
Procedure	Set by the Constitution, guided by the House Impeachment Rules; initiated by the House of Representatives and decided by a two-thirds vote of all the Members of the Senate.	Set by the Rules promulgated by the Supreme Court; depends on position but typically investigated by a Committee resulting in a non-binding recommendation then decided the Supreme Court.
Effect	Removal from office and disqualification to hold any office under the Republic of the Philippines; vulnerability to suit.	For any officer of the Court fine, admonition/reprimand and for those not belonging to the ranks of Justices of the Court — suspension, dismissal, and disbarment.

C. Limitation of Remedies Equivalent to Absolute Immunity?

The remedy against a SC Justice that immediately springs to mind is impeachment. But as discussed above and in the first Part of this Note, the procedure for impeachment has become a dead letter for obvious reasons. Proceedings in the House of Congress, especially with regard to impeachment, involve a political question. It is a numbers game and there can be no movement without the right numbers to approve the complaint for further action. Before it even comes to that, given the trend in Congress, it has to be of vital importance to engender attendance by a sufficient number of Representatives and Senators. Members of Congress are not obliged to vote — they may even abstain — and they need not give reasons for their decision. Then, there is the timing of a complaint, since complaints cannot be initiated within a year of each other against the same official; so in the drafting of a complaint, it is either a hit or miss at least for a year.[452] There are, therefore, a number of hurdles before an impeachment complaint can become successful. Once a complaint is successful, the media blitz and political opportunities presented by a well-publicized proceeding are sufficient to transform a trial from a means for accountability to a monster of self-promotion and aggrandizement. The temptation to further one's own political career by earning a few headlines and sound bites worthy of the six o'clock news may be too much for some to resist. Orators may spew out

452. H. Rules on Impeachment, rule V, §§ 16 & 17.

motherhood statements intended to sway the hearts of men rather than facts and evidence used to persuade the minds of the people.

Then alternative modes of accountability are cancelled out by the Court's various pronouncements. Case law states that absent administrative proceedings undertaken by the SC, no other entity, including the Office of the Ombudsman, may proceed with an investigation on public officers and personnel of the Judiciary, much less remedy the situation through the meting out of an administrative sanction.[453]

Thus, the SC Justices effectively have immunity from true liability;[454] the OCA cannot very well investigate cases in the same manner it has done for all other members of the Judiciary. Complaints cannot be raffled to the various divisions of the Court like any other administrative matter. After an examination of the remedies available, it becomes ever more apparent that an in-house mechanism for Judicial Responsibility is necessary.

VI. CONCLUSION AND RECOMMENDATIONS — EVALUATING THE CORNERSTONE OF ACCOUNTABILITY: A PROPOSAL FOR MODIFICATIONS IN ITS MECHANISM

> *No one is above the law or the Constitution. ... Perhaps, there is no other government branch or instrumentality that is most zealous in protecting that principle of legal equality other than the Supreme Court which has discerned its real meaning and ramifications through its application to the numerous cases especially of the high-profile kind. ... The Chief Justice is not above the law and neither is any other member of this Court. But just because he is the Chief Justice does not imply that he gets to have less in law than anybody else. The law is solicitous of every individual's rights irrespective of his station in life.*
>
> — Justice Conchita Carpio-Morales[455]

A. Judicial Will, Political Purse Strings, and the People's Support: Practical Considerations

1. Judicial Independence: The Will to Survive

Members of the Court are considered public officers but are not under the supervision of any other body. There has been a documented history of the indiscretions of some Members but seldom has the Court taken any formal action. Proceedings are haphazardly assumed, largely depending upon the rapport between the incumbent justices and the leadership of the Chief Justice. Sanctions were meted out, not in proportion to the gravity of the

453. *See Maceda*, 221 SCRA 464; *Dolaslas*, 265 SCRA 819; *Caoibes, Jr.*, 361 SCRA 395.

454. *See, e.g.*, Tejada Jr., *supra* note 66, at 81-82.

455. Francisco, Jr., 415 SCRA at 179.

offense but in proportion to the severity of the media's glare. But all this changed in *Reyes*; here, the Court explicitly applied the general doctrines of accountability of public officers on a SC Justice. It did not state that such was possible only because of the retirement of the justice; rather, the Court explained that only the imposition of administrative sanctions was prevented by his retirement, therefore, it may be deduced that had he not retired, the Court would not have hesitated to impose administrative sanctions.

These administrative sanctions, however, have not had a clear direction nor boundaries. The Court's action must be guided by a certain legal framework in imposing sanctions and this Note presents the Court with an option for its actions.

Outside the Court's action, the only recognized remedy against an incumbent Member is impeachment. Yet this remedy seems to be one that solely exists on paper. Impeachment has proven to be a costly and inefficient manner of holding erring public officers accountable for their actions.[456] The toll the process takes on the entire State is more often than not seen as unjustifiable, for the indiscretions, which though undoubtedly affect the administration of justice, do not generate enough of an outcry to merit the action of Congress. Complaints are easy to draft; garnering sufficient support from the House of Representatives and demand presence in the Session Hall is nearly impossible.

This remains to be true all around the world where the members of various apex courts are also protected as impeachable officers in their constitutions. These countries also struggle with the issue of Judicial Accountability in the face of Judicial Independence but have resolved it by creating Judicial Councils to handle the investigation of complaints and only acting upon those which have substantiated matters that do not constitute impeachable offenses. When it has been discovered through these investigations that impeachable offenses have been committed, rather than sitting around waiting for Congress to initiate any proceedings, the courts take the first step by sending a report to their parliaments recommending action. Such an act sends a clear message of support for any action undertaken by a co-equal branch of the state and facilitates the proceedings.

As emphasized throughout this Note, the creation of a mechanism for Judicial Responsibility does not threaten Judicial Independence. Reconciling both concepts would result in Judicial Responsibility. A mechanism for Judicial Responsibility would be a simple exercise of the Court's administrative powers. In fact, this exercise would be the ultimate act of Independence because, through it, the Court self-regulates. Apart from the political process available *via* impeachment, an in-house administrative

456. *See generally* MICHAEL J. GERHARDT, THE FEDERAL IMPEACHMENT PROCESS: A CONSTITUTIONAL AND HISTORICAL ANALYSIS 37 (2d. ed. 2000).

process is necessary to strengthen the Judiciary and uphold the concept of Judicial Responsibility. This would be well within the Court's powers of administrative supervision as it would not bar impeachment proceedings. In fact, this mechanism would facilitate the process of impeachment thereby breathing new life into its tired form.

The judicial system is failing; the Judiciary is losing public confidence. The Court now has an opportunity to meet the challenges of the present; all that is necessary is the judicial will to do so. Fortunately, the time appears to have arrived. The current composition of the SC seems to guarantee that positive action will be taken in this Author's lifetime.

2. The Judicial Fund and International Support

Any proposal for a change in the system is often met with naysayers espousing the impracticability of the measure considering the financial burden it presents. These concerns, while valid at other times, are not so here. The Judiciary has fiscal autonomy, which is constitutionally protected.[457] The Court is even asking for an increase of this fund, which may not be decreased even if the increase is denied.

The proposed mechanism will make use of the bodies already in existence and only requires a clear delineation of membership, duties, powers, and procedures. If any additional expenses are foreseen, the international community, particularly foreign aid organizations, has a history of financially supporting any reforms aimed at the eradication of corruption and the increase in transparency of the government. This proposal is based on case studies of judiciaries around the world, including those within our own region. Therefore, upon further study, it should be well received.

3. Watchdogs and the Cry of the People

The members of the international community are not the only ones who have been taking note of the need for judicial reform in the Philippines. Local public concern over the Judiciary has increasingly grown over the years. The bad publicity has resulted in frequent outcries against the Court. Non-governmental organizations and educational institutions have become vigilant against corruption in Court but have concentrated its efforts in preventive measures by guarding the appointment process.

This is because the prevailing school of thought claims that since impeachment is the only available remedy against these officers, then it is best to simply ensure that those who manage to sit on the Bench are of the highest moral caliber. But even the most stringent screening processes cannot

457. PHIL. CONST. art. VIII, § 3.

account for a change in an officer's moral direction and contingencies must be in place in case certain officers fall out of line.

B. Building Upon the Dignity and Respect for the Supreme Court

In an interview, when asked about the concern on instances of leakage of SC decisions, SC Justice Arturo Brion opined, "[t]he Court must sanction erring personnel. If we default, whatever protection (given to the Court) is self-defeating."[458]

Long before any of the issues discussed here were placed under a spotlight, to inspire respect for the justice system, the SC released an Administrative Circular requiring all its officials and employees to comply with the Canons of Judicial Ethics, Code of Judicial Conduct, Section 47, Chapter 7, Subtitle A, Title I, Book V of the Administrative Code of 1987, and the Code of Conduct and Ethical Standards for Public Officials and Employees.[459] In this Circular, the OCA was tasked with the implementation of these Codes and Canons.[460]

Eventually, the New Code of Judicial Conduct for the Philippine Judiciary was promulgated. Much credit was given to the effort of then Chief Justice Davide. It was during his tenure that the New Code was created to reflect that in all levels of the Judiciary, competence in law alone was insufficient and that moral integrity, at least to the extent that is externalized, is necessary to uphold the dignity of the Court.

The problem of its implementation at all ranks remained — there was an increase in the number of cases heard on nearly all levels except for the apex Court. Still, all behavior that did not constitute an impeachable offense was allowed to slip by without much thought even after this New Code was released. It seemed as if even after these movements in Judicial Accountability, nothing could touch the Members of the Court. All this changed, however, in 2009.

C. The Internal Rules of the Supreme Court

After the Reyes incident and the alleged leaks in the deliberations that led to Justice Brion's death threats, the Members of the Court scrutinized the existing mechanisms of accountability in place and found them wanting. The

458. Marites Danguilan Vitug, Exclusive: SC leak leads to death threat vs[.] justice, *available at* http://www.abs-cbnnews.com/special-report/07/01/09/exclusive-sc-leak-leads-death-threat-vs-justice (last accessed Nov. 15, 2011).

459. Supreme Court, Enhancing the Dignity of Courts as Temples of Justice and Promoting Respect for Their Officials and Employees, SC Administrative Circular No. 1-99 [SC A.O. No. 1-99] (Feb. 1, 1999).

460. *Id.* ¶ 2.

efforts in finally putting into place a set of rules that could possibly resolve this issue were doubled. The Court promulgated its internal rules upon the recommendation of one of its sub-committees.[461]

Although jurisprudence has dispensed with the publication of such rules, the SC decided to publish it in a newspaper of general circulation for its effectivity and post the Rules on the SC website.[462] The Rules took effect on 22 May 2010 after its 7 May 2010 publication in the Manila Bulletin.[463] Many of them are simply a compendium of the scattered principles that already govern the operating procedures of the Court. The significance of these Rules, however, lies in the fact that their promulgation and subsequent publication revealed to the public the manner by which the Court exercised its administrative functions.[464]

The Rules have also placed "cases involving the discipline of a Member of the Court, or a Presiding Justice, or any Associate Justice of the collegial appellate courts ... [and] all matters involving policy decisions in the administrative supervision of all courts and their personnel" under the jurisdiction of the Court *en banc*.[465]

These Rules presented the Author with a unique opportunity. *Reyes* had originally touched on the possibility of open and formal proceedings other than impeachments against a SC Justice. But questions arose as to whether it truly constituted as precedent since the accused was retired by the time the decision was promulgated. The fact remains, however, that the decision did outline the procedures undertaken by the Court and upon examination of the Court's recent history it is evident that there are certain procedures that remain constant. It was therefore baffling why the Court never formalized any of these procedures and continued to rely upon the wisdom of the sitting Chief Justice and the scattered Administrative Circulars for direction in handling these matters. Though provisions on the Ethics Committee were put to the test in the case against Justice Mariano C. del Castillo,[466] many concerns have still been left hanging.

The Rules signified the Court's determination to break away from the existing legal framework but failed to fully develop a new one. This Part

461. Internal Rules.

462. *Id.* rule 1, § 3 (d).

463. Gleo Sp. Guerra, SC Promulgates Internal Rules, *available at* http://sc.judiciary.gov.ph/publications/benchmark/2010/06/061009.php (last accessed Nov. 15, 2011).

464. Internal Rules, rule 1, § 1.

465. *Id.* rule 2, § 3 (h) & (o).

466. In the Matter of the Charges of Plagiarism, etc., Against Associate Justice Mariano C. Del Castillo, 632 SCRA 607 (2010).

examines the gaps in the existing rules and attempts to fill them in with the principles of Judicial Responsibility as may be gleaned from *Reyes* and international experience.

1. Composition of the Ethics Committee

The Ethics and Ethical Standards Committee is a permanent Committee that acts much like the Judicial Councils in the U.S., U.K., Canada, Hong Kong, Sweden, Singapore, New South Wales, and Victoria.[467] The key difference lies in its composition.

In other jurisdictions, the Judicial Councils consist of senior members of the Judiciary. In the Philippines, however, the Chief Justice chairs the Committee. Three out of the five members are sitting SC Justices chosen through secret ballot amongst the Court *en banc*. Then, the Chief Justice has the power to appoint a working Vice-Chair and a retired SC Justice as a non-voting observer-consultant.[468] Although it is not specified, it can be assumed based on the Philippines' past experience that the Vice-Chair would be a sitting member of the Court. For future purposes, however, this provision must be clarified and made more specific.

Human experience suggests that the likelihood of all substantial complaints being resolved without delay decreases if all the voting members of the Committee consist solely of Members of the Court simultaneously serving in the same administration. Though the ability of these Members to stay objective is not questioned, placing at least five retired Members of the Court with voting rights would significantly stabilize the Committee and improve the public's confidence in the Court thereby contributing to the overall improvement of the perception of the entire judicial system.

Including the Chair and Vice-Chair, five Committee Members serving for a term of five years would be greater assurance that headway could be made in cleaning up the Justice System. There would be no readily available excuse to them since they are given a term nearly as long as the President's, minus a year — after all they do not need to spend a year getting their bearings. It is hoped that though the Committee would be absent a voting incumbent Member of the Court, this measure would be taken as one for the increased efficiency of the Court. Since many of these Justices already have a full docket, there seems to be no compelling reason to further delay the service of justice when there are a sufficient number of capable retired SC Justices willing to step up.

The incumbent Justices would still have a hand in the selection of the Members of the Committee since it is they who must nominate and vote for

467. *See* Internal Rules, rule 2, § 13, ¶ 1.

468. *Id.* rule 2, § 13, (a)–(c).

them. If, before their five-year term expires, the Members of the Committee commit acts that merit their removal, the Court *en banc* may do so upon a motion, seconded and won by a simple majority.

2. Procedure

The survey of experiences in countries around the world has shown that although the Court has entertained anonymous complaints in the past that allude to certain justices, if formal proceedings are to be instituted, a complaint must at the very least specifically identify the SC Justice involved. Unlike certain anonymous complaints in the past, a valid complaint here cannot come in the form of a blind item that you would find in some tabloid. If the in-house mechanism is to gain any credibility whatsoever, it must demand that both sides be treated fairly. This means that if a justice is to be called out then it must be done with certainty.

General descriptions and hints cannot be left with the SC to decipher. The accuser would then be the Committee since the investigators are the ones who would narrow down the search. This would not bode well when all other precautionary measures — such as the Confidentiality Provision — are put into place to protect the accuser anyway. If the complainant has sufficient reason to fear reprisals, he or she should have the right to request that the Committee keep his name confidential.

The Committee must immediately take cognizance of the complaint and docket it. The pinpointed justice must be informed of the complaint and given notice of the proceedings. Since it is a permanent body, there is no impediment to it immediately convening for the purpose of conducting a preliminary examination of the matter.

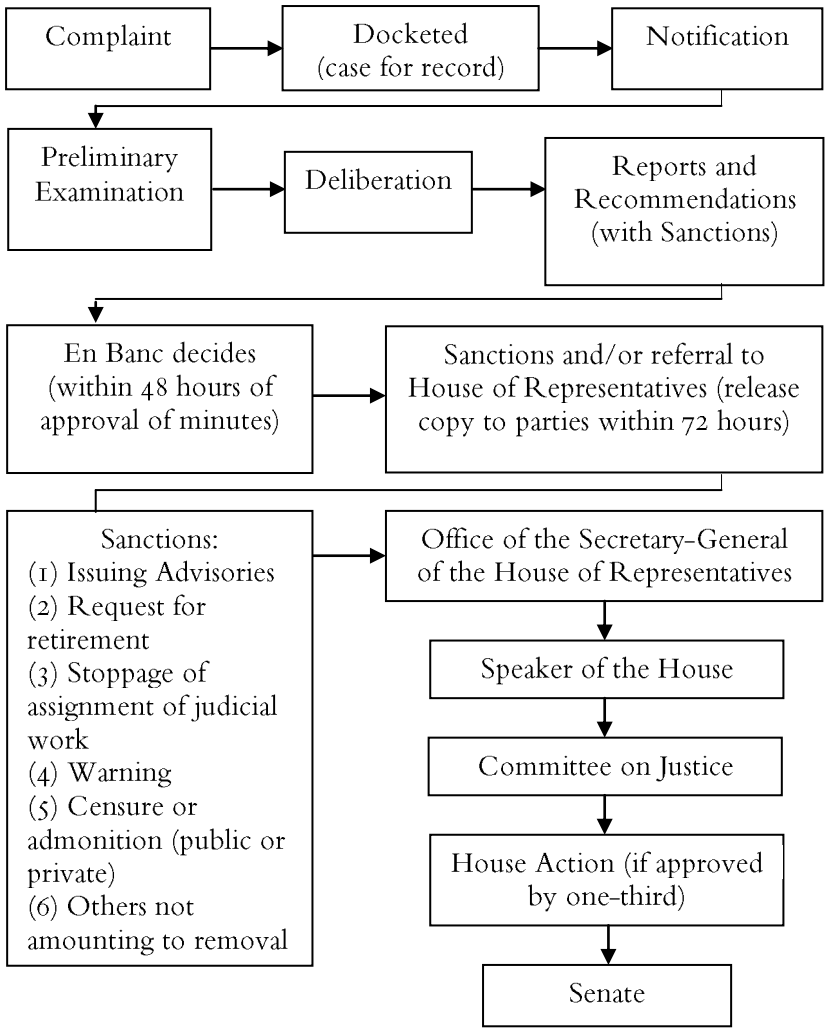
After an investigation is concluded, the Committee must file its report with its recommendations with the Court *en banc*. The justice involved and the complainant must be given copies of the report, which shall not be disclosed to outside parties unless otherwise requested by the parties or determined by the Court.

The practice of trying to work the accusations and issues informally *via* the Chief Justice's mediation should be banished if any effort for improvement is to be seen through. The Author's proposal, as seen below, also provides for the referral of any findings of guilt for an offense constituting an impeachable offense to Congress for its appropriate action.

This system has worked in countries across the globe; and given the general operations of the Court, there is no reason why such a system, when adopted as part of the mechanism for Judicial Responsibility, would not work here.

The proposed procedure for Judicial Responsibility with the corresponding impeachment process is outlined below.

Chart 6.1 Procedure for Judicial Responsibility



3. Minor Sanctions

In the past, sanctions imposed on SC Justices have been found wanting. They have also been inconsistently applied. Fines were described by Justice Isagani A. Cruz as "a painless penalty," and censures as ones that "did not cut deeply enough and drew no blood."[469] The minor sanctions that would be imposed by the Court *en banc* upon recommendation of the Ethics Committee would include (i) issuing advisories, (ii) request for retirement, (iii) stoppage of assignment of judicial work for a limited time, (iv) warning, and (v) censure or admonition (public or private).

469. Isagani A. Cruz, *An awry sense of values*, PHIL. DAILY INQ., Apr. 8, 2000, at A6.

Withdrawal of Judicial work can be of two types: (i) withdrawal pending proceedings; and (ii) withdrawal of work as a "minor measure" at the end of the inquiry. It cannot be for an indefinite period because that would effectively remove the justice from his position.

The stoppage of assigning judicial work to the judge against whom the investigation has commenced, where the Ethics Committee considers it necessary in the interests of fair and impartial investigation, should also be made as an available option. During this period, the justice remains in possession of his judicial authority and will be permitted to go about his other business. But much like in preventive suspension, he will not be permitted to undertake any other work that may affect the smooth administration of justice.

4. Grounds

A justice cannot be guilty of misbehavior if the allegations relate to the merits of a judgment or order. The Internal Rules already provide for the basic grounds for a complaint — graft and corruption and violations of ethical standards. Violations of ethical standards include misbehavior to the extent affecting the effective and expeditious administration of the business of the Court. Even when the grounds overlap, the lighter offense will simply be absorbed by the heavier one. And when a ground proven is also an impeachable offense, this will simply require the Committee to recommend that the Court *en banc* endorse the complaint to the House of Representatives. The Code of Judicial Conduct as well as the international conventions on Judicial Independence should be used as the basis for ethical standards; as such, the Committee should also be delegated with power to amend the Code from time to time.

D. The Proposal: Amendments for a Role Model in Public Trust

As mentioned earlier, those who form part of the Judiciary, being public officers, are expected to adhere to the age-old principle that "public office is a public trust." Thus:

> By reason of the nature and functions of their office, the officials and employees of the Judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust. Inherent in this mandate is ... the efficient use of every moment ... for public service, if only to recompense the Government, and ultimately the people, who shoulder the cost of maintaining the Judiciary.[470]

470. Supreme Court, Strict Observance of Working Hours and Disciplinary Action for Absenteeism and Tardiness, SC Administrative Circular No. 2-99 [SC A.C. No. 2-99] (Feb. 1, 1999).

1. A Supplement to the Internal Rules

The Internal Rules is a fine instrument, revealing the inner workings of the SC for all to see. The concept of Judicial Accountability was well served when the Court outlined the proper procedure for every step in the course of a case before the SC. The Rules opened a window to the realization of the concept of Judicial Responsibility. Its provision directing the Ethics Committee to oversee the annual update of ethical rules and standards provided the Author with a concrete approach for a proposal on the legal framework for the mechanism for Judicial Responsibility. An in-house mechanism is ideal to preserve Judicial Independence while providing for Judicial Accountability.

By virtue of this Conclusion, the Author recommends that the following instrument be used to establish the in-house mechanism:

REPUBLIC OF THE PHILIPPINES

SUPREME COURT

MANILA

EN BANC

A.M. NO. XX-X-X-SC

RULES FOR PROCEEDINGS BEFORE THE ETHICS COMMITTEE

RESOLUTION

Acting on the recommendation of the Ethics Committee of the Supreme Court, submitting for this Court's consideration and approval the proposed Rules for Proceedings Before the Ethics Committee, the Court Resolved to APPROVE the same.

These Rules shall take effect fifteen (15) days after publication in a newspaper of general circulation in the Philippines.

Month X, 20XX.

...

PREAMBLE

These Rules were promulgated by the Supreme Court of the Philippines, pursuant to A.M. No. 10-4-20-SC, to establish ethical standards and procedures for addressing complaints filed by complainants or identified by the Ethics Committee.

PART __

RULE __

GENERAL PROVISIONS

Section 1. *Scope.* — These Rules govern proceedings under the Internal Rules to determine whether a Supreme Court Justice has engaged in conduct prejudicial to the effective and expeditious administration of the business of the Courts.[471]

Section 2. *Supreme Court Justice.* — These rules refer to the incumbent Supreme Court Justices during the filing period of the charges brought against them.

Section 3. *Graft and Corruption.* — includes all acts prohibited under Republic Act No. 3019 - The Anti-Graft and Corrupt Practices Act and as otherwise provided by law.

Section 4. *Ethical Standards.* — Ethical Standards as determined by this Committee are guided by the New Code of Judicial Conduct for the Philippine Judiciary, A.M. No. 03-05-01 SC — April 27, 2004. Some examples of which have been placed under the rubric of "Disability" and "Misconduct" for the purposes of this Rule but shall not be considered to be limited to such.

Section 5. *Disability.* — Disability is a temporary condition rendering a justice unable to discharge the duties of the particular judicial office. Examples of disability include substance abuse, the inability to stay awake during court proceedings, or a severe impairment of cognitive abilities.

Section 6. *Misconduct.* — Cognizable misconduct:

(1) is conduct prejudicial to the effective and expeditious administration of the business of the courts. Misconduct includes, but is not limited to:

(a) using the judge's office to obtain special treatment for friends or relatives;

(b) accepting bribes, gifts, or other personal favors related to the judicial office;

(c) having improper discussions with parties or counsel for one side in a case;

(d) treating litigants or attorneys in a demonstrably egregious and hostile manner;

471. Judicial Conduct and Disability Act of 1980, § 351 (a).

(e) failing to properly and expeditiously act on a security concern of any member of the Bench made known to the Member of the Court;

(f) engaging in partisan political activity or making inappropriately partisan statements;

(g) soliciting funds for organizations; or

(h) violating other specific, mandatory standards of judicial conduct, such as those pertaining to the elimination of the Court's backlog or restrictions on outside income and requirements for financial disclosure.

(2) is conduct occurring outside the performance of official duties if the conduct might have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people.

(3) is in violation of the Internal Rules of the Supreme Court.

(4) does not include:

(a) an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related. If the decision or ruling is alleged to be the result of an improper motive, e.g., a bribe, *ex parte* contact, racial or ethnic bias, or improper conduct in rendering a decision or ruling, such as personally derogatory remarks irrelevant to the issues, the complaint is not cognizable to the extent that it attacks the merits; and

(b) an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.

Section 7. *Minor Sanctions.* — The Supreme Court *en banc* shall mete out a sanction commensurate to the offense such as but are not limited to — (i) issuing advisories; (ii) requesting for retirement; (iii) stoppage of assignment of judicial work for a specified limited time; (iv) warning; (v) censure or admonition (public or private); and (iv) any other sanction not amounting to removal.

Section 8. *Deadline.* — Complaints must be filed within five (5) years from the act or three (3) years from the retirement of the Member of the Court.

Section 9. *Legal Fees.* — Complaints properly filed shall not be subject to any legal or court fees.

Section 10. *Form.* — A complaint shall be made in any written form but must identify the complainant and the Justice concerned.

Section 11. *Confidentiality.* — The complainant shall have the right to request that his or her name be kept confidential. The entire complaint proceedings, starting from the complaint, till 'minor measures' are imposed by the Court or in case the Committee recommends removal [until] its recommendation as to removal is placed in the House of Congress.

The complainant and the witnesses are prohibited from giving public statements about the allegations in the complaint, name of the complainant or witness or the name of the Justice. The Committee may prohibit the publication of any information or documents placed before it in connection with, or arising out of, an inquiry or investigation under these Rules when it is of the opinion that the publication is not in the public interest.

An inquiry or investigation under this section may be held in public or in private, unless the Chairperson requires that it be held in public.

Any breach of confidentiality amounts to contempt.

Section 12. *Notice of Hearing.* — A Justice in respect of whom an inquiry or investigation under Sections 3-6 is to be made shall be given reasonable notice of the subject-matter of the inquiry or investigation and of the time and place of any hearing thereof and shall be afforded an opportunity, in person or by counsel, of being heard at the hearing, of cross-examining witnesses and of adducing evidence on his or her own behalf.

RULE __

THE ETHICS COMMITTEE

Section 1. *Creation and Composition of the Ethics Committee.* — A permanent Committee on Ethics and Ethical Standards shall be established by the Chief Justice, with the following membership:

(1) a working Chairman and Vice-Chairman chosen by the *en banc* by secret vote from the roster of retired Supreme Court Justices, all of whom must have exemplary records as members of the Bar and Bench, upon a nomination duly seconded by the incumbent Members of the Court excluding the Justice under investigation and any other Justice who should inhibit under Section 16 of these Rules;

(2) the Chief Justice as a non-voting observer-consultant;

(3) three (3) retired Supreme Court Justices of good moral standing as voting members will also be chosen by the *en banc* by secret vote from the roster of retired Supreme Court Justices upon a nomination duly seconded by the incumbent Members of the Court excluding the Justice under investigation and any other Justice who should inhibit under Section 16 of these Rules.

The Chair, Vice-Chair, and retired Supreme Court Justices shall serve for a term of five (5) years, with the election of the Vice-Chair and Chair to be held at the call of the Chief Justice.

Section 2. *Powers of Committee Chair.* — The Chief Justice, upon recommendation by the Chair, may grant leave of absence to any Justice found, pursuant to Section 7, to be guilty of the charges, for such period as the Chief Justice, in view of all the circumstances of the case, may consider just or appropriate, and if leave of absence is granted the salary of the Justice shall continue to be paid during the period of leave of absence so granted.

Section 3. *Powers and Duties of the Committee.* — The Committee shall:

(1) conduct preliminary investigations on all complaints involving graft and corruption and violations of ethical standards filed against Members of the Court;

(2) submit its findings and recommendations to the Court *en banc*;

(3) monitor and report the progress of the investigation or similar complaints against Supreme Court officials and employees;

(4) handle the annual update of the Rules and the ethical standards upon which they are based;

(5) submit recommendations on the update to the Court *en banc.*

Section 3. *Inhibition.* — A Member of the Court shall inhibit himself or herself from participating in the resolution of the case when the Member of the Court or his or her spouse is related to either party in the case within the sixth degree of consanguinity or affinity. A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason. The inhibiting Member must state the precise reason for the inhibition. Rule __ on the Inhibition and Substitution of Members of the Court shall govern all other instances when not in conflict with the provisions of this Rule.

Section 4. *Complaints.* — Any person may complain to the Committee about a matter that concerns or may concern the ability or behavior of a

sitting Supreme Court Justice. A complaint is a document that, in accordance with Rule __, is filed by any person in his or her individual capacity or on behalf of a professional organization; or information from any source, other than a document herein described, that gives the Ethics Committee probable cause to believe that a Supreme Court Justice, has engaged in misconduct or may have a disability, whether or not the information is framed as or is intended to be an allegation of misconduct or disability.[472]

The Committee shall not deal with a complaint (otherwise than to summarily dismiss it) unless it appears to the Commission that:

(1) the matter, if substantiated, could justify Congress' consideration of the removal of the Justice from office, or

(2) although the matter, if substantiated, might not justify Congress' consideration of the removal of the Justice from office, the matter warrants further examination on the ground that the matter may affect or may have affected the performance of judicial or official duties by the officer.

A complaint may be made in relation to a matter, and be dealt with, even though the matter is already or has been the subject of investigation or other action by any other body or person.

Without limiting the foregoing, a complaint may be made in relation to a matter, and be dealt with, even though the matter constitutes or may constitute a criminal offence (whether or not dealt with, or being dealt with, by a court).

Section 5. *Preliminary Examination.* — The Committee shall conduct a preliminary examination of a complaint.

In conducting the preliminary examination, the Committee may initiate such inquiries into the subject-matter of the complaint as it thinks appropriate.

The examination or inquiries shall, as far as practicable, take place in private.

Section 6. *Annuity to Justice who resigns.* — The Supreme Court *en banc* may grant to any Justice found to be guilty of the charges laid before him, if the Justice resigns, the annuity that the Court might have granted the Justice if the Justice had resigned at the time when the finding was made by the Court *en banc.*

Section 7. *Stoppage of Assignment of Cases* — The Justice may not be assigned any cases during the conduct of proceedings. Recommendations

472. 28 U.S.C. § 351.

regarding all pending cases previously assigned shall not be entertained during this period. All other rights as holder of the office shall not be affected.

Section 8. *Recording of Complaints in Docket En Banc.* — A complaint properly filed shall be assigned a docket or A.M. (Administrative Matter) number, which shall identify the case for record purposes until its termination under these Rules.

Section 9. *Proceedings.* — All actions taken during the investigation and deliberation on the case shall be duly reflected in the minutes of the proceedings. All records relating to the proceedings are confidential and shall not be disclosed to outside parties except as may be requested by the parties or authorized by the Court. These records shall be transmitted to the Office of the Court Administrator after each session.

Oral arguments shall be recorded by at least two stenographers as provided in Section 4, Rule __ on Court Sessions and Hearings.

Section 10. *Monitoring of Proceedings.* — The Supreme Court *en banc* shall monitor the progress of the proceedings but shall not interfere until the Report and Recommendations of the Ethics Committee has been filed before it.

Section 11. *Reports and Recommendations.* — After an inquiry or examination under Section 18 has been completed, if the Committee decides that a complaint is wholly or partly substantiated by reason of

(1) having been guilty of violating Ethical Standards through graft and corruption, disability, misconduct, or

(2) having been placed, by his or her conduct or otherwise, in a position incompatible with the due execution of that office, the Committee:

(a) may form an opinion that the matter could justify Congress' consideration of the removal of the Justice complained about from office; or

(b) may form an opinion that the matter does not justify such consideration and should therefore be referred back to the Court *en banc.*

If it forms an opinion referred to in subsection (a) or (b), the Committee shall send a report to the Court *en banc* setting out the Committee's conclusions.

This report shall include recommendations as to what steps might be taken to deal with the complaint.

Section 12. *Administrative Sanctions.* — The Court *en banc* shall clearly indicate the appropriate minor sanction in the final resolution of the case in situations of the immediately preceding section.

Section 13. *Release of Resolutions.* — All cases shall be resolved within forty-eight hours from the approval of the Minutes of the final session resolutions by the Chairperson. Resolutions indicating the action/s of the Court shall be released within seventy-two hours to the parties.

Section 14. *Update of Ethical Rules and Standards.* — The Committee shall refer to the needs of the justice system, international standards, and its own deliberations in its annual update of the Ethical Rules and Standards.

Section 15. *House of Congress.* — Nothing in, or done or omitted to be done under the authority of, any of the previous sections affects any power, right or duty of the House of Congress, in relation to the removal from office of a Justice or any other person in relation to whom an inquiry may be conducted under any of those sections.

2. A House Resolution and a Senate Resolution for Judicial Responsibility

The synergy of efforts of the various branches of government will ensure the efficient implementation of Judicial Responsibility. In recognition of the process afforded to the subject Justice, the House of Representatives and the Senate should adopt the following instruments to revitalize the impeachment process and hold incumbent SC Justices accountable for their misbehavior.

These documents eliminate much of the red tape associated with the failure of impeachment complaints. Also, since the recommendation for impeachment came from the SC, the solons need not fear the absence of support and cooperation from the apex Court. This will allow the House of Representatives to forego their own investigation (without barring it in case such is desired) and allow them to enter into the final stages of the impeachment process.

While the Author worked mainly on the administrative process for Judicial Responsibility, improvements upon the political process of impeachment may also be made based upon these findings. The salient points of the House and Senate Resolutions below are as follows: (1) the tedious investigation process is generally dispensed with unless the Committee on Justice obtains a majority vote to undertake a new investigation; (2) the Report on the facts of the Ethics Committee shall be adopted; (3) the House of Representatives will only need to vote on its own recommendations and file a resolution based on such; and (4) the Senate will proceed with the trial.

A RESOLUTION AUTHORIZING THE ETHICS COMMITTEE OF THE SUPREME COURT TO INQUIRE WHETHER THE HOUSE

SHOULD IMPEACH A SUPREME COURT JUSTICE, AMENDING THE HOUSE RULES OF PROCEDURE ON IMPEACHMENT PROCEEDINGS OF THE THIRTEENTH CONGRESS, AND FOR OTHER PURPOSES

Be it enacted by the Senate and the House of representatives of the Philippines in Congress assembled:

Section 1. Ethics Committee Report and Recommendations. — The Ethics Committee of the Supreme Court or any subcommittee or task force designated by the Committee may, in connection with any inquiry regarding a complaint filed before it involving an incumbent Supreme Court Justice, submit its Report and Recommendations to the House of Representatives. The House of representative shall immediately take cognizance of such Report and Recommendations. The submission of which shall initiate impeachment proceedings against the subject Justice.

Section 2. Committee on Justice Resolution. — The Committee on Justice, upon referral of the Report and Recommendations, shall adopt the Ethics Committee's findings and proceed to calendar the Report and Recommendations with the accompanying Resolution of the Committee on Justice regarding the disposition of the Resolution in accordance with the Rules of the House of Representatives unless upon vote of majority of the members of the Committee on Justice, further investigation is necessary. The House shall dispose of the Resolution within ten (10) session days from its submission by the Committee on Justice.

Section 3. In line with the above Sections, Section 2 of the 13th Congress' Rules of Procedure in Impeachment Proceedings is hereby amended as follows:

> Section 2. Mode of Initiating Impeachment. — Impeachment shall be initiated by the filing and subsequent referral to the Committee on Justice of:
>
> (1) a verified complaint for impeachment filed by any Member of the House of Representatives; or
>
> (2) a verified complaint filed by any citizen upon a resolution of endorsement by any Member thereof; or
>
> (3) a verified complaint or resolution of impeachment filed by at least one-third (1/3) of all the Members of the House; or
>
> (4) *a report from the Ethics Committee of the Supreme Court, recommending that an incumbent Justice of the Supreme Court undergo the impeachment process upon its findings of fact that an impeachable offense has been committed upon a resolution of endorsement by any Member of the House of Representatives.*

Section 4. Section 3 of the 13th Congress' Rules of Procedure in Impeachment Proceedings is hereby amended as follows:

> Section 3. Filing and Referral of Verified Complaints. — A verified complaint for impeachment by a Member of the House or by any citizen upon a resolution of endorsement by any Member thereof *or report from the Ethics Committee of the Supreme Court* shall be filed with the office of the Secretary General and immediately refereed to the Speaker.
>
> The Speaker shall have it included in the Order of Business within ten (10) session days from receipt. It shall then be referred to the Committee on Justice within three (3) session days thereafter.

Section 5. Section 4 of the 13th Congress' Rules of Procedure in Impeachment Proceedings is hereby amended as follows:

> Section 4. Determination of Sufficiency in Form and Substance. — Upon due referral, the Committee on Justice shall ... it shall dismiss the complaint and shall submit its report as provided hereunder.
>
> *Upon due referral of the Report and Recommendations of the Ethics Committee, unless upon motion showing reasonable cause, a vote of majority of the members of the Committee on Justice, finds that further investigation is necessary, the Committee on Justice shall deem the Report adopted. When the Report and Recommendations are deemed adopted, the procedures indicated in Sections 5-7 shall no longer be undergone. A formal resolution of the Committee on Justice regarding the disposition of the Resolution shall be calendared for consideration by the House within ten (10) session days from receipt thereof.*

Section 6. All laws, decrees, executive orders, instructions, rules and regulations or parts thereof inconsistent with the provisions of this Resolution are hereby repealed or modified accordingly.

Section 7. This Resolution shall take effect thirty (30) days after its approval and after its publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved,

RESOLUTION ADOPTING CERTAIN RULES OF PROCEDURE AND PRACTICE TO GOVERN IMPEACHMENT PROCEEDINGS IN THE SENATE WHEN INITIATED *VIA* THE REPORT AND RECOMMENDATIONS FROM THE ETHICS COMMITTEE OF THE SUPREME COURT OF THE PHILIPPINES

I. When the Senate receives articles of impeachment against an incumbent Justice of the Supreme Court originating from the Report and Recommendations of the Ethics Committee of the Supreme Court, the Senate President shall inform the House of Representatives that the Senate shall take proper order on the

subject of impeachment and shall be ready to receive the prosecutors on such time and date as the Senate may specify.

II. Upon such articles being presented to the Senate, the Senate shall, at 2 o'clock in the afternoon of the day (except Saturday and Sunday) following such presentation, or sooner if ordered by the Senate, proceed to the consideration of such articles. It shall continue in session from day to day (except Saturday and Sunday) after the trial shall commence (unless otherwise ordered by the Senate) until final judgment shall be rendered, and so much longer as may, in its judgment, be needful. Before proceeding to the consideration of the articles of impeachment, the Presiding Officer shall administer the oath hereinafter provided to the Members of the Senate then present and to the other Members of the Senate as they shall appear, whose duty it shall be to take the same.

III. The Senate President shall preside in these cases of impeachment.

IV. The Presiding Officer shall have the power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, and writs authorized by these rules or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.

V. The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, and judgments, to preserve order, and to punish in a summary way contempts of, and disobedience to, its authority, orders, mandates, writs, or judgments, and to make all lawful orders, rules, and regulations which it may deem essential or conducive to the ends of justice. And the sergeant-at-arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, execute, and carry into effect the lawful orders, mandates, and writs of the Senate.

VI. Upon the presentation of articles of impeachment and the organization of the Senate as hereinbefore provided, a writ of summons shall issue to the Supreme Court Justice impeached, reciting or incorporating said articles, and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate and named in such writ, and file his answer to said articles of impeachment. Within an unattendable period of ten (10) days from receipt thereof, and to stand to and abide by the orders and judgments of the Senate thereon; which writ shall be served by such officer or person as shall be named in the order thereof, such number of days prior to the day fixed for such appearance as shall be named in such order either by the delivery of an attested copy thereof to the person impeached, or if that cannot conveniently be

done, by leaving such copy at the last known place of abode of such person, or at his usual place of business in some conspicuous place therein; or if such service shall be, in the judgment of the Senate, impracticable, notice to the person impeached to appear shall be given in such other manner, by publication or otherwise, as shall be deemed just; and if the writ aforesaid shall fail of service in the manner aforesaid, the proceedings shall not thereby abate, but further service may be made in such manner as the Senate shall direct. If the person impeached, after service, shall fail to appear, either in person or by attorney, on the day so fixed thereof as aforesaid, or, appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

VII. At 3 o'clock in the afternoon of the day appointed for the return of the summons against the person impeached, the legislative business of the Senate shall be suspended, and the Secretary of the Senate shall administer an oath to the returning officer in the form following: "I, _____, do solemnly swear that the return made by me upon the process issued on the ____ day of _____, by the Senate of the Philippines, against _____ is truly made, and that I have performed such service as therein described: So help me God." Which oath shall be entered at large on the records.

VIII. The Supreme Court Justice impeached shall then be called to appear and answer the articles of impeachment against him. If he appears, or any person for him, the appearance shall be recorded, stating particularly if by himself, or by agent or attorney, naming the person appearing and the capacity in which he appears. If he does not appear, either personally or by agent or attorney, the same shall be recorded.

IX. At 2 o'clock in the afternoon, or at such other hour as the Senate may order, of the day appointed for the trial of an impeachment, the legislative business of the Senate shall be suspended, and the Secretary shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment of _____, in the Senate Chamber.

X. The hour of the day at which the Senate shall sit upon the trial of an impeachment shall be (unless otherwise ordered) 2 o'clock in the afternoon; and when the hour shall arrive, the Presiding Officer upon such trial shall cause proclamation to be made, and the business of the trial shall proceed. The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate as a

legislative body and on such adjournment the Senate shall resume the consideration of its legislative business.

XI. The Secretary of the Senate shall record the proceedings in cases of impeachment as in the case of legislative proceedings, and the same shall be reported in the same manner as the legislative proceedings of the Senate.

XII. Counsel for the parties shall be admitted to appear and be heard upon an impeachment: Provided, That counsel for the prosecutors shall be under the control and supervision of the panel of prosecutors of the House of Representatives.

XIII. At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be open to the public.

XIV. An article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial. Once voting has commenced on an article of impeachment, it shall continue until completed on all articles of impeachment, unless the Senate adjourns for a period not to exceed one day or adjourns sine die. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of all the Members, a judgment of acquittal shall be entered; but if the person impeached shall be convicted upon any such article by the votes of two-thirds of all the Members, the Senate may proceed to the consideration of such other matters as may be determined to be appropriate prior to pronouncing judgment. A motion to reconsider the vote by which any article of impeachment is sustained or rejected shall not be in order.

XV. All the orders and decisions may be acted upon without objection, or, if objection is heard, the orders and decisions shall be voted on without debate by yeas and nays, which shall be entered on the record, subject, however, except when the doors shall be closed for deliberation, and in that case no Member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the Members present. The fifteen minutes herein allowed shall be for the whole deliberation on the final question, and not on the final question on each article of impeachment.

XVI. All other matters not herein discussed, including suspension of proceedings, as well as forms of oaths and documents, shall conform with the Senate's general rules for impeachment proceedings insofar as they are not inconsistent with this Resolution.

Resolved, as the Senate hereby resolves, to approve the foregoing Sense of the Senate Resolution for all concerned to provide for the efficient processing of complaints against incumbent Supreme Court Justices of the Philippines in accordance with the rule of law.

ADOPTED.