POSITION PAPER
ON THE PROPOSED AMENDMENTS
TO RULE 4, SEC. 5 OF THE JBC RULES

AS TO THE 1ST PROPOSED AMENDMENT:

The Existing Rule:

Sec. 5. Disqualification. - The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman or Deputy Ombudsman:

1. *Those with pending criminal or regular administrative cases;*
2. *xxx;*
3. *xxx.*

The Proposed Rule:

Sec. 5. Disqualification. - The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman or Deputy Ombudsman:

1. *Those with pending criminal or regular administrative cases, IF IN THE DETERMINATION OF THE COUNCIL, THE CHARGES ARE SERIOUS OR GRAVE AS TO AFFECT THE FITNESS OF THE APPLICANT FOR NOMINATION;*
2. *xxx;*
3. *xxx.*

Commentary:

The proposal is inherently laudable. It seriously addresses long-standing concerns of applicants for judgeship positions who end up being disqualified by the JBC due to pending administrative or criminal cases arising from harassment, groundless and vexatious suits. Thus, the proposal seeks to vest the JBC with discretion to determine whether the pending charges against an applicant are serious or grave as to affect his fitness for nomination.

While the proposal is impressed with merit, its adoption, with all due respect, may create more problems than it seeks to address.

Firstly, the preliminary determination by the JBC of the merit of the case may create an undue influence or pressure on the administrative or prosecution office handling the case against the applicant-respondent. If the JBC resolves to nominate the applicant-respondent based on a preliminary finding that the case is not grave or serious, such determination may create an undue impression of exoneration. Since the JBC is headed by the Chief Justice with the DOJ Secretary as member, its finding on the merit of the case, or its absence, could force the hands of the investigating authority to conform thereto, regardless of the evidence presented in the course of further proceedings.

Secondly, the preliminary determination by the JBC of the merit of the pending charges against the applicant may compromise, if not undermine, the credibility of the JBC as an institution. If the applicant earns the JBC nomination but ends up being convicted or ordered dismissed from service in the course of further proceedings, the JBC will completely lose face. Its credibility as an institution will suffer irreparable damage.

It is better to deny a qualified applicant of nomination rather than risk damaging the credibility of the JBC if its preliminary findings end up being repudiated by the investigating or disciplinary authority in the course of further proceedings. While the damage to the applicant may only be temporary as he can still avail of another day in the JBC, the damage to the JBC as an institution may be lasting and irreparable.

Counter-Proposal:

By way of counter-proposal, it is submitted that the best option still lies with retaining the existing rules but securing and enforcing strict adherence to the constitutional guarantee of every respondent to speedy disposition of his case. Along this direction, the JBC may request the Supreme Court, the Office of the President, DOJ, Ombudsman and other tribunals exercising administrative disciplinary authority to issue corresponding directives for strict observance of the periods for resolving cases involving respondents with pending applications with the JBC. The failure to adhere with the prescribed period despite notice of pending JBC application shall amount to serious violation of the constitutional right to speedy disposition of the case, warranting summary dismissal thereof.

AS TO THE 2ND PROPOSED AMENDMENT:

The Existing Rule:

Sec. 5. Disqualification. - The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman or Deputy Ombudsman:

1. *xxx;*
2. *xxx;*
3. *Those who have been convicted in any criminal case; or in an administrative case, where the penalty imposed is at least a fine of more than P10,000, unless he has been granted judicial clemency.*

The Proposed Rule:

Sec. 5. Disqualification. - The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman or Deputy Ombudsman:

1. *xxx;*
2. *xxx;*
3. *Those who have been convicted in any criminal case;*
4. *THOSE WHO HAVE BEEN FOUND GUILTY in an administrative case FOR THE FOLLOWING OFFENSES unless they have been granted clemency BY THE OFFICE WHICH IMPOSED THE ADMINISTRATIVE SANCTION:*

    a. *SERIOUS OFFENSES OR WHERE THE PENALTY IMPOSED IS AT LEAST A FINE OF MORE THAN Php20,000;*
    b. *OFFENSES WHERE THE PENALTY IMPOSED IS SUSPENSION WHICH WOULD INVOLVE DEPRIVATION OF SALARY EQUIVALENT TO MORE THAN Php20,000 AS OF THE TIME THE PENALTY WAS IMPOSED; OF*
    c. *OTHER OFFENSES WHEN IT AFFECTS THE FITNESS OF THE APPLICANT FOR NOMINATION.*

Commentary:

The proposal is also inherently laudable. It seriously addresses long-standing concerns of judges previously penalized with less severe charges, or a fine not exceeding Php20,000, who end up being barred from seeking promotion even if they have demonstrated good behavior or meritorious

conduct evincing reform and fitness. Thus, the proposal seeks to increase the disqualification threshold for applicants found guilty in administrative cases from a fine of Php10,000 to Php20,000, including suspension without salary, equivalent to a fine of more than Php20,000. As a safeguard, the proposal also seeks to empower the JBC with discretion to disqualify even applicants found guilty of other offenses, regardless of the amount of fine, if "it affects their fitness for nomination."

While the proposal is impressed with merit, its adoption, with all due respect, may create more negative impact on the JBC screening process than what it seeks to positively address.

To begin with, the proposal has the effect of watering down the disqualification standards for applicants in the judiciary. As such, it could unduly expose the JBC to charges of undermining its own underlying institutional mandate of elevating – and not lowering -- the qualification standards in the judiciary.

Secondly, the administrative penalty of fine of not more than Php20,000, the new proposed threshold, covers offenses defined as less serious under Secs. 9 and 11 of Rule 140 of the Revised Rules of Court. Based on actual cases and jurisprudence, many of such offenses touch the very core of existing qualification and merit standards, the moral fitness and competence of the applicant. Thus, to qualify those found guilty of such charges would unduly dilute and diminish, without any useful or redeeming value, the qualification standards in the judiciary.

Thirdly, it is more harmful than beneficial to rely on the proposed safeguard of allowing the JBC wide discretion to disqualify even those guilty of lesser offenses, regardless of the amount of fine, if it falls within the catch-all clause of "affecting the fitness of the applicant." The grant of such wide, if not undefined, legal standard to disqualify an applicant could open the floodgates to various undue influences in the JBC screening process. Thus, the proposed safeguard could be prone to arbitrariness, if not abuse, and end up creating more harm than good to the JBC selection process.

Counter-Proposal:

By way of counter-proposal, it is suggested that the existing standard on disqualification be retained but serious reforms should be adopted in the grant of judicial or administrative clemency. The solution lies not in

lowering the standards of qualification but in rationalizing the rules on the grant of clemency. The procedure must be rendered more transparent and clear-cut with the end view of allowing those previously found guilty, including those penalized with Php20,000 fine, to avail of clemency upon proper showing of good conduct for a certain minimum period, thereby entitling them to be restored to their previous status. Thus, those penalized with fine of more than Pph10,000 who have demonstrated good conduct service for at least five (5) years may be entitled to a mandatory review process for clemency and, if granted, may be qualified for appointment or promotion in the judiciary.

In sum, the roadmap to reforms in the JBC screening process lies not in the lowering of qualification standards for those found guilty of administrative offenses but in rationalizing and enhancing the rules on judicial and administrative clemency.

Respectfully submitted, 09 September 2011.

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