

Defining the Parameters of Judicial Independence and Accountability in Light of Chief Justice Corona’s Impeachment: An Examination of the Violation of the New Code of Judicial Conduct as a Ground for Betrayal of Public Trust

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I. INTRODUCTION

*A spotless dispensation of justice requires not only that the decision rendered be intrinsically fair but that the judge rendering it must at all times maintain the appearance of fairness and impartiality.*¹

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In 2005, then Associate Justice Renato C. Corona cited these words in ruling against a member of the Judiciary who was found guilty of simple misconduct.² Interestingly, perhaps by a twist of fate, the very essence of these words is now being used as one of the grounds to remove him as Chief Justice (CJ) of the Philippine Supreme Court.³

The 1987 Philippine Constitution limits the number of impeachable officers to: “the President, the Vice President, the members of the Supreme Court, the members of Constitutional Commissions[,] and the Ombudsman.”⁴ Among these impeachable officers, only the members of the Supreme Court are bound by the New Code of Judicial Conduct for the Philippine Judiciary (New Code of Judicial Conduct).⁵ In essence, the New Code of Judicial Conduct gives the members of the Supreme Court a sublime duty to adhere to. Should they fail to do so, they shall lack the moral fitness to remain in public office.⁶ Thus, it is the supposition of this discourse that a blatant and willful violation of the New Code of Judicial Conduct for Supreme Court Justices is equivalent to betrayal of public trust; hence an impeachable office.⁷ The case in point of the Article is the impeachment of CJ Corona.

The automatic filing of the impeachment complaint against CJ Corona came as an anticipated surprise. It was anticipated because everyone knew that the House of Representatives (House), majority of which are allies of the Aquino administration, would be filing an impeachment complaint

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1. *Ribaya v. Binamira-Parcia*, 456 SCRA 107, 118 (2005) (citing *Naldoza v. Lavilles*, 254 SCRA 286 (1996)).
 2. *Id.*
 3. See *In Re: Impeachment of Honorable Chief Justice Renato C. Corona, Impeachment Case No. 002-2011, Verified Complaint for Impeachment*, art. III (Dec. 12, 2011) [hereinafter *CJ Corona Impeachment Complaint*].
 4. PHIL. CONST. art. XI, § 2.
 5. See generally *Supreme Court, Re: Adopting New Code of Judicial Conduct for the Philippine Judiciary*, SC Administrative Matter No. 03-05-01-SC [New Code of Judicial Conduct] (Apr. 27, 2004). The provisions of the New Code of Judicial Conduct specify the conduct that judges must observe. Under the Code, a judge is “any person exercising judicial power, however designated.” New Code of Judicial Conduct, definitions, ¶ 3.
 6. See generally *ABA-RULE OF LAW, NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY (ANNOTATED) (2007)* [hereinafter *NEW CODE ANNOTATED*]. It illustrates several decided cases where members of the court were deemed unfit to serve as judges because of specific acts that violate the Canons on Judicial Conduct.
 7. See *CJ Corona Impeachment Complaint*.

against him.⁸ After all, the Chief Executive himself has been very vocal of his opposition and dislike against CJ Corona's appointment to the highest position in the Judiciary.⁹ Yet, the manner by which the House filed the impeachment complaint still came as a surprise because it only took one day for the Lower House to gather the required one-third vote¹⁰ of the members of the House of Representatives. Speculations that some of the members of the House may not have had the opportunity to read the allegations of the complaint ensued; views that the filing of the impeachment complaint was not really based on the merits but on political affiliations have been expressed.¹¹

8. Ira Pedrasa, *Impeachment complaint vs Corona readied*, available at <http://www.abs-cbnnews.com/nation/12/12/11/impeachment-complaint-vs-corona-readied> (last accessed Feb. 29, 2012).

9. See, e.g., Benigno S. Aquino III, President of the Philippines, *Speech at the 1st National Criminal Justice Summit at the Centennial Hall, Manila Hotel* (Dec. 5, 2011) (transcript available at <http://www.gov.ph/2011/12/05/president-aquinos-speech-at-the-1st-national-criminal-justice-summit-december-5-2011/> (last accessed Feb. 29, 2012)). During the Speech, President Aquino remarked:

[A]lam naman po nating pinilit ni Ginang Arroyo na magtalaga pa rin ng Chief Justice. Hinirang siya, hindi dalawang buwan bago ang halalan, kundi isang linggo matapos ang eleksiyon. Base sa batas at sa dati nilang pasya, sumangayon ang Korte Suprema na bawal magtalaga ng pwesto dalawang buwan bago sumapit ang susunod na eleksiyon, maliban na lamang kung ito ay pansamantalang posisyon sa ehekutibo. Ngunit bumaliktad sila nang italaga ni Ginang Arroyo, ating kagalang-galang, na Chief Justice Renato Corona: isang pwestong hindi saklaw ng ehekutibo, kundi sa hudikatura. Ang tanong ngayon: lumabag ba ang Korte Suprema sa pagbabaliktad ng dating pag-unawa ng ating Saligang Batas? ([W]e all know how Mrs. Arroyo insisted on appointing the Chief Justice. He was appointed, not two months before the election, but a week after. According to the law and one of their previous decisions, the Supreme Court ruled that the President could not appoint any official two months before an election, except for temporary appointments to the executive position. But they turned their back on their pronouncements when Mrs. Arroyo appointed the Honorable Chief Justice Renato Corona — in a position that was not in the executive branch, but of the judiciary. The question now is: is the Supreme Court in violation of the Constitution?)

Id.

10. See PHIL. CONST. art. XI, § 3 (3). The 15th Congress has 286 Members of the House of Representatives; 95 votes, thus, were needed for the impeachment complaint against CJ Corona to prosper. See House of Representatives, *House Members*, available at <http://www.congress.gov.ph/members/> (last accessed Feb. 29, 2012).

11. See, e.g., Carlo Suerte Felipe & Charissa M. Luci, *Complaint flawed, IBP head cites defects in impeachment case against Corona*, MANILA BULL., Jan. 7, 2012,

On 16 January 2012, the Senate, acting as an Impeachment Court, ruled that it would not probe on the alleged irregularity in the filing of the impeachment complaint against CJ Corona.¹² It based its decision on the presumption of legality in the performance of duties of the House.¹³

The impeachment trial of CJ Corona is one of the most acrimoniously debated issues in 2012. In the ongoing debate, it is essential to answer whether or not a member of the Supreme Court may be impeached based *solely* on his betrayal of public trust by failure to uphold one's impartiality, probity, competence, and independence as a magistrate. Such matters are provided in the New Code of Judicial Conduct. On the one hand, members of the Supreme Court must, indeed, live to the high ethical standards required from members of the Judiciary. As members of the institution upon which the people delegated the administration of judicial power, they must serve as models to the other members of the Judiciary. On the other hand, due to the high standards set forth in the New Code of Judicial Conduct, the Authors also fear that the same may be indiscriminately used to remove a

available at <http://www.mb.com.ph/articles/347312/complaint-flawed> (last accessed Feb. 29, 2012); Sandy Araneta & Aurea Calica, *Legal groups, judges, employees back Corona, hit impeach rap*, PHIL. STAR, Dec. 25, 2011, *available at* <http://www.philstar.com/Article.aspx?articleId=761974&publicationSubCategoryId=63> (last accessed Feb. 29, 2012); Tarra Quismundo, *Integrated Bar: Impeach raps vs Corona flawed*, PHIL. DAILY INQ., Dec. 21, 2011, *available at* <http://newsinfo.inquirer.net/115061/integrated-bar-impeach-raps-vs-corona-flawed> (last accessed Feb. 29, 2012); and Tetch Torres, *Lawyer files petition to stop impeachment trial vs Corona*, PHIL. DAILY INQ., Dec. 19, 2011, *available at* <http://newsinfo.inquirer.net/113973/lawyer-files-petition-to-stop-impeachment-trial-vs-corona> (last accessed Feb. 29, 2012).

12. Maila Ager, *Impeachment court denies Corona motion for preliminary hearing*, PHIL. DAILY INQ., Jan. 16, 2012, *available at* <http://newsinfo.inquirer.net/129037/impeachment-court-denies-corona-motion-for-preliminary-hearing> (last accessed Feb. 29, 2012).

13. In re: Impeachment Trial of Honorable Chief Justice Renato C. Corona, Impeachment Case No. 002-2011, Ruling on the Motion for Preliminary Hearing dated Dec. 29, 2011 (Jan. 19, 2012). The Impeachment Court ruled —

As to the allegation that there was not enough time and opportunity for all of the 188 Congressmen to read the complaint before affixing their signatures thereto, suffice it to state that the Senate firmly believes in the *presumption of legality of the actions of the House of Representatives as a co-equal legislative body* and absent strong and convincing evidence, the Senate will not question the precise manner of performance by the members of the House of Representatives of their official acts including that of filing of a verified impeachment complaint against Chief Justice Renato C. Corona as long as they appear to have complied with the basic requirements of the Constitution.

Id. (emphasis supplied).

member of the Supreme Court for a very small infraction — a scenario that is entirely against the intent of the framers of the 1987 Constitution.

In this Article, the Authors will delineate the boundaries of judicial independence and accountability in light of the New Code of Judicial Conduct and the impeachment complaint against CJ Corona. Through an analysis of the arguments provided in Article III of the impeachment complaint against CJ Corona, the Authors will determine whether or not all violations of the New Code of Judicial Conduct may be considered as impeachable offenses.

II. JUDICIAL INDEPENDENCE AND ACCOUNTABILITY

A. Judicial Independence and Separation of Powers

Article II, Section 1 of the Constitution provides that “[t]he Philippines is a Democratic and Republican State. Sovereignty resides in the people and all government authority emanates from them.”¹⁴ With a Republican form of government, power may neither be concentrated on a chosen few nor be given indiscriminately to the entire population.¹⁵ Through the Constitution, the Filipinos delegated the power to govern them to “three branches of government — the Executive, the Legislative, and the Judiciary — each branch being supreme in its own sphere but with constitutional limits and a firm tripod of checks and balances.”¹⁶ The separation of powers of the three branches is a reflection of the people’s adherence to Republicanism.¹⁷

Republicanism prevents the concentration of power in one branch of government.¹⁸ Thus,

it follows that the three branches of government must discharge their respective functions within the limits of authority conferred by the Constitution. Under the principle of separation of powers, neither Congress, the President, nor the Judiciary may encroach on fields allocated to the other branches of government. The legislature is generally limited to the enactment of laws, the executive to the enforcement of laws[,] and the judiciary to their interpretation and application to cases and controversies.¹⁹

14. PHIL. CONST. art. II, § 1.

15. *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*, 415 SCRA 44, 214 (2003) (J. Vitug, separate opinion).

16. *Id.*

17. Salvador T. Carlota, *The Three Most Important Features of the Philippine Legal System the Others Should Understand* (A Paper Presented on IALS Conference) 177, available at <http://www.ialsnet.org/meetings/enriching/carlota.pdf> (last accessed Feb. 29, 2012).

18. *Id.*

19. *Bengzon v. Drilon*, 208 SCRA 133, 142 (1992).

The separation of powers does not, however, entirely prohibit the three branches of government from ensuring that each branch is properly discharging the power delegated to it.²⁰ Co-existent with the separation of powers is the system of checks and balances.²¹ The system of checks and balances has been described in *Francisco, Jr. v. Nagmamalaskit na mga Mananagbol ng mga Manggagawang Pilipino, Inc.*,²² as a doctrine “which has been carefully calibrated by the Constitution to temper the official acts of these three branches [and] must be given effect without destroying their indispensable co-equality.”²³

Moreover, aside from ensuring that one branch is not going beyond the powers granted to said branch by the Constitution, the system of checks and balances also secures the cooperation of the three branches of the Philippine government.²⁴ As held in *Angara v. Electoral Commission*²⁵ —

Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.²⁶

Article VIII, Section 1 of the Constitution vests judicial power in the Supreme Court and in other lower courts that may be established by law.²⁷ Judicial power has been defined as “the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights.”²⁸ Essentially, it is “the power to maintain inviolate what it decrees.”²⁹

By virtue of the doctrines of separation of power and checks and balances, the Judicial Department is not entirely independent from the Legislative and Executive Departments. There are instances provided for in

20. *Abakada Guro Party List v. Purisima*, 562 SCRA 251, 286 (2008).

21. *Id.*

22. *Francisco, Jr.*, 415 SCRA 44.

23. *Id.* at 105.

24. *Sarmiento III v. Mison*, 156 SCRA 549, 572 (1987).

25. *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

26. *Id.* at 156.

27. PHIL. CONST. art. VIII, § 1.

28. *Lopez v. Roxas, et al.*, 17 SCRA 756, 761 (1966).

29. *Bengzon*, 208 SCRA at 142. See PHIL. CONST. art. VIII, § 1.

the Constitution which act as checks to the internal and external administration of the Judicial Department.

On the one hand, the Legislative Department “has the power to create new courts and to apportion jurisdiction among various courts.”³⁰ Moreover, the Legislative Department also has the power to remove a member of the Supreme Court through an impeachment proceeding.³¹ Under the 1987 Constitution, it is the House that impeaches³² while the Senate is the body that convicts or acquits.³³

On the other hand, the Executive Department, through the President, has the authority to appoint the members of the Supreme Court and the judges of lower courts based on a list of nominees submitted by the Judicial and Bar Council.³⁴

B. Judicial Independence and the Two Concepts of Liberty

In the Judiciary’s discharge of its functions, judicial independence is necessary.³⁵ It has been expressed that “[j]udicial independence is important for precisely the reasons that the [J]udiciary itself is important.”³⁶ After all, “[i]f [the] [J]udiciary cannot be relied upon to decide cases impartially, according to the law, and not based on external pressures and influences, its role is distorted and public confidence in government is undermined.”³⁷

Judicial independence is a two-fold concept: the Judiciary needs to be free from external pressures and it also must have the power to resist such pressures. The Two Concepts of Liberty³⁸ — *freedom from* and *freedom to* — has been used to describe the two-fold concept of judicial independence.³⁹

30. JOAQUIN G. BERNAS, S.J., *THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER* 331 (2011 ed.). See PHIL. CONST. art. VIII, § 2.

31. See PHIL. CONST. art. XI, § 3.

32. PHIL. CONST. art. XI, § 3 (1).

33. PHIL. CONST. art. XI, § 3 (6).

34. See PHIL. CONST. art. VIII, § 9.

35. NEW CODE ANNOTATED, *supra* note 6, at 1.

36. Office of Democracy and Governance, *Guidance for Promoting Judicial Independence and Impartiality* (A Publication for the Guidance of USAID Field Officers on Judicial Independence) 5, available at http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacm007.pdf (last accessed Feb. 29, 2012).

37. *Id.* at 6.

38. Isaiah Berlin, *Two Concepts of Liberty*, in *FOUR ESSAYS ON LIBERTY* 118 (1969). Berlin presents two kinds of liberty: (1) negative liberty or the “[freedom] to the degree to which no man or body of men interferes with [one’s] activity. [It] is simply the area within which a man can act unobstructed by others. ... By being

I. Negative Freedom: *Freedom From*

Judicial independence requires negative freedom. To ensure that members of the Judiciary are able to render impartial judgments, they must have freedom from external pressures, such as harrassments and threats. In the Philippines, for instance, the Constitution grants to the Supreme Court the sole power to discipline the members of the Judiciary.⁴⁰ As a rule, no other branch of the government may hold a member of the Judiciary accountable for any violation. The only exception to this is impeachment.

To a certain extent, members of the Supreme Court, like the other impeachable officials under the Constitution, have a level of “immunity” before conviction in an impeachment proceeding. *In Re: Raul M. Gonzalez*⁴¹ quoting *Lecaroz v. Sandiganbayan*⁴² elucidates —

The provisions of the 1973 Constitution we referred to ... in *Lecaroz v. Sandiganbayan* are substantially reproduced in Article XI of the 1987 Constitution:

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

Sec. 3 [...]

free in this sense[, one is] not being interfered with by others” and (2) positive freedom or that will in a person “to be his own master[,] ... to depend ... not on external forces of whatever kind[,] to be the instrument of [his] own, not of other men's, acts of will[,] ... to be moved by reasons, ... which are [his] own, not by causes which affect [him] ... from outside.” *Id.*

39. See Pamela S. Karlan, *Two Concepts of Judicial Independence*, 72 S. CAL. L. REV. 535 (1998). Karlan used negative freedom or “freedom from” in describing the limitations on the Judiciary imposed by external factors and positive freedom or “freedom to” in describing the limitations on judicial independence because of things that are inherent in the Judiciary such as law and *stare decisis*. Unlike Karlan, the Authors, in this Article, use “freedom from” to describe the freedom of the judiciary from outside forces while “freedom to” is used to describe the capacity of the members of the Judiciary to resist these outside forces. Thus, in the context of the Article, “freedom from” refers to the external forces that affect the independence of the judiciary while “freedom to” refers to the ability of its members to maintain judicial independence.

40. PHIL. CONST. art. VIII, §§ 6 & 11.

41. *In re: Raul M. Gonzalez*, 160 SCRA 771 (1988).

42. *Lecaroz v. Sandiganbayan*, 128 SCRA 324 (1984).

(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial[,] and punishment according to law.’

It is important to make clear that the Court is not ... saying that its Members or the other constitutional officers ... referred to ... are entitled to immunity from liability for possibly criminal acts or for alleged violation of the Canons of Judicial Ethics or other supposed misbehaviour. *What the Court is saying is that there is a fundamental procedural requirement that must be observed before such liability may be determined and enforced. A Member of the Supreme Court must first be removed from office via the constitutional route of impeachment under Sections 2 and 3 of Article XI of the 1987 Constitution. Should the tenure of the Supreme Court Justice be thus terminated by impeachment, he may then be held to answer either criminally or administratively (by disbarment proceedings) for any wrong or misbehaviour that may be proven against him in appropriate proceedings.*

*The above rule rests on the fundamental principles of judicial independence and separation of powers. The rule is important because judicial independence is important. Without the protection of this rule, Members of the Supreme Court would be vulnerable to all manner of charges which might be brought against them by unsuccessful litigants or their lawyers or by other parties who, for any number of reasons might seek to affect the exercise of judicial authority by the Court.*⁴³

This procedural immunity is further affirmed in *Jarque v. Ombudsman*,⁴⁴ where the Supreme Court reiterated its ruling in *In Re: Raul M. Gonzalez* and refused to hold an impeachable officer, the Ombudsman, for charges warranting disbarment on account of failure of the complainant to first observe the strict procedural requirement of removing the said officer from office prior to having him answer for such charges.⁴⁵ The Court pronounced

We would make clear once more that the Court is not here saying that the Ombudsman and other constitutional officers who are required by the Constitution to be members of the Philippine Bar and are removal [sic] only by impeachment, are immunized from liability for possibly criminal acts or for violation of the Code of Professional Responsibility or other claimed misbehavior. *What the Court is saying is that there is here a fundamental procedural requirement which must be observed before such liability may be determined and enforced.* The Ombudsman or his deputies must first be removed from office via the constitutional route of impeachment under Sections 2 and 3 of Article XI of the 1987 Constitution. Should the tenure of the Ombudsman be thus terminated by impeachment, he may then be held to answer either criminally or administratively — e.g., in disbarment

43. *In re: Gonzalez*, 160 SCRA at 776-77 (citing PHIL. CONST. art. XI, §§ 2-3) (emphasis supplied).

44. *Jarque v. Desierto*, 250 SCRA xi (1995).

45. *See Jarque*, 250 SCRA xi.

proceedings — for any wrong or misbehavior which may be proven against him in appropriate proceedings.⁴⁶

Finally, in *Marcoleta v. Borra*,⁴⁷ the Supreme Court once again used the doctrine in *In Re: Raul M. Gonzalez* to rule that, prior to impeachment, sitting commissioners of the Commission on Elections (COMELEC) cannot be disbarred:

At the outset, the Court, guided by its pronouncements in *Jarque v. Ombudsman*, *In Re: Raul M. Gonzales*[,] and *Cuenco v. Ferman*, has laid down the rule that *an impeachable officer who is a member of the Bar cannot be disbarred without first being impeached*. Complainant's availment of Section 1 (1) of Article IX-C of the Constitution to skirt this rule is specious.⁴⁸

Thus, in the line of cases, it becomes evident that officials occupying positions removable only by impeachment are protected from criminal liability by a strict procedural requirement mandating that they be impeached first, prior to being sued. Therefore, the only mechanism available to hold a Supreme Court Justice accountable is through the process of impeachment. Compared to all other impeachable officers, however, only Supreme Court Justices enjoy this procedural immunity until they reach their age of retirement, which is 70 years old.⁴⁹

Hence, reflective of the need to afford members of the Supreme Court negative freedom, they are immune from suit until they are removed from their positions.

2. Positive Freedom: *Freedom To*

Judicial independence also requires positive freedom. Members of the Judiciary must have the ability to set themselves free to realize the goals of the Judiciary. In upholding positive freedom, the New Code of Judicial Conduct serves as the Bible of the priests and priestesses of justice. As opined by retired Supreme Court Justice Ameurfina A. Melencio Herrera —

It is ... certain that *without* a Code of Conduct[,] a judge will find it difficult to navigate ethically through the mined waters of professional conduct and even in their everyday life as a judge. Prudence is certainly a necessary virtue, but the gray areas are many and questions they raised, difficult.

...

No code can ever achieve the disposition and the decision to conduct oneself ethically, but the direction one must go, the guidepost to use when one chooses to conduct oneself with honor and to hold oneself out to the

46. *Id.* at xiv (emphasis supplied).

47. *Marcoleta v. Borra*, 582 SCRA 476 (2009).

48. *Id.* at 483.

49. PHIL. CONST. art. VIII, § 11.

public as the Republic's credible agent for the administration of justice, is what a Code of Conduct fundamentally is.⁵⁰

The attainment of positive freedom, however, is an objective that only members of the Judiciary can achieve. Thus, members of the Judiciary have an obligation "to make the [New] Code [of Judicial Conduct] a living reality in the honorable, decent, respectable[,] and inspiring conduct of our justices, judges[,] and judicial officials."⁵¹

3. The Two Judicial Freedoms

The need to afford the Judiciary the "freedom from" and "freedom to" has been acknowledged in Philippine jurisprudence. While the terms "negative freedom" and "positive freedom" were not used, two distinct but related concepts of independence have been acknowledged by the Philippine Supreme Court in *In the Matter of the Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya Dated September 18, 19, 20 and 21, 2007*.⁵² Citing Winsconsin Supreme Court CJ Chirley Abrahamson, the Philippine Supreme Court discussed two concepts of judicial independence, *viz* —

One concept is *individual* judicial independence, which focuses on each particular judge and seeks to insure his or her ability to decide cases with autonomy within the constraints of the law. A judge has this kind of independence when he can do his job without having to hear — or at least without having to take it seriously if he does hear — criticisms of his personal morality and fitness for judicial office. The second concept is *institutional* judicial independence. It focuses on the independence of the judiciary as a branch of government and protects judges as a class.

A truly independent judiciary is possible only when both concepts of independence are preserved — wherein *public confidence* in the competence and integrity of the judiciary is maintained, and the public accepts the legitimacy of judicial authority.⁵³

Thus, applying The Two Concepts of Freedom in describing judicial independence, the following may be said: Negative freedom or "freedom from" is, on the one hand, that which must be accorded to the Judiciary as an institution. Positive freedom or "freedom to," on the other hand, is that which each particular judge must have.

50. Ameurfina A. Melencio Herrera, *Foreword* to NEW CODE ANNOTATED, *supra* note 6, at i.

51. *Id.*

52. *In the Matter of the Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya Dated September 18, 19, 20 and 21, 2007*, 561 SCRA 395 (2008).

53. *Id.* at 436.

C. Judicial Independence and the New Code of Judicial Conduct

The Supreme Court has repeatedly stressed that public confidence in the judicial system is crucial in its discharge of function. It makes all the members of the Judiciary responsible for upholding this confidence. In *Office of the Court Administrator v. Gines*,⁵⁴ the Supreme Court declared that due to the sacredness of the task of administering justice, a member of the Judiciary, upon assumption of office, “becomes ‘the visible representation of the law and more importantly, of justice.’”⁵⁵ A member of the Judiciary is expected, at all times, to be ethical — to live honorable, decent, respectable, and inspiring lives. After all,

[p]ublic confidence in the judiciary can of course be attained only if judges are perceived by the public to be fair, honest, competent, principled, dignified[,] and honorable. Accordingly, the first duty of judges is to conduct themselves at all times in a manner that is beyond reproach. In whatever atmosphere or environs they may happen to be, judges must remain conscious of their character and reputation as judges and should avoid anything which will indignify their public positions and demean the institution to which they belong.⁵⁶

On 27 April 2004, the Supreme Court promulgated the New Code of Judicial Conduct. Patterned after the Bangalore Draft of the Code of Judicial Conduct, it is based on three principles, to wit —

- (1) that a competent, independent[,] and impartial judiciary is essential if the courts are to fulfill their role in upholding constitutionalism and the rule of law;
- (2) that public confidence in the judicial system and in the moral authority and integrity of the judiciary is of utmost importance in a modern democratic society; and
- (3) that it is essential that judges, individually and collectively, respect and honor judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.⁵⁷

Under the New Code of Judicial Conduct, a magistrate must adhere to six canons: independence, integrity, impartiality, propriety, equality, and competence and diligence.⁵⁸

54. *Office of the Court Administrator v. Gines*, 224 SCRA 261 (1993).

55. *Id.* at 281 (citing *De la Paz v. Inutan*, 64 SCRA 540 (1975); *Fonacier-Albaño v. Ancheta*, 107 SCRA 538 (1981); and *Inciong v. De Guia*, 154 SCRA 93 (1987)).

56. NEW CODE ANNOTATED, *supra* note 6, at 8.

57. *Id.* at vi. *See also* New Code of Judicial Conduct, whereas cl.

58. *See generally* New Code of Judicial Conduct.

I. Independence

Canon 1 of the the New Code of Judicial Conduct deals with independence. It declares that: “[j]udicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify Judicial independence in both its individual and institutional aspects.”⁵⁹ It places upon the members of the Judiciary the obligation to reject all kinds of external pressure. In *Ramirez v. Corpus Macandong*,⁶⁰ the Supreme Court held that a magistrate is expected “to be fearless in her pursuit to render justice, to be unafraid to displease any person, interest[,] or power[,] and to be equipped with a moral fiber strong enough to resist the temptations lurking in her office.”⁶¹ This is a recognition that in the Philippines,

[j]udges frequently experience pressures in the exercise of their judicial functions. Common sources of pressure upon a judge include political patrons, family members, friends and associates, colleagues on the bench, media, civil society, militant groups, criminals and criminal syndicates, and rebel groups. For instance, it is not unusual for political leaders who helped a judge get appointed or promoted to ask for favors regarding a pending case. It is also not uncommon for family members, friends[,] or even close associates to seek assistance in getting provisional remedies, bail grants[,] or even favorable verdicts.⁶²

In addition, Canon 1 also requires magistrates to neither “allow family, social, or other relationships to influence judicial conduct or judgment”⁶³ nor use “the prestige of judicial office ... to advance the private interests of others[.]”⁶⁴ Furthermore, it is also required that judges “be independent in relation to society in general and in relation to the particular parties to a dispute which he or she has to adjudicate.”⁶⁵ They must also “exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the [J]udiciary, which is fundamental to the maintenance of judicial independence.”⁶⁶

2. Integrity

59. New Code of Judicial Conduct, canon 1.

60. *Ramirez v. Corpuz-Macandog*, 144 SCRA 462 (1986).

61. *Id.* at 477.

62. NEW CODE ANNOTATED, *supra* note 6, at 1.

63. New Code of Judicial Conduct, canon 1, § 4.

64. *Id.*

65. *Id.* § 6.

66. *Id.* § 8.

The second Canon of the New Code of Judicial Conduct provides that “[i]ntegrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.”⁶⁷ As such, judges are mandated to ensure that their conduct is not only above reproach but is also perceived by the general public as such.⁶⁸ In *Sibayan-Joaquin v. Javellana*,⁶⁹ the Supreme Court expressed the view that

[j]udges ... should be extra prudent in associating with litigants and counsel appearing before them so as to avoid even a mere perception of possible bias or partiality. It is not expected ... that judges should live in retirement or seclusion from any social intercourse. ... In pending or prospective litigations before them, however, judges should be scrupulously careful to avoid anything that may tend to awaken the suspicion that their personal, social[,] or sundry relations could influence their objectivity, for not only must judges possess proficiency in law but that also they must *act and behave in such manner that would assure, with great comfort, litigants and their counsel of the judges’ competence, integrity[,] and independence.*⁷⁰

Thus, under the Canon on Integrity, members of the Judiciary may be “disciplined for lack or loss of good moral character, both in the performance of their duties and in their private lives.”⁷¹ After all, they are required “not only to be honest but also appear to be so; not only to be a good judge, but also a good person.”⁷²

3. Impartiality

Under the third Canon, impartiality is declared to be “essential to the proper discharge of the judicial office.”⁷³ The faith of the public in the judicial system is based on the principle that everyone is equal in the eyes of the law. In adhering to this Canon, magistrates are required to observe impartiality “not only to the decision itself but also to the process by which the decision is made.”⁷⁴

In being impartial, members of the Judiciary — as visible representations of the law and justice — must not only “perform their judicial duties without favor, bias[,] or prejudice[;]”⁷⁵ in addition, a judge must also ensure

67. *Id.* canon 2.

68. NEW CODE ANNOTATED, *supra* note 6, at 10.

69. *Sibayan-Joaquin v. Javellana*, 368 SCRA 503 (2001).

70. *Id.* at 508 (emphasis supplied).

71. NEW CODE ANNOTATED, *supra* note 6, at 11.

72. *Id.* at 12 (citing *Dawa v. De Asa* 292 SCRA 703, 725 (1998)).

73. New Code of Judicial Conduct, canon 3.

74. *Id.*

75. *Id.* § 1.

that “his or her conduct, both in and out of the court, maintains and enhances the confidence of the public, the legal profession[,] and litigants in the impartiality of the judge and of the [J]udiciary.”⁷⁶ Mere “appearance of bias or prejudice can be as damaging to public confidence and the administration of justice as actual bias or prejudice.”⁷⁷

4. Propriety

Under the fourth Canon, judges are required to observe propriety and the appearance of propriety in the performance of all their activities.⁷⁸ Like independence and integrity, the appearance of propriety is essential in keeping the public’s confidence in the judicial system.⁷⁹ In fact, the New Code of Judicial Conduct declares that propriety and the appearance of propriety are essential to the discharge of judicial functions.⁸⁰ It must be noted that the New Code of Judicial Conduct “recognizes that even acts that are not *per se* improper can nevertheless be perceived by the larger community as such.”⁸¹ Because of this recognition, an act that is not illegal may still be considered as a violation of the fourth Canon.⁸²

For instance, “[i]n *Ribaya [v.] Binamira-Parcia*, the [Supreme] Court noted that there were just ‘too many intriguing uncertainties’ that surrounded the filing of a case that had become the root of an administrative complaint.”⁸³ Thus, it was “ruled that although a judge had done nothing to violate the constitutional rights of the accused as alleged by the complainant, she had nevertheless failed to erase doubts as to her manner of administering justice within her jurisdiction.”⁸⁴

Members of the Judicial Department, by the nature of their functions as priests and priestesses of justice, are expected to live their lives in a conduct “consistent with the dignity of the judicial office.”⁸⁵ In accepting their positions, members of the Judiciary must also “accept personal restrictions that might be viewed as burdensome by the ordinary citizen.”⁸⁶ Thus, the

76. *Id.* § 2.

77. NEW CODE ANNOTATED, *supra* note 6, at 15 (citing *Montemayor v. Bermejo, Jr.*, 425 SCRA 403 (2004)).

78. New Code of Judicial Conduct, canon 4.

79. NEW CODE ANNOTATED, *supra* note 6, at 23.

80. *See* New Code of Judicial Conduct, canon 4.

81. NEW CODE ANNOTATED, *supra* note 6, at 23.

82. *Id.*

83. *Id.* at 25 (citing *Ribaya*, 456 SCRA at 118).

84. *Id.*

85. New Code of Judicial Conduct, canon 4, § 2.

86. *Id.*

New Code of Judicial Conduct demands from magistrates the abstinence from conducts that may “reasonably give rise to the suspicion or appearance of favoritism or partiality.”⁸⁷ They must also not “convey or permit others to convey the impression that anyone is in a special position improperly to influence them in the performance of judicial duties.”⁸⁸ Neither should “judges and members of their families ... ask for nor accept, any gifts, bequest, loan[,] or favor in relation to anything done or to be done or omitted to be done by him or her in connection with the performance of judicial duties.”⁸⁹

5. Equality

The fifth Canon requires that Members of the Judiciary ensure “equality of treatment to all before the courts.”⁹⁰ In ensuring equality, they are required to “understand the impact of variables such as gender, poverty, race, illiteracy, disability, discrimination ... on social behavior and on their own decisions”⁹¹

After all, “[a]s the guardians of justice, courts must adhere to the principle of equality. People expect the courts to be unaffected by differences in social status, degree of education, and even physical abilities.”⁹²

Judges are under the obligation to be “aware of and understand diversity in society and differences arising from various sources, including, but not limited to, race, color, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status, and other like causes.”⁹³

6. Competence and Diligence

The New Code of Judicial Conduct contains an express recognition that “[c]ompetence and diligence are pre-requisites to the due performance of judicial office.”⁹⁴ As such, members of the Judiciary are expected to place their judicial duties on top of all their obligations. They are expected to “devote their professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the

87. *Id.* § 3.

88. *Id.* § 8.

89. *Id.* § 13.

90. *Id.* canon 5.

91. NEW CODE ANNOTATED, *supra* note 6, at 33.

92. *Id.*

93. New Code of Judicial Conduct, canon 5, § 1.

94. *Id.* canon 6.

court's operations."⁹⁵ They are required to refrain from "conduct incompatible with the diligent discharge of judicial duties."⁹⁶

D. Accountability of Judicial Officers

As mentioned in the earlier part of the Article, the Constitution gives to the Supreme Court the "administrative supervision over all courts and the personnel thereof."⁹⁷ The Constitution has given the "power to discipline judges of lower courts"⁹⁸ to the Supreme Court. A survey of jurisprudence would reveal that the Supreme Court has imposed a range of penalties to members of the Judiciary.⁹⁹ These penalties range from giving of warnings to removal from office and forfeiture of retirement benefits.¹⁰⁰

As for the accountability of Supreme Court Justices, the Supreme Court has maintained the position that it "must be allowed to administratively deal with these erring personnel of the courts."¹⁰¹ The Supreme Court has also recognized that "its Members are not immune from liability for violations of the Canons of Judicial Ethics or 'other supposed misbehavior.' Yet, it set impeachment proceedings as a procedural prerequisite for this liability to materialize."¹⁰² The Supreme Court firmly declared in *In Re: Raul M. Gonzales* —

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 incumbency. ... [Nor can he or she 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.¹⁰³

95. *Id.* § 2.

96. *Id.* § 7.

97. PHIL. CONST. art. VIII, § 6.

98. PHIL. CONST. art. VIII, § 11.

99. Maria Luisa Isabel L. Rosales, *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*, 56 ATENEO L.J. 558, 615-17 (2011).

100. *Id.*

101. *Id.* at 570 (citing 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)).

102. *Id.* (citing *In Re: Gonzalez*, 160 SCRA at 776-77).

103. *In Re: Gonzalez*, 160 SCRA at 774 & 776-77.

While the Supreme Court, in several cases, has acted upon the misconduct of its members,¹⁰⁴ these administrative matters never amounted to removal and there remains a bar or procedural immunity from the filing of criminal and disbarment cases against sitting Justices.¹⁰⁵

Just recently, the Supreme Court investigated on the alleged plagiarism of Associate Justice Mariano C. del Castillo.¹⁰⁶ Ironically, the manner that the Supreme Court dealt with this administrative matter is one of the grounds provided in the current impeachment case against CJ Corona.¹⁰⁷

III. BETRAYAL OF PUBLIC TRUST

Under the 1987 Constitution, betrayal of public trust is listed as one of the grounds for the impeachment of certain public officers from office — a ground that was not present in the 1935 and the 1970 Constitutions of the Philippines.¹⁰⁸ For Senator Francis Joseph G. Escudero, “betrayal of public trust” is a “catch-all phrase [that] at the same time [is] too vague.”¹⁰⁹ In *Francisco*, the Supreme Court recognized that this vagueness seems to be the intent of the framers of the Constitution — they did not give a specific definition of the phrase; they only gave positive and negative examples.¹¹⁰ Associate Justice Antonio T. Carpio, in his concurring opinion in *Gutierrez v. House of Representatives Committee on Justice*,¹¹¹ shares the deliberations of

104. See Rosales, *supra* note 99, at 600–10. The Note cites three instances where the Supreme Court has acted on the alleged misconduct of its members.

105. *Id.*

106. In the Matter of the Charges of Plagiarism, etc., Against Associate Justice Mariano C. Del Castillo, 632 SCRA 607, 616 (2010).

107. See CJ Corona Impeachment Complaint, art. VI. It alleges that —

[CJ Corona] betrayed the public trust by arrogating unto himself, and to a committee he created, the authority and jurisdiction to improperly investigate an alleged erring member of the Supreme Court for the purpose of exculpating him. Such authority and jurisdiction is properly reposed by the Constitution in the House of Representatives *via* impeachment.

CJ Corona Impeachment Complaint.

108. Compare PHIL. CONST. art. XI with 1935 PHIL. CONST. art. IX (superseded 1973) & 1973 PHIL. CONST. art. XIII (superseded 1987).

109. Rolly T. Carandang, *Betrayal of public trust casts giant shadow on Senate*, MANILA BULL., Apr. 2, 2011, available at <http://www.mb.com.ph/node/312560/betrayal-public-tru> (last accessed Feb. 29, 2012).

110. *Francisco*, 415 SCRA at 152 (citing RECORD OF THE CONSTITUTIONAL COMMISSION 278, 316, 272, 283–284, & 286).

111. *Gutierrez v. House of Representatives Committee on Justice*, 643 SCRA 198 (2011).

the framers of the Constitution in support of the abovesited *Francisco* dictum, to wit —

MR. ROMULO. I think, if I may speak for the Committee and subject to further comments of Commissioner de los Reyes, the concept is that this is a catchall phrase. Really, it refers to his oath of office, in the end that the idea of public trust is connected with the oath of office of the officer, and if he violates that oath of office, then he has betrayed the trust.

...

MR. DE LOS REYES. The reason I proposed this amendment is that during the Regular Batasang Pambansa where there was a move to impeach then President Marcos, there were arguments to the effect that there is no ground for impeachment because there is no proof that President Marcos committed criminal acts which are punishable, or considered penal offenses. *And so the term 'betrayal of public trust,' as explained by Commissioner Romulo, is a catchall phrase to include all acts which are not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in office. It includes betrayal of public interest, inexcusable negligence of duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance, cronyism, favoritism, etc. to the prejudice of public interest and which tend to bring the office into disrepute.* That is the purpose, Madam President.

...

MR. ROMULO. If I may add another example, because Commissioner Regalado asked a very good question. This concept would include, I think, obstruction of justice since in his oath he swears to do justice to every man; so if he does anything that obstructs justice, it could be construed as a betrayal of public trust.

...

MR. NOLLEDO. In pursuing that statement of Commissioner Romulo, Madam President, we will notice that in the presidential oath of then President Marcos, he stated that he will do justice to every man. If he appoints a Minister of Justice and orders him to issue or to prepare repressive decrees denying justice to a common man without the President being held liable, I think this act will not fall near the category of treason, nor will it fall under bribery or other high crimes, neither will it fall under graft and corruption. And so when the President tolerates violations of human rights through the repressive decrees authored by his Minister of Justice, the President betrays the public trust.¹¹²

The framers of the Constitution left the discretion to the House of Representatives to interpret what constitutes betrayal of public trust.¹¹³

112. *Id.* at 280-81 (J. Carpio, concurring opinion) (citing 2 RECORD OF THE CONSTITUTIONAL PROCEEDINGS AND DEBATES 272).

113. *Id.*

During the deliberations as well, one of the framers of the 1987 Constitution explained his sentiment regarding the ground “betrayal of public trust.”¹¹⁴ For Commissioner Wilfrido V. Villacorta, the ground should not be as vague as “betrayal of public trust.” Basing his argument on the explanation of Commissioner Ricardo J. Romulo that links betrayal of public trust with breach of an officer’s oath of office, Commissioner Villacorta, with the intention of making the non-lawyers understand the intent of the framers, suggested that

[i]n order to avoid confusion, would it not be clearer to stick to the wording of Section 2 which reads: ‘may be removed from office on impeachment for and conviction of, culpable violation of the Constitution, treason, bribery, and other high crimes, graft and corruption or VIOLATION OF HIS OATH OF OFFICE’ ... because if betrayal of public trust encompasses the earlier acts that were enumerated, then it would behoove us to be equally clear about this last provision or phrase.¹¹⁵

The framers of the Constitution, however, did not adopt this suggestion. As noted by Fr. Joaquin G. Bernas, S.J. —

The person responsible for the insertion of this provision said that it includes ‘betrayal of public interest, inexcusable negligence of duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance, cronyism, favoritism, etc., to the prejudice of public interest and which tend to bring the office into disrepute.’ More generally, another commissioner said that it could ‘cover any violation of the oath of office.’ However, the committee responsible for the [A]rticle on Accountability of Public Officers accepted the narrower view that betrayal of public trust ‘implied deliberate intent, perhaps even a certain degree of perversity, for it is not easy to imagine that individuals of the category of these [impeachable] officials would go so far as to defy knowingly what the Constitution commands.’ But, again, what it all comes down to is that since ‘betrayal of public trust’ is enumerated, as among an exclusive class of offenses, it must also be seen as having the same gravity as the other offenses in the class. In other words, not every violation of public trust is an impeachable offense.¹¹⁶

IV. IMPEACHMENT OF SUPREME COURT JUSTICES

A. Impeachment in General

114. Reynaldo Geronimo, *Geronimo: Betrayal of public Trust — Views from the High Court*, SUN STAR MANILA, Jan. 19, 2012, available at <http://www.sunstar.com.ph/manila/opinion/2012/01/19/geronimo-betrayal-public-trust-views-high-court-201388> (last accessed Feb. 29, 2012).

115. *Id.*

116. Joaquin G. Bernas, S.J., *Impeachable Offenses*, available at <http://fatherbernas.blogspot.com/2012/02/impeachable-offenses.html> (last accessed Feb. 29, 2012).

As earlier discussed, Article XI, Section 2 of the Constitution provides that “[t]he President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.”¹¹⁷ It is a constitutional mechanism for removing a public officer that is unworthy of the office.¹¹⁸ Under Article XI, Section 3 of the Constitution, the power to initiate all impeachment cases is lodged with the House.¹¹⁹ It is the House’s submission of a verified complaint for impeachment with at least one-third affirmative vote that the impeachment trial in the Senate commences.¹²⁰ An accused public officer is convicted upon two-thirds affirmative vote of the Impeachment Court.¹²¹ A conviction results in his or her removal from office and disqualification to hold any governmental office.¹²²

Despite the presence of the impeachment provisions in the 1935 and 1973 Constitutions, the first impeachment trial occurred in the year 2000.¹²³ On 13 November 2000, the Members of the House of Representatives voted affirmatively for the impeachment of then President Joseph E. Estrada from his office on the grounds of bribery, graft and corrupt practices, betrayal of public trust, and culpable violation of the Constitution.¹²⁴ The trial, however, failed to be the first successful impeachment trial in the country. The Estrada Impeachment was aborted on the night of 16 January 2001 when majority of the Senator Judges decided not to open the second envelope — an envelope alleged to contain pieces of evidence that would result to the conviction of then President Estrada.¹²⁵ With the Senator Judge’s decision not to open the second envelope, the private prosecutors

117. PHIL. CONST. art. XI, § 2.

118. BERNAS, *supra* note 30, at 442.

119. PHIL. CONST. art. XI, § 3 (1).

120. PHIL. CONST. art. XI, § 3 (3).

121. PHIL. CONST. art. XI, § 3 (6).

122. PHIL. CONST. art. XI, § 3 (7).

123. Neal H. Cruz, *Estrada talks about his impeachment trial*, PHIL. DAILY INQ., Jan. 31, 2012, available at <http://opinion.inquirer.net/22191/estrada-talks-about-his-impeachment-trial> (last accessed Feb. 29, 2012).

124. *Fast Facts: Estrada Impeachment Trial*, PHIL. DAILY INQ., Jan. 16, 2012, available at <http://newsinfo.inquirer.net/128607/fast-facts-estrada-impeachment-trial> (last accessed Feb. 29, 2012).

125. Raymond Vincent G. Sandoval, *The Removal of President Estrada Through People Power: A Threat to Constitutional Democracy*, 76 PHIL. L.J. 31, 31 (2001).

walked out of the Impeachment Court despite the trial not being adjourned.¹²⁶

What followed was the spontaneous gathering of people at Epifanio de los Santos Avenue (EDSA), calling for the resignation of former President Estrada.¹²⁷ With the proclamation of Gloria Macapagal-Arroyo as the new President of the Philippines on 20 January 2001, the termination of the Estrada Impeachment became clear.¹²⁸ The first impeachment trial in the Philippines failed to reach its due conclusion. It left the country with no precedent on the subject matter.

On 22 March 2011, a little more than ten years after the termination of the Estrada Impeachment, the House of Representatives, through House Resolution No. 1089,¹²⁹ impeached another public officer — Ombudsman Ma. Merceditas N. Gutierrez.¹³⁰ Under the Resolution, then Ombudsman Gutierrez committed betrayal of public trust in the manner she acted on the Fertilizer Fund scam, the euro generals scandal, the Mega-Pacific deal, the NBN-ZTE deal, the ensign Philip Pestaño Case, and by having a low conviction record.¹³¹ Despite the transmission of the impeachment complaint against Ombudsman Gutierrez to the Senate, the Gutierrez Impeachment never took place as the Ombudsman resigned from her post on 29 April 2011.¹³²

B. Impeachment Complaint Against CJ Corona

The impeachment complaint against CJ Corona contains eight Articles, with the allegations claiming that CJ Corona has been partial in cases involving then President Macapagal-Arroyo; failed to disclose his Statement of Assets, Liabilities and Net Worth (SALN); failed to observe the standards required

126. Sabrina M. Querubin, et. al, *Legitimizing the Illegitimate: Disregarding the Rule of Law in Estrada v. Desierto and Estrada v. Macapagal-Arroyo (An Article on Constitutional Law)* 5, available at http://www.law.upenn.edu/journals/jil/jilp/articles/2-1_Querubin_Sabrina.pdf (last accessed Feb. 29, 2012).

127. Sandoval, *supra* note 125, at 31.

128. *Id.*

129. Resolution Impeaching Ombudsman Ma. Merceditas Navarro-Gutierrez for Betrayal of Public Trust, H. Res. No. 1089, 15th Cong., 1st Reg. Sess. (2011) [hereinafter *Ombudsman Gutierrez Impeachment Complaint*].

130. *Id.* See Ben R. Rosario, *House of representatives impeach Ombudsman Gutierrez*, MANILA BULL., Mar. 22, 2011, available at <http://www.mb.com.ph/node/310726/hou> (last accessed Feb. 29, 2012).

131. See *Ombudsman Gutierrez Impeachment Complaint*, arts. I-VI.

132. Tetch Torres, et al., *Ombudsman resigns*, PHIL. DAILY INQ., Mar. 29, 2011, available at <http://newsinfo.inquirer.net/breakingnews/nation/view/20110429-333621/Ombudsman-resigns> (last accessed Feb. 29, 2012).

for members of the Judiciary; blatantly disregarded the separation of powers; disregarded *res judicata*; used his position to protect an erring member of the Supreme Court; erred in issuing a temporary restraining order in favor of President Macapagal-Arroyo; and failed to account for several funds in the Judiciary.¹³³ These Articles, nonetheless, rely on two grounds of impeachment: culpable violation of the Constitution and betrayal of public trust.¹³⁴

On 28 February 2012, believing that it has already established a strong case to prove that CJ Corona has committed culpable violation of the Constitution and betrayal of public trust, the Prosecution decided to no longer present evidence on the five other Articles of Impeachment.¹³⁵ Before the end of the Impeachment Court's trial that day, Lead Prosecutor Niel Tupaz manifested —

On [30 January] 2012, on [D]ay 8 of the [I]mpeachment [T]rial, we manifested that the House [P]anel will present its case within a reasonable time as we believe that this is the best for the nation. We do not wish to prolong the proceedings and impose upon the time of this [H]onorable [T]ribunal, the [R]espondent[,], and that of the public that we serve[.]

It is our humble submission that we have already presented a strong case and the evidence that we have laid down suffices for the removal from office of [CJ] ... Corona for betrayal of public trust with the presentation of Articles [III, VII,] and ... Article [II.]¹³⁶

As mentioned in the earlier part of the Article, the Authors intend to focus on the interplay of judicial ethics, judicial accountability, and judicial independence in the impeachment of a Member of the Supreme Court. More specifically, the Authors intend to determine whether any violation of the New Code of Judicial Conduct may be construed as betrayal of public trust, thus, an impeachable offense. In determining this, the Authors will use Article III of the Impeachment Complaint against CJ Corona, which provides —

[CJ Corona] committed culpable violation of the Constitution and betrayed the public trust by failing to observe the stringent standards under Art. VIII of the Constitution that provides that '[a] member of the [J]udiciary must be a person of proven competence, integrity, probity, and independence' in allowing the Supreme Court to [a]ct on mere letters filed by a counsel which caused the issuance of flip-flopping decisions in final and executory

133. See CJ Corona Impeachment Complaint, arts. I-VIII.

134. See generally CJ Corona Impeachment Complaint.

135. Marvin Sy, *Five impeachment articles withdrawn*, PHIL. STAR, Feb. 29, 2012, available at <http://www.philstar.com/Article.aspx?articleId=782200&publicationSubCategoryId=63> (last accessed Mar. 10, 2012).

136. *Id.*

cases; in creating an excessive entanglement with [President Macapagal-Arroyo]; and in discussing with litigants regarding cases pending before the Supreme Court.¹³⁷

I. Flip-flopping Decisions of the Supreme Court

a. Arguments Submitted by the Parties

The Impeachment Complaint alleges that CJ Corona betrayed the public trust when he allowed the Supreme Court to recall its 7 September 2011 decision that denied the second motion for reconsideration filed by the counsel of Philippine Airlines (PAL), Atty. Estelito P. Mendoza.¹³⁸ In 2008, the Supreme Court has made a ruling in favor of the employees of PAL in *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc.*¹³⁹ When the counsel for PAL asked for a motion for reconsideration, the same was denied — two times.¹⁴⁰ Failing to obtain a motion for reconsideration, Atty. Mendoza wrote the Supreme Court and questioned the ruling made by the Second Division of the Supreme Court on the basis that the ruling should have been made by a Special Third Division.¹⁴¹ In a Resolution dated 4 October 2011, the Supreme Court *en banc* resolved to recall the decision rendered by its Second Division.¹⁴²

For the prosecution, it was betrayal of public trust when CJ Corona allowed the Supreme Court to recall its decision without, at the very least,

137. CJ Corona Impeachment Complaint, art. 3.

138. *Id.* ¶ 3.3.

139. *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.*, 559 SCRA 252 (2008).

140. *See Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc.*, 602 SCRA 473 (2009) & *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc.*, G.R. No. 178083, Sep. 7, 2011, *available at* <http://elibrary.judiciary.gov.ph/resolutions.php?doctype=Minute%20Resolutions&docid=1318484479121770709> (last accessed Feb. 29, 2012).

141. *See Purple S. Romero*, *Timeline: FASAP-PAL case*, *available at* <http://www.rappler.com/nation/special-coverage/corona-trial/1370-timeline-fasap-pal-case> (last accessed Feb. 29, 2012). This provides for a timeline of the decisions made and changed in the course of the FASAP-PAL case.

142. *In Re: Letters of Atty. Estelito P. Mendoza Re: G.R. No. 178083 — Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc. (PAL)*, Patricia Chong et al., A.M. No. 11-10-1-SC, Oct. 4, 2011, *available at* http://elibrary.judiciary.gov.ph/administrative_matters.php?doctype=Administrative%20Matters&docid=1318471280340395681 (last accessed Feb. 29, 2012).

giving notice to the other parties involved in the case.¹⁴³ It is argued that the action of the Supreme Court denied the employees of PAL their right to due process.¹⁴⁴ The betrayal of public trust, for the prosecution, was exacerbated by the fact that the recall of the decision was reportedly made in compliance with the orders of CJ Corona — who allegedly admitted that he inhibited from the case in 2008.¹⁴⁵ The same reasons are cited by the prosecution for the alleged flip-flopping of the Supreme Court in *League of Cities v. COMELEC*.¹⁴⁶ Through the letter of the same lawyer, Atty. Mendoza, the Supreme Court purportedly changed its already final and executory ruling.¹⁴⁷

For the defense, the actions were nowhere near being irregular.¹⁴⁸ The defense submits that, to begin with, the acceptance of the letters was regular in nature.¹⁴⁹ After all, “[t]he Supreme Court uniformly treats all such letters as official communications that it must act on when warranted.”¹⁵⁰ The defense, also and more importantly, points out that in both *FASAP* and *League of Cities*, the Supreme Court acted as a collegial body — one that acts depending on the consensus of the fifteen magistrates of the Supreme Court.¹⁵¹ The vote of CJ Corona being just one of the fifteen votes, it had the same weight as the vote of the most junior Associate Justice.¹⁵²

In the Reply, the prosecutors manifest the unacceptability of CJ Corona’s counter-argument.¹⁵³ For them, the Supreme Court, both in *FASAP* and *League of Cities*, blatantly showed partiality and undue favoritism in favor of the clients of Atty. Mendoza.¹⁵⁴ This was clearly proved by their taking cognizance of the case in a manner that is violative of the right to due

143. CJ Corona Impeachment Complaint, art. 3, ¶ 3.3.

144. *Id.*

145. *Id.* ¶ 3.3.1.

146. *Id.* ¶ 3.3.4.

147. *Id.*

148. See In Re: Impeachment of Honorable Chief Justice Renato C. Corona, Impeachment Case No. 002-2011, Answer to Verified Complaint for Impeachment, art. 3, ¶ 3 (Dec. 21, 2011) [hereinafter CJ Corona Impeachment Answer].

149. CJ Corona Impeachment Answer, art. 3, ¶ 3.

150. *Id.*

151. *Id.* ¶ 7.

152. *Id.*

153. In Re: Impeachment of Honorable Chief Justice Renato C. Corona, Impeachment Case No. 002-2011, Reply to the Answer Dated 21 December 2011, art. 3 (Dec. 30, 2011) [hereinafter CJ Corona Impeachment Reply].

154. *Id.* ¶ 57.

process of the opposing party.¹⁵⁵ The prosecutors also question the defense of CJ Corona that he did not participate in the *FASAP* ruling through Section 4, Rule 11 of the Internal Rules of the Supreme Court (Internal Rules).¹⁵⁶ Under this provision, extended resolutions are only released to the parties after the Chief Justice or the Division Chairperson gives his written approval.¹⁵⁷ Therefore, since the controversial recall of the decision was issued by the Supreme Court *en banc*, it was only CJ Corona who could have ordered the release of said decision.¹⁵⁸

As for *League of Cities*, the prosecutors aver that even if CJ Corona did not change his vote during the times that the ruling of the Supreme Court in the said case has been flip-flopping, it does not automatically exempt him from any responsibility.¹⁵⁹ They point out that CJ Corona, as the Chief Justice of the Supreme Court, did nothing to prevent the overturning of a decision that was already in its finality.¹⁶⁰

b. Analysis

No less than the Constitution acknowledges that the Supreme Court is a collegial body that acts on the concurrence of the majority of the members who took part in the deliberations.¹⁶¹ Unlike Article VII, Section 17 of the Constitution that gives the President control of the entire Executive Department, there is no provision in the Constitution that gives the Chief Justice control over the entire Judicial Department.¹⁶²

On the one hand, the power of control is defined in Political Law as “the power of an officer to alter, modify[,] or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.”¹⁶³ The power of supervision, on the other hand, is the “authority of the officer to see that their subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or steps as prescribed by law to

155. *Id.* ¶ 56.

156. *Id.* ¶ 59.

157. Supreme Court, The Internal Rules of the Supreme Court, A.M. No. 10-4-20-SC [SC Internal Rules], rule 11, § 4 (May 4, 2010).

158. CJ Corona Impeachment Reply, art. 3, ¶ 59.

159. *Id.* ¶ 60.

160. *Id.*

161. See PHIL. CONST. art. VIII, § 4.

162. Compare PHIL. CONST. art. VII, § 17 with PHIL. CONST. art. VIII.

163. RUBEN E. AGPALO, ADMINISTRATIVE LAW, LAW ON PUBLIC OFFICERS AND ELECTION LAW 33 (2005 ed.) (citing *Borres v. Canonoy*, 108 SCRA 181 (1981)).

make them perform their duties.”¹⁶⁴ Both the Constitution and the Internal Rules grant neither power of control nor power of supervision over to the Chief Justice.¹⁶⁵ Under the Internal Rules, the only power granted to the Chief Justice is the power of leadership over administrative matters.¹⁶⁶ It provides:

SECTION 1. *Exercise of judicial and administrative functions.* — The Court exercises its judicial functions and its powers of administrative supervision over all courts and their personnel through the Court *en banc* or its Divisions. It administers its activities under the leadership of the Chief Justice, who may, for this purpose, constitute supervisory or special committees headed by individual Members of the Court or working committees of court officials and personnel.¹⁶⁷

The judicial functions of the Supreme Court are, indeed, exercised by the entire collegial body. As such, the Chief Justice is placed at the same level as an Associate Justice of the Supreme Court when it comes to his vote.¹⁶⁸ His vote has the same weight as the vote of any member of the Supreme Court. Given that the Rules of Court create the presumption “[t]hat official duty has been regularly performed[,]”¹⁶⁹ the fact that the Supreme Court changed its ruling in a manner that is alleged to be irregular cannot support the conclusion that the Chief Justice betrayed public trust.

Nonetheless, there is merit in the argument of the prosecution that CJ Corona’s consent to the release of a resolution of the Supreme Court *en banc* — one that placed the independence and impartiality of the Supreme Court in question — is a reflection of his lack of competence, integrity, probity, and independence. As pointed out by the prosecution, the recall of the *FASAP* decision was made by the Supreme Court *en banc*.¹⁷⁰ Thus, under Rule 11 of the Internal Rules, CJ Corona was under the obligation to take down the minutes of the proceedings.¹⁷¹ During that hearing, did CJ Corona

164. *Id.*

165. *See generally* PHIL. CONST. art. VIII & Internal Rules.

166. SC Internal Rules, rule 2, § 1.

167. *Id.*

168. *Id.*

169. REVISED RULES ON EVIDENCE, rule 121, § 3 (1).

170. *See Re: Letters of Atty. Estelito P. Mendoza*, A.M. No. 11-10-1-SC.

171. SC Internal Rules, rule 11, §§ 3-4. These Sections provide:

SEC. 3. *Minutes of proceedings.* — The Chief Justice or the Chairperson of the Division shall provide the Clerk of Court or the Division Clerk of Court his or her notes on the actions taken by the Court. The copy of the Agenda containing the handwritten notes of the Chief Justice or Division Chairperson shall serve as the basis for the preparation of the

fail to observe that there has yet been service of notice to the opposing parties?

If he failed to take notice of the lack of service to the opposing party, such may be considered as a violation of the Canon on Independence of the New Code of Judicial Conduct. After all, by failing to observe that the action being taken by Members of the Supreme Court was in violation of the rights of the adverse party to the case, he failed to “exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.”¹⁷² As the CJ of the Supreme Court, with his failure to take note of the fact that the members of the Supreme Court were about to change a decision that has long been final and executory, he failed to “encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the [J]udiciary.”¹⁷³

The facts involved in *FASAP* were matters that media repeatedly showed to the public. The entire nation was aware of the dispute between PAL and its employees. If despite this, CJ Corona overlooked the fact that the already final decision of the Supreme Court will be recalled without service of notice to the opposing party, then as the CJ of the Supreme Court, he failed to uphold the Canon on Integrity that required his and the Supreme Court Justice’s “behavior and conduct [to] reaffirm the people’s faith in the integrity of the judiciary.”¹⁷⁴

If he *did*, in fact, notice the lack of service in the recall of a decision that was already final but did not consider the same irregular, CJ Corona violated

minutes of the session by the Office of the Clerk of Court or of the Division Clerks of Court.

SEC. 4. *Preparation of minutes of proceedings.* — Within forty-eight hours from the time the copy of the Agenda containing the handwritten actions of the Court is transmitted to him or her, the Clerk of Court or the Division Clerk of Court shall submit the draft of the minutes of the session for the approval by the Chief Justice or the Division Chairperson. The draft of the minutes of a Court session shall follow the chronological sequence of the cases in the Agenda. Excerpts of the minutes pertaining to a particular case quoted in a letter of the Clerk of Court or the Division Clerk of Court to the parties, and extended resolutions showing the actions of the Court on the cases on agenda shall be released to the parties only after the Chief Justice or the Division Chairperson has approved the minutes in writing.

Id.

172. New Code of Judicial Conduct, canon 1, § 8.

173. *Id.* § 7.

174. *Id.* canon 2, § 3.

the Canon on Competence and Diligence. It is required under the Canon that members of the Judiciary perform “all judicial duties ... efficiently, fairly[,] and with reasonable promptness.”¹⁷⁵ Further, he also failed to observe the Canon on Impartiality because he was not able to “ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession[,] and litigants in the impartiality of the judge and of the judiciary.”¹⁷⁶

Lastly, if CJ Corona knew that there was indeed lack of notice and that the decision of the Supreme Court would result to the recall of the decision, his mere inaction was a violation of the Canons of the New Code of Judicial Conduct already. While CJ Corona did not have the control or supervision over the Members of the Supreme Court, especially in the discharge of their judicial powers, it was incumbent upon him, the CJ of the Supreme Court, to ensure that such actions will not undermine the public’s trust and confidence in the Philippine Supreme Court.

Thus, regardless of CJ Corona’s participation in *FASAP*, the fact that he did not do anything to ensure that the decision of the Members of the Supreme Court would not place the integrity, impartiality, propriety, and dignity of the Supreme Court into question, is a nonfeasance that violates the conduct demanded from him by his Judicial office. As the CJ, it was his solemn duty to protect the dignity of the Supreme Court. He failed to do this by not doing anything.

2. Alleged Entanglement with Former President Macapagal-Arroyo

a. Arguments Submitted by Both Parties

Another basis being cited by the prosecution in questioning the integrity, probity, competence, and independence of CJ Corona is his excessive entanglement with former President Macapagal-Arroyo.¹⁷⁷ They allege that CJ Corona’s voting pattern proves “bias and manifest impartiality” in favor of former President Macapagal-Arroyo.¹⁷⁸ Further, the prosecution alleges that the appointment of CJ Corona’s wife in the Board of John Hay Management Corporation (JHMC) compromised the independence of the Chief Justice.¹⁷⁹

For the defense, the second allegation under Article III is inaccurate. For one, the wife of CJ Corona was appointed to the Board of JHMC back in

175. *Id.* canon 6, § 5.

176. *Id.* canon 3, § 2.

177. CJ Corona Impeachment Complaint, art. III.

178. *Id.* ¶ 3.3.4.

179. *Id.* ¶ 3.4.

2001 — even before the appointment of CJ Corona to the Supreme Court.¹⁸⁰ Furthermore, the defense raises the contention that there is no law in the Philippines that prohibits the wife of a CJ from pursuing a career in the government.¹⁸¹

b. Analysis

As to the appointment of the Chief Justice's wife in JHMC, the same cannot be viewed as resulting to compromise the independence and impartiality of CJ Corona. While the New Code of Judicial Conduct provides that members of the Judiciary and their families “shall neither ask for, nor accept, any gift, bequest, loan[,] or favor in relation to anything done or to be done or omitted to be done by him or her in connection with the performance of judicial duties[,]”¹⁸² the same may not be applied in the case of CJ Corona's wife as she was appointed as early as 2001. Neither may an appearance of impartiality be obtained by a reasonable man from the mere fact that CJ Corona's wife is working for the government. Furthermore, the appointment of a spouse to a government office does not *ipso facto* result to the compromise of the independence and impartiality of a magistrate.

The impartiality and/or appearance of impartiality of CJ Corona in favor of former President Macapagal-Arroyo, as reflected by his decision, were not made part of the allegations under Article III.¹⁸³ Rather, under Article III of the Impeachment Complaint, the alleged betrayal of public trust by CJ Corona is based on the alleged “excessive entanglement” of CJ Corona with former President Macapagal-Arroyo because of the appointment of his wife to a government office.¹⁸⁴ For the Authors, this is flawed reasoning. The argument supports neither the conclusion that CJ Corona violated the New Code of Judicial Conduct nor the conclusion that he betrayed public trust.

In addition, the mere fact that CJ Corona was an appointee of former President Macapagal-Arroyo must not be used to remove him from office for being partial to the former President. To begin with, the President's appointment of the Chief Justice is a constitutional mandate.¹⁸⁵ Furthermore, assuming *arguendo* that his appointment resulted to his compromised independence and impartiality to favor the former President, the New Code

180. CJ Corona Impeachment Answer, art. III, ¶ 10.

181. *Id.*

182. New Code of Judicial Conduct, canon 4, § 13.

183. *See* CJ Corona Impeachment Complaint, art. III.

184. CJ Corona Impeachment Complaint, art. III.

185. PHIL. CONST. art. VIII, § 9, ¶ 1. It provides that “Members of the Supreme Court ... shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.” *Id.*

of Judicial Conduct does not automatically disqualify him from his office.¹⁸⁶ The New Code of Judicial Conduct recognizes the right of the members of the Judiciary to inhibit from cases¹⁸⁷ which they believe would result to a conflict of interest. Even the Internal Rules recognize this right of the magistrate. The Internal Rules even allow an interested person to file a motion for inhibition against a member of the Supreme Court, to wit —

186. See New Code of Judicial Conduct, canon 3, §§ 5 & 6. The Sections provide:

SEC. 5. Judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:

- (a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
- (b) The judge previously served as a lawyer or was a material witness in the matter in controversy;
- (c) The judge, or a member of his or her family, has an economic interest in the outcome of the matter in controversy;
- (d) The judge served as executor, administrator, guardian, trustee or lawyer in the case or matter in controversy, or a former associate of the judge served as counsel during their association, or the judge or lawyer was a material witness therein;
- (e) The judge's ruling in a lower court is the subject of review;
- (f) The judge is related by consanguinity or affinity to a party litigant within the sixth civil degree or to counsel within the fourth civil degree; or
- (g) The judge knows that his or her spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceedings.

SEC. 6. A judge disqualified as stated above may, instead of withdrawing from the proceeding, disclose on the records the basis of disqualification. If, based on such disclosure, the parties and lawyers independently of the judge's participation, all agree in writing that the reason for the inhibition is immaterial or unsubstantial, the judge may then participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceedings.

New Code of Judicial Conduct, canon 3, §§ 5 & 6.

187. NEW CODE ANNOTATED, *supra* note 6, at 18-22.

SEC. 2. *Motion to inhibit a Division or a Member of the Court.* — A motion for inhibition must be in writing and under oath and shall state the grounds therefore.

A motion for inhibition of a Division or a Member of the Court must be acted upon by the Division or the Member of the Court concerned, as the case may be, within ten working days from receipt thereof except when there is an application for a temporary restraining order, in which case the motion must be acted upon immediately.

No motion for inhibition of a Division or a Member of the Court shall be granted after a decision on the merits or substance of the case has been rendered or issued by any Division, except for a valid or just reason such as an allegation of a graft and corrupt practice or a ground not earlier apparent.¹⁸⁸

Therefore, if CJ Corona is indeed partial in favoring the former President or some other party in a case, it is well within the interested party's right to file a motion for inhibition. If cases, therefore, against former President Macapagal-Arroyo are to reach the Supreme Court later on, CJ Corona may be asked to inhibit from these cases. Thus, his alleged partiality in favor of the former President, under Article III, may not be considered as betrayal of public trust.

3. Discussing with Litigants Cases Pending Before the Supreme Court

a. Arguments Submitted by Both Parties

The final argument of the prosecution to support Article III is the alleged conversation that CJ Corona had with Lauro Vizconde, the offended party in the well-publicized *Lejano v. People*¹⁸⁹ or the Vizconde Massacre case. According to the Prosecution, a courtesy call was made by Mr. Vizconde and Mr. Dante Jimenez in the office of CJ Corona.¹⁹⁰ During the said visit, Mr. Vizconde allegedly asked CJ Corona about the status of the case.¹⁹¹ CJ Corona, allegedly, “instead of rebuffing [Mr.] Vizconde for asking the questions, engaged [Mr.] Vizconde in a personal and *ex-parte* conversation regarding a case then pending consideration before the Supreme Court.”¹⁹² In the same conversation, CJ Corona is alleged to have told Mr. Vizconde that Associate Justice Antonio Carpio was exerting efforts to acquit the accused, Hubert Webb.¹⁹³

188. SC Internal Rules, rule 8, § 2.

189. *Lejano v. People*, 639 SCRA 760 (2011).

190. CJ Corona Impeachment Complaint, art. III, ¶ 3.5.3.

191. *Id.*

192. *Id.*

193. *Id.* ¶ 3.5.5.

For the prosecution, these actions of CJ Corona were violations of his oath of office. Not only did he fail to avoid the conversation of a pending case before the litigant, he also placed the integrity of the Supreme Court in question when he imputed Associate Justice Carpio.¹⁹⁴ In addition, the divulging of the status of the case is argued by the prosecution as a violation of Section 3 (k) of Republic Act No. 3019, which makes unlawful the “[d]ivulging [of] valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.”¹⁹⁵

In his Answer, CJ Corona, through his defense counsel, denies that Mr. Vizconde was granted the permission to visit his office.¹⁹⁶ The CJ was expecting Mr. Jimenez only, but Mr. Vizconde appeared.¹⁹⁷ It was out of courtesy and good graces that CJ Corona allowed Mr. Vizconde to stay in the room.¹⁹⁸ Further, the defense also denies that CJ Corona engaged in the alleged discussion with Mr. Vizconde and Mr. Jimenez with regard to the actions of Associate Justice Carpio.¹⁹⁹

For the Prosecution, the fact that CJ Corona sees nothing wrong with meeting Mr. Jimenez raises serious questions regarding his propriety.²⁰⁰ The prosecution alleges that Mr. Jimenez was very vocal of his position in the Vizconde Massacre trial.²⁰¹ It was improper, therefore, for CJ Corona to entertain him in a private meeting as the said case was then pending with the Supreme Court.²⁰² For the prosecution, “Corona could have politely declined a meeting with Mr. Jimenez and Mr. Vizconde, but he instead chose to meet with them and discuss the much-publicized and controversial case in which they were involved.”²⁰³

b. Analysis

CJ Corona admits that he, indeed, entertained Mr. Jimenez and Mr. Vizconde when they went to his office.²⁰⁴ For the Authors, the fact that he

194. *Id.* ¶¶ 3.5.5-3.5.6.

195. Anti-Graft and Corrupt Practices Act, Republic Act No. 3019, § 3 (k) (1960).

196. CJ Corona Impeachment Answer, art. III, ¶ 15.

197. *Id.*

198. *Id.*

199. *Id.* ¶ 16.

200. CJ Corona Impeachment Reply, art. III, ¶ 63.

201. *Id.*

202. *Id.*

203. *Id.*

204. CJ Corona Impeachment Answer, art. III, ¶ 15.

entertained both Mr. Jimenez and Mr. Vizconde in his office while a case of great interest to them is pending before the Supreme Court is by itself a betrayal of public trust. While the Supreme Court explained in *People v. Teehankee, Jr.*²⁰⁵ that “a fair and impartial judge is not that of a hermit who is out of touch with the world[,]”²⁰⁶ they are still demanded to always maintain that appearance of impartiality in all their doings.²⁰⁷ At the time when CJ Corona entertained Mr. Vizconde and Mr. Jimenez, the Vizconde Massacre case was pending resolution. This action of CJ Corona is a violation of the Canons on Independence, Integrity, Impartiality, and Propriety.

First, under the Canon on Independence, members of the Judiciary “must exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.”²⁰⁸

Second, members of the Judiciary, under the Canon on Integrity, are obliged to act in ways that “reaffirm the people’s faith in the integrity of the judiciary.”²⁰⁹

Third, the Canon on Impartiality obliges the members of the Judiciary to “ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession[,] and litigants in the impartiality of the judge and of the judiciary.”²¹⁰

Fourth, under the Canon on Propriety, members of the Judiciary are required to “avoid impropriety and the appearance of impropriety in all of their activities.”²¹¹

All these obligations and duties were breached by CJ Corona when he met with a person interested in the outcome of the Vizconde Massacre case. These infractions of CJ Corona are violations of the New Code of Judicial Conduct. These violations controvert the very oath of office that CJ Corona took when he assumed his office in the Judiciary.

4. General Analysis

The first and third allegations in Article III, if properly proved, can indeed support the conclusion that the Chief Justice breached several canons of the New Code of Judicial Conduct. Taking into account, however, the

205. *People v. Teehankee, Jr.*, 249 SCRA 54 (1995).

206. *Id.* at 105.

207. New Code of Judicial Conduct, canon 3, § 2.

208. *Id.* canon 1, § 7.

209. *Id.* canon 2, § 2.

210. *Id.* canon 3, § 2.

211. *Id.* canon 4, § 1.

explanation given by Fr. Bernas regarding betrayal of public trust as a ground for impeachment, the Authors will now determine whether the violations of CJ Corona are tantamount to betrayal of public trust.

As mentioned in the earlier part of this Article, betrayal of public trust as a ground for impeachment requires an “implied deliberate intent, perhaps even a certain degree of perversity, for it is not easy to imagine that individuals of the category of these officials would go so far as to defy knowingly what the Constitution commands.”²¹² The ground requires something more than a misdemeanor.

In the case of CJ Corona, it must be noted that he is not just an ordinary member of the Judicial Department. He is no less than the CJ of the Supreme Court of the Philippines — the embodiment and symbol of the Philippine judicial system. He is the first among equals in the Supreme Court. His violations under the first and third allegations of Article III are not just mere misdemeanors. His failure to protect the Supreme Court’s integrity in the eyes of the public, by allowing the Supreme Court to recall final and executory decisions because of mere letters and in violation of the right to due process of the adverse party, and his failure to observe that conduct required from a member of the Judiciary when he entertained Mr. Vizconde and Mr. Jimenez are actions that strike the very heart of his office.

CJ Corona’s actions carry an implied deliberate intent on his part to defy the Constitutional mandate that he, as a member of the Supreme Court and as its Chief Justice, protect judicial independence. He may not feign good faith or lapse in judgment since a person of his caliber and stature should know and ought to have known that his actions amount to a grave breach of judicial ethics. Furthermore, should he use the defense of ignorance or lapse in judgment, it is with more reason that he should not stay in his seat for the sole reason that he does not have the gravitas for the demands of the position.

Thus, for this reason, if proved by competent evidence, CJ Corona may be removed from office based on Article III of the Impeachment Complaint alone.

V. EPILOGUE

In Part I of the Article, the Authors manifested their desire to determine whether or not all violations of the New Code of Judicial Conduct amount to betrayal of public trust that can support the impeachment of a Justice of the Supreme Court. Based on the qualification given by the framers of the Constitution, the answer is in the negative.²¹³ For a violation of the New

212. Bernas, *supra* note 116.

213. See *Gutierrez*, 643 SCRA 198.

Code of Judicial Conduct to be sufficient to support the impeachment of a Supreme Court Justice, it must be of a gravity that carries an implied deliberate intent of the Supreme Court Justice to defy the Constitution. Thus, not all misdemeanors of Supreme Court Justices are impeachable offenses.²¹⁴

Just recently, the Committee on Justice of the House of Representatives found probable cause to impeach Associate Justice Mariano del Castillo due to his alleged plagiarism in writing a Supreme Court decision.²¹⁵ This matter, for the Authors, does not constitute betrayal of public trust.

The problem, however, with the current legal system of the Philippines is the lack of perceived accountability measures with regard to erring members of the Supreme Court.²¹⁶ Through jurisprudence, the Supreme Court established that not even the Sandiganbayan has the authority to hold the erring members of the Supreme Court accountable for their malfeasance, misfeasance, and nonfeasance in public office.²¹⁷ It has reserved the power to discipline its own members into its own hands.

The crux of the problem lies in the fact that the Supreme Court has been lenient in disciplining its members. Out of the three Associate Justices that were previously disciplined by the Supreme Court, none received a penalty that was commensurate to the offense committed.²¹⁸ Just recently,

214. *Id.*

215. Gil C. Cabacungan, *Other impeachment case set for House vote*, PHIL. DAILY INQ., Mar. 8, 2012, available at <http://newsinfo.inquirer.net/149849/other-impeachment-case-set-for-house-vote> (last accessed Mar. 10, 2012).

216. See Rosales, *supra* note 99, at 572. It was observed —

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. 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.

Id. (citing 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)).

217. See *In re: Raul M. Gonzalez*, 160 SCRA 771.

218. See generally Rosales, *supra* note 99, at 600-11. The Supreme Court Justices involved in the Cases were Justices Hugo E. Gutierrez, Jr., Fidel P. Purisima, and Ruben T. Reyes. In the cited Note, however, Rosales finds hope in the fact that the Supreme Court has started to make its Members more accountable. She expresses —

the alleged plagiarism issue against Associate Justice Mariano del Castillo was resolved by the Supreme Court in a manner that was found to be unsatisfactory by some members of the public.²¹⁹ Those who voiced dismay and disappointment were sanctioned.²²⁰

The time when the Supreme Court was sacrosanct has already passed. Members of the Supreme Court are no longer considered “as little deities on Mount Olympus, whose decisions and pronouncements were revered with biblical finality and obeyed dutifully by everyone living in the plains.”²²¹ People are now demanding a more transparent and accountable Supreme Court. Hence, once the Filipino people find that the disciplinary measures being undertaken by the Supreme Court in holding their officials accountable are not enough, they will take the matters into their own hands through the aid of their representatives in initiating impeachment proceedings.

As a penultimate point, perhaps it is apt to recall that the independence of the Judiciary is like the Two Concepts of Liberty: it requires both positive and negative freedoms — freedom from and freedom to.²²² It is well within the right of the members of the Judiciary to demand that they be freed from external pressures such as political harassment and threats of removal from office for rendering unfavorable decisions. Yet, it is also equally important to

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.

Id. at 610.

219. See, e.g., Nikko Dizon, *UP law professor slams SC over plagiarism issue*, PHIL. DAILY INQ., Oct. 23, 2010, available at <http://newsinfo.inquirer.net/breakingnews/nation/view/20101023-299340/UP-law-professor-slams-SC-over-plagiarism-issue> (last accessed Feb. 29, 2012) and Harvey S. Keh, *Dear Justices, where is justice?*, MANILA TIMES, Oct. 28, 2010, available at <http://harveykeh.com/2010/10/28/the-manila-times-dear-justices-where-is-justice/> (last accessed Feb. 29, 2012).

220. See Re: Letter of the UP Law Faculty entitled Restoring Integrity: A Statement by the Faculty of the University of the Philippines College of Law on the Allegations of Plagiarism and Misrepresentation in the Supreme Court, A.M. No. 10-10-4-SC (June 7, 2011).

221. Artemio V. Panaganiban, *Foreword* to the third issue of Volume 53 of the *Journal* (2010). See Rosales, *supra* note 99, at 559.

222. See Karlan, *supra* note 39.

stress that the independence of the Judiciary is dependent on the ability of its members to make themselves free to dispense justice without regard to anyone; for after all, faith in the judicial system starts with the perception that justice will be served by an impartial magistrate.

May this *ponencia* of CJ Corona a few years back serve as a guiding light on judicial conduct: “[a] spotless dispensation of justice requires not only that the decision rendered be intrinsically fair but that the judge rendering it must at all times maintain the appearance of fairness and impartiality.”²²³

223. *Ribaya*, 456 SCRA at 118 (citing *Naldoza*, 254 SCRA 286).