Compulsory Judicial Disqualification in the Court of Tax Appeals

Lily K. Gruba[*]
Angelo Patrick F. Advincula[**]
Samantha Paula G. Dy[***]

I. INTRODUCTION

> *However upright the judge, and however free from the slightest inclination but to do justice, there is peril of his unconscious bias or prejudice, or lest any former opinion formed ex parte may still linger to affect unconsciously his present judgment, or lest he may be moved or swayed unconsciously by his knowledge of the facts which may not be revealed or stated at the trial, or cannot under the rules of evidence. No effort of the will can shut the memory; there is no art of forgetting. We cannot be certain that the human mind will deliberate and determine unaffected by that which it knows, but which it should forget in that process.*[1]

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* '81 LL.M., Georgetown University Law Center; '76 LL.B., Ateneo de Manila University School of Law. The author has been involved in both private practice and government service. She served as Undersecretary of the Department of Finance from 1998 to 2001. At present, she is Associate Dean for Continuing Legal Education at the Ateneo de Manila University School of Law and teaches Taxation, Due Diligence in Mergers and Acquisition, and Local Government Finance. She is also the Managing Partner of Zambrano & Gruba Law Offices.

** '96 LL.B., University of the Philippines College of Law. The author has been a Partner at Zambrano & Gruba Law Offices since 2001. He specializes in Commercial Law, Commercial Litigation and Arbitration, Government Policy, as well as Taxation.

The appeals process is a common feature of most legal systems worldwide. It is generally defined as "a resort to a superior (i.e., appellate) court to review the decision of an inferior (i.e., trial) court or administrative agency."[2] Even non-legal adjudication systems use the appeals process in some form or another. Professional sports leagues, religious orders, and corporate employer-employee grievance procedures incorporate a resort to a higher authority to correct possible errors of the lower body.

The appellate process provides a number of key functions to the judicial system. Among these functions are: (1) harmonization of the law — where the various trial courts' decisions can be sifted by a single body, (2) error prevention — where the fear of reversal makes judges pay greater attention to their decisions, and (3) lending legitimacy to the judicial process.[3]

However, the key function of an appeal is the correction of errors, which might have been committed by the lower courts.[4] It is still the most effective means by which litigants, who are somehow dissatisfied with the trial court's decision, can point out the errors and have them reexamined by a fresh set of eyes.

It is the purpose of this short Essay to point out that under the present setup of the Court of Tax Appeals (CTA), the right to an appeal might not be fully fleshed out. Under Republic Act (R.A.) No. 9503,[5] a decision of any of the three divisions can be appealed to the CTA *en banc*, which is composed of the three divisions sitting as one.[6] However, under this appeal, the justices belonging to the division that issued the appealed decision are not disqualified from participating in the proceedings of the appeal. This could be a violation of at least the spirit of the Rules of Court that enjoin

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*** '09 J.D., Ateneo de Manila University School of Law. The author is currently a Junior Associate at Zambrano & Gruba Law Offices.

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1. Gutierrez v. Santos, 2 SCRA 249, 254 (1961) (citing Ann. Cas., 1917A, 1235).
2. People v. Paradeza, 397 SCRA 151, 157 (2003) (citing BLACK'S LAW DICTIONARY 88-89 (5th ed. 1979)).
3. Steven Shavell, *The Appeal Process as a Means of Error Correction*, 24 J. LEGAL STUD. 379, 425-26 (1995).
4. United States v. Laguna, 17 Phil. 532, 540 (1910).
5. An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes, Republic Act No. 9503 (2008).
6. *Id.* § 1.

judges' participation in cases where their ruling or decision is subject to review.[7]

II. JUDICIAL DISQUALIFICATION

There are two kinds of judicial disqualification, namely: compulsory disqualification and voluntary inhibition. Compulsory disqualification provides for the conclusive presumption that a judge cannot take part in the deliberations on a case where his ruling or decision is being questioned. On the other hand, voluntary inhibition "leaves to the judge's discretion whether he should desist from sitting in a case for other just and valid reasons, with only his conscience to guide him."[8]

These concepts of judicial disqualification are embodied in Section 1, Rule 137 of the 1997 Rules of Court on Legal Ethics. The first paragraph of Section 1 pertains to compulsory disqualification, while the second refers to voluntary inhibition. It reads, thus:

> Section 1. Disqualification of judges. *No judge or judicial officer shall sit in any case* in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or *in which he has presided in any inferior court when his ruling or decision is the subject of review*, without the written consent of all parties in interest, signed by them and entered upon the record.
>
> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.[9]

The rule on voluntary inhibition states that to disqualify or not to disqualify a judge from sitting in a case is "a matter of conscience and is addressed primarily to the sense of fairness and justice of the judge concerned."[10] As the law itself provides, the judge's "sound discretion" comes into play. To be considered a valid reason for the voluntary inhibition of a judge, his partiality must be proved with clear and convincing

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7. RULES OF COURT ON LEGAL ETHICS, rule 137, § 1.

8. People v. Kho, 357 SCRA 290, 296 (2001).

9. RULES OF COURT ON LEGAL ETHICS, rule 137, § 1 (emphasis supplied).

10. Rosello v. Court of Appeals, 186 SCRA 459, 470 (1988).

evidence.[11] Additionally, bias or prejudice "must be shown to have stemmed from an extrajudicial source, and that it would result in a disposition on the merits on some basis other than what the judge learned from participating in the case."[12]

On the other hand, the rule on the first kind of disqualification, i.e., compulsory disqualification, is more clear-cut. A judge shall be disqualified from sitting in any case upon showing of pecuniary interest, relationship, or previous participation in the matter that calls for adjudication. The judicial disqualification in this instance is compulsory or mandatory.[13]

Recusation or recusal is another term for compulsory disqualification of judges. It is defined as "a species of exception or plea to jurisdiction, to the effect that the particular judge is disqualified from hearing the case by reason of interest or prejudice."[14]

III. HEARING BEFORE AN IMPARTIAL TRIBUNAL

The principle that a judge must exhibit neutrality is "as old as the history of courts."[15] Due process requires a hearing before an impartial and disinterested tribunal. Due process is therefore illusory without an impartial judge whose "cold neutrality" reassures litigants of fairness, justice, and his integrity.[16] As public servants, judges are appointed to the judiciary to serve as examples of the law and of justice.[17] Therefore, whether a judge proceeds or not with the trial, if so disqualified from proceeding, is considered as a duty which he cannot ignore "without the risk of being called upon to account for his dereliction."[18]

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11. People v. Court of Appeals, 309 SCRA 705, 710 (1999) (citing Go v. Court of Appeals, 221 SCRA 397, 409-11 (1993) (citing Offutt v. United States 99 L. Ed. 11, 16 (1954))); Soriano v. Angeles, 339 SCRA 366, 375 (2000) (citing Genoblazo v. Court of Appeals, 174 SCRA 124, 134 (1989)).
12. Aleria, Jr. v. Velez, 298 SCRA 613, 619-20 (1998); Soriano v. Angeles, 339 SCRA 366, 375 (2000) (citing Webb v. People, 276 SCRA 243, 253 (1997)).
13. RULES OF COURT ON LEGAL ETHICS, rule 137, § 1.
14. BLACK'S LAW DICTIONARY 1277 (6th ed. 1990).
15. Dais v. Torres, 57 Phil. 897, 903 (1933) (citing State v. Board of Education 19 Wash. 8).
16. Luque v. Kayanan, 29 SCRA 167, 177-78 (1969) (citing Buenaventura v. Benedicto, Administrative Case No. 137-J, Mar. 21, 1971).
17. Dela Paz v. Inutan, 64 SCRA 541, 548 (1975).
18. Joaquin v. Barretto, 26 Phil. 273, 275 (1913); Perfecto v. Contreras, 28 Phil. 538, 543 (1914).

On the occasion that a judge is duty-bound to hear a case, the judge has "both the duty of rendering a just decision and duty of doing it in a manner completely free from suspicion as to his fairness and as to his integrity."[19]

IV. DISQUALIFICATION BECAUSE OF PREVIOUS PARTICIPATION

Section 1, Rule 137 of the 1997 Rules of Court on Legal Ethics provides that no judge shall sit in any case in which he has presided in any inferior court when his ruling or decision is the subject of review.[20] This judicial limitation works side by side with Section 5, Canon 3 of the Code of Judicial Conduct. It states, in essence, that a judge should not participate in a proceeding where the judge's ruling in a lower court is the subject of review. It reads, thus:

> Section 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
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> (a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
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> (b) The judge previously served as a lawyer or was a material witness in the matter in controversy;
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> (c) The judge, or a member of his or her family, has an economic interest in the outcome of the matter in controversy;
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> (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*[.][21]

The rule on compulsory disqualification of a judge to hear a case rests on the principle that no judge should preside in a case in which he is not "wholly free, disinterested, impartial and independent."[22] Compulsory

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19. Geotina v. Gonzalez, 41 SCRA 66, 74 (1971) (citing Gutierrez v. Santos, 2 SCRA 249, 254 (1961)).

20. RULES OF COURT ON LEGAL ETHICS, rule 137, § 1.

21. ADOPTING THE NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY, A.M. No. 03-05-01-SC, canon 3, § 5, June 1, 2004 (emphasis supplied).

22. Garcia v. Dela Pena, 229 SCRA 766, 774 (1994) (citing Umale v. Villaluz, 51 SCRA 84, 91 (1973) and Geotina v. Gonzalez, 41 SCRA 66, 73 (1971)).

disqualification assures the people that their rights shall be fairly protected by the courts.[23] *Mateo v. Villaluz*[24] speaks about such purpose in this wise:

> It is made clear to the occupants of the bench that outside of pecuniary interest, relationship or previous participation in the matter that calls for adjudication, there may be other causes that could conceivably erode the trait of objectivity, thus calling for inhibition. That is to betray a sense of realism, for the factors that lead to preferences or predilections are many and varied. It is well, therefore, that if any such should make its appearances and prove difficult to resist, the better course for a judge is to disqualify himself. That way, he avoids being misunderstood. His reputation for probity and objectivity is preserved. What is even more important, the ideal of an impartial administration of justice is lived up to. Thus is due process vindicated.[25]

When the subject of review is a judge's ruling or decision in a lower court, due process requires that the judge disqualify himself from proceeding with trial. The law conclusively presumes that the judge cannot objectively and impartially sit in such a case. If the judge is not inhibited from sitting in such a proceeding, it violates a litigant's right to due process in that his chances of having the case, as appealed, decided in his favor are slim to none. In essence, the law also presumes, whether rightly or wrongly, that the judge cannot make a disinterested ruling in the appealed case, without his previous participation in the case affecting his review subconsciously or otherwise.

V. APPEAL FROM THE COURT OF TAX APPEALS

In 1954, R.A. No. 1125[26] created the CTA. Composed of a Presiding Judge and two Associate Judges,[27] the CTA exercised exclusive appellate jurisdiction to review by appeal decisions of the Collector of Internal Revenue, Commissioner of Customs and provincial or city Boards of Assessment Appeals.[28] CTA decisions were appealed directly to the Supreme Court (SC).[29]

The 1997 Rules of Civil Procedure changed the remedy of litigants who received unfavorable CTA decisions. Instead of going directly to the SC, the

23. Pimentel v. Salanga, 21 SCRA 160, 166 (1967).

24. Mateo, Jr. v. Villaluz, 50 SCRA 18 (1973).

25. *Id.* at 24-25.

26. An Act Creating the Court of Tax Appeals, Republic Act No. 1125 (1954).

27. *Id.* § 1.

28. *Id.* § 7.

29. *Id.* § 18.

taxpayer or the Commissioner of Internal Revenue would present his appeal to the Court of Appeals (CA).[30]

Addressing the growing number of appealed tax cases, R.A. No. 9282[31] amended the law that originally created the CTA. It added a Second Division so that there was one Presiding Justice and five Associate Justices.[32] Significantly as well, the CTA came into existence.[33] Apart from its administrative, ceremonial, and non-adjudicative functions, the CTA reviewed the decisions of the CTA Divisions as a matter of course.[34] From the CTA *en banc*, the recourse is with the SC.[35]

Recently, R.A. No. 1125 was further amended by adding a Third Division. The CTA now sits in three Divisions with each Division consisting of three Justices.[36]

VI. JUDICIAL DISQUALIFICATION IN THE CTA

Section 5 of R.A. No. 1125, the law that created the CTA, provides:

> Section 5. Disqualification. — No judge or other officer or employee of the Court of Tax Appeals shall intervene, directly or indirectly, in the management or control of any private enterprise which in any way may be affected by the functions of the Court. *Judges of said Court shall be disqualified from sitting in any case on the same grounds provided under Rule one hundred twenty-six of the Rules of Court for the disqualification of judicial officers.* No person who has once serviced in the Court in a permanent capacity, either as Presiding Judge or as Associate Judge thereof, shall be qualified to practice as counsel before the Court for a period of one (1) year from his separation therefrom or any course.[37]

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30. 1997 RULES OF CIVIL PROCEDURE, rule 43, § 1.

31. An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, Republic Act No. 9282 (2004).

32. *Id.* § 1.

33. *Id.* § 2.

34. *Id.* § 18.

35. *Id.* § 19.

36. R.A. No. 9503, § 1.

37. R.A. No. 1125, § 5 (emphasis supplied).

R.A. No. 1125 was amended by R.A. No. 9282 in 2004 and then by R.A. No. 9503 in 2008. However, the law, as amended, retained the proviso on the disqualification of justices (changed from the term "judges") from sitting in any case on the same grounds provided "under Rule one hundred thirty-seven of the Rules of Court."[38]

The 2005 Revised Rules of the CTA[39] tweaked the provision on the disqualification of justices by differentiating mandatory from voluntary disqualification. It states:

> SEC. 6. Disqualification of justices:
>
> (a) *Mandatory*. — No justice or other officer or employee of the Court shall intervene, directly or indirectly, in the management or control of any private enterprise which in any way may be affected by the functions of the Court. *Justices of the Court shall be disqualified from sitting in any case on the same grounds provided under the first paragraph, Section 1, Rule 137 of the Rules of Court*. No person who has once served in the Court either as presiding justice or as associate justice shall be qualified to practice as counsel before the Court for a period of one year from his retirement or resignation as such. (Rules of Court, Rule 137, sec. 1, par. 1a)
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> . . .
>
> (c) *Voluntary*. — A justice of the Court may, in the exercise of his sound discretion, disqualify himself from sitting in a case or proceeding, for just or valid reasons other than those mentioned above. (Rules of Court, Rule 137, sec. 1, par. 2a)
>
> A justice of the Court who inhibits himself from sitting in a case or proceeding shall immediately notify in writing the presiding justice and the members of his Division.[40]

The 2008 Proposed Amendments to the Revised Rules of the CTA[41] contains the same proviso and enumeration of the two kinds of judicial disqualification.

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38. R.A. No. 9282, § 5.

39. REVISED RULES OF THE COURT OF TAX APPEALS, A.M. No. 05-11-07-CTA, Nov. 22, 2005.

40. *Id.* rule 2, § 6 (emphasis supplied).

41. PROPOSED AMENDMENTS TO THE REVISED RULES OF THE COURT OF TAX APPEALS, A.M. No. 02-8-13-SC, Sep. 16, 2008.

VII. COMPULSORY DISQUALIFICATION SHOULD APPLY TO JUSTICES OF BOTH THE CTA DIVISIONS AND CTA *EN BANC*

A perusal of the laws in play leads to no other conclusion than that the first paragraph of Section 1, Rule 137 of the Rules of Court on Legal Ethics should equally and wholly apply to CTA Justices sitting in Divisions and *en banc*.

First, back when the CTA was sitting through a lone division, the law disqualified a judge from participating in a case upon showing of pecuniary interest, relationship, or previous participation. When R.A. No. 1125 was amended in 2004 and the law added a Second Division and created the CTA *en banc*, the proviso on judicial disqualification retained its form. Hence, the extent of the application of judicial disqualification remained unchanged so that it applied to CTA Division and *en banc* Justices without condition, without exception.

Second, especially with respect to the amended law, Section 5 provides that "[j]ustices of the Court shall be disqualified from sitting in any case on the same grounds provided under Rule one hundred thirty-seven of the Rules of Court for the disqualification of judicial officers."[42] The proviso did not make any distinction whatsoever between justices of the Division and justices of the CTA *en banc*. It is a well-known maxim in statutory construction that where the law does not distinguish, we should not distinguish — *ubi lex non distinguit nec nos distinguire debemos*.[43]

Finally, R.A. Nos. 1125, 9282, and 9503 have similar provisions on quorum for sessions *en banc*. Relevant portions of the law are reproduced below. It would be observed that all three versions of the law governing the CTA specifically provide for a quorum for sessions *en banc* in the event that any of the justices are either disqualified or inhibited.

(1) R.A. No. 1125 (1954):

> Section 2. Quorum; temporary vacancy. — Any two judges of the Court of Tax Appeals shall constitute a quorum, and the concurrence of two judges shall be necessary to promulgate any decision thereof. In case of temporary vacancy, disability or *disqualification*, for any reason, of any of the judges of the said Court, the President may, upon the request of the Presiding Judge, designate any Judge of First Instance to act in his place; and such Judge of First Instance shall be duly qualified to act as such.[44]

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42. R.A. No. 9282, § 5.

43. *See* People v. Sandiganbayan, 451 SCRA 413, 421 (2005).

44. R.A. No. 1125, § 2 (emphasis supplied).

(2) R.A. No. 9282 (2004):

> Section. 2. Sitting *En Banc* or Division; Quorum; Proceedings. — The CTA may sit *en banc* or in two (2) Divisions, each Division consisting of three (3) Justices.
>
> *Four (4) Justices shall constitute a quorum for sessions en banc* and two (2) Justices for sessions of a Division: *Provided, That when the required quorum cannot be constituted due to any* vacancy, *disqualification, inhibition,* disability or any other lawful cause, the Presiding Justice shall designate any other Justice of other Divisions of the Court to sit temporarily therein.
>
> The affirmative votes of four (4) members of the Court *en banc* or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution.[45]

(3) R.A. No. 9503 (2008):

> Section 2. Sitting *En Banc* or Division; Quorum; Proceedings. — The CTA may sit *en banc* or in three (3) Divisions, each Division consisting of three (3) Justices.
>
> *Five (5) Justices shall constitute a quorum for sessions en banc* and two (2) Justices for sessions of a Division. *Provided, That when the required quorum cannot be constiuted due to any* vacancy, *disqualification, inhibition,* disability, or any other lawful cause, the Presiding Justice shall designate any Justice of other Divisions of the Court to sit temporarily therein.
>
> The affirmative votes of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division Level.[46]

Pursuant to R.A. No. 9503, for instance, five justices shall constitute a quorum for sessions *en banc*. However, the rule is qualified such that the quorum of five justices will apply only when neither one of the justices is prevented from sitting in the case by reason of compulsory disqualification or voluntary inhibition. The concept of judicial disqualification clearly applies to the CTA *en banc* since the law itself distinguishes and provides for a quorum wherein a justice is under compulsory disqualification. To construe otherwise is to render the provision on quorum nugatory.

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45. R.A. No. 9282, § 2 (emphasis supplied).

46. R.A. No. 9503, § 2 (emphasis supplied).

VIII. SANDIGANBAYAN *EN BANC* DOES NOT HAVE ADJUDICATORY POWER

The structure and limitations of the CTA *en banc* may not be likened with those of the SC *en banc* for varied reasons. The SC is accorded recognition by our Constitution,[47] while the CTA is a mere statutory creation. Corollarily, no less than the Constitution provides for a Supreme Court.[48] On the other hand, it was R.A. No. 9282, a statute, which created the CTA *en banc*.

The simple distinction between the SC and the CTA having been made, insofar as the law that created each is concerned, one might ask why the powers and functions of the CTA *en banc* exceed the administrative powers exercised by the Sandiganbayan *en banc*.

The Sandiganbayan Court was created by virtue of Presidential Decree No. 1606,[49] as amended by R.A. Nos. 7975[50] and 8249.[51] As such, like the Court of Tax Appeals, it is a mere statutory creation. However, unlike the adjudicatory powers and functions of the CTA *en banc*, the powers exercised by the Sandiganbayan *en banc* are restricted to administrative and organizational matters.[52]

IX. IS APPEAL TO THE CTA *EN BANC* MERE LIP SERVICE?

A survey of the CTA decisions from 2004 to 2010 reveals that out of 371 cases appealed to the CTA *en banc*, only 34 were reversed or modified.[53]

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47. PHIL. CONST. art. VIII, § 1 ("The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.").

48. PHIL. CONST. art. VIII, § 4, ¶ 1 ("The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or in its discretion, in divisions of three, five, or seven members.").

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

50. An Act to Strengthen the Functional and Structural Organization of the Sandiganbayan, Amending for That Purpose Presidential Decree No. 1606, as Amended, Republic Act No. 7975 (1995).

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

52. REVISED INTERNAL RULES OF THE SANDIGANBAYAN, A.M. No. 02-6-07-SB, rule 3, § 2, Oct. 1, 2002.

53. Based on the authors' personal research on decided cases.

This amounts to virtually a 91% rate of affirmation or just a nine percent reversal percentage. Thus, litigants have come to expect nine times out of 10 that their cases will not have any reversal at the appellate stage.

For comparison, we can look at the period when the CTA was under the CA. During the period of 2001 to 2004, the CA reversed or modified 46 cases out of the 162 appealed cases.[54] This amounts to a lower affirmation rate of 72%.

However, the comparisons above have some shortcomings. It can be argued, for example, that the CA, being an appellate court of general jurisdiction, does not have the same specialized knowledge regarding tax matters as the CTA *en banc*. It may also be entirely possible that the CTA Divisions' decisions from 2004 onwards are more sound or are of higher quality and thus less prone to an appellate reversal. It is therefore highly simplistic to say this low rate of reversal could indicate that the check and balance function of a true appellate process is not being met.

X. CONCLUSION

Indeed, these bare figures should be taken with a grain of salt. However, if taken together with the above provisions of the Rules of Court on judicial disqualification, they provide a compelling argument for at least a reexamination of the CTA appeals process. Against this backdrop, it is proposed that some measures be taken to comply with the spirit of the Rules of Court. Since the CTA now has nine members, the recusal of the members of the division that rendered the appealed decision will not result in a lack of quorum. The remaining six members can still validly decide the appeal. This will hopefully allow the CTA *en banc* to decide the case from a new perspective. The proposed remedy would not need new legislation but could be implemented either as a voluntary mechanism for the CTA justices, or through an internal procedural memorandum.

An alternative albeit more radical solution would be to follow the Sandiganbayan structure. This would, however, need an implementing legislation. The CTA *en banc* would continue to exist but with primarily administrative functions. All appeals would go to the SC directly. It might be argued, of course, that this could increase the burden on the SC, and defeat the purpose behind creating a layer between the CTA division and the SC. But with the present CTA *en banc* essentially ratifying all of the division decisions, the litigants who originally appealed will most likely go to the SC anyway.

54. Based on the authors' personal research on decided cases.