

IAJ/UIM
Study Commission IV — 2022

Judicial Workplace and Judicial Independence

What is the impact on judicial independence of the judicial workplace (including nominations and appointments, independence in decision making, governance, assignments, fund and other resources)?

Please provide examples in the judicial workplace that foster judicial independence and identify barriers and practices that impede or negatively impact judicial independence.

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With respect to the Philippines, Judicial independence is essentially guaranteed by section 8 Article VIII of the 1987 Constitution which mandates the creation of a multi-sectoral body known as the Judicial and Bar Council in terms of the selection and nomination process for aspiring members to the Bench and by section 3 of the same Article in terms of fiscal autonomy.

As an added aspect of judicial independence, Philippine jurisprudence also emphasizes the character of independence of the judiciary in terms of its administrative supervision, in the sense that the same is exclusive, noting that only the Supreme Court can oversee the judges and court personnel's compliance with all laws, rules and regulations. No other branch of government may intrude into this power, without running afoul the doctrine of separation of powers.¹

Section 8 Article VIII of the 1987 Constitution provides that the composition of the Judicial and Bar Council (JBC, for brevity) shall be as follows: the Supreme Court Chief Justice as ex-officio Chairman, the Secretary of Justice as a representative of the executive branch and a member of Congress as ex-officio members, and for its regular voting members -- a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

¹ Ampong v. Civil Service Commission, CSC-Regional Office No. 11, supra, at 303, citing *Maceda v. Vasquez*, G.R. No. 102781, April 22, 1993, 221 SCRA 464. (as cited in the SC en banc decision **Re: COA Opinion on the Computation of the Appraised Value of the Properties Purchased by the Retired Chief/Associate Justices of the Supreme Court**. A.M. No. 11-7-10-SC; July 31, 2012.)

The creation of the JBC, guaranteed by the 1987 Constitution, removed from the heavily political “Commission on Appointments” the confirmatory power it had over appointees to the Judiciary² which was the previous setup under the 1973 Constitution.

Under the present set up, all aspirants to the bench must have successfully hurdled the pre-assessment qualifications, psychological evaluation, written examination and interviews to ensure that the applicants have been vetted properly prior to the transmittal of the short list of nominees to the President who has the sole appointing power pursuant to section 11, Article VIII of the 1987 Constitution.

Furthermore, the Philippine Judiciary which adopted the *Universal Declaration of Standards for Ethical Conduct of Judges embodied in the “Bangalore Draft”* into what is now known as the “Code of Conduct for the Philippine Judiciary³” also included as one of its canons, specifically Canon 1 -- Judicial Independence as articulated in its various sections:

CANON 1

INDEPENDENCE

Judicial 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.

SECTION 1. Judges shall exercise the judicial function independently on the basis of their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.

SEC. 2. In performing judicial duties, judges shall be independent from judicial colleagues in respect of decisions which the judge is obliged to make independently.

SEC. 3. Judges shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency.

SEC. 4. Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

SEC. 5. Judges shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to be free therefrom to a reasonable observer.

SEC. 6. Judges shall 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.

² <https://jbc.judiciary.gov.ph/index.php/about-us/judicial-and-bar-council/3-about-jbc>

³ A.M. No. 03-05-01-SC

SEC. 7. Judges shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

SEC. 8. Judges shall 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.

These standards provide the safeguards to ensure that independence – both individually and institutionally -- is fostered and maintained in the workplace.

In a multi-sala court, for example, it may be commonplace for judges to occasionally ask questions from or share experiences with their colleagues in order to guide them on how to proceed when a complicated case is assigned to them, but at the end of the day, it will still be the judge alone who independently decides the said case.

To further impress upon the image that the judge is independent from external influences, judges also willingly undertake to limit their social interactions with members of the Bar, politicians, and other personalities in order to maintain that standard of “judicial independence” in the eyes of a reasonable observer.

In terms of governance, judicial independence can also be readily seen in the process of how a judge selects his/her own staff – as these appointments go through a process where all interested applicants are given the opportunity to submit their applications once a vacancy is declared to the Supreme Court (through the appropriate office.) This will do away with the precarious scenario of a judge arbitrarily handpicking his/her staff members that may create the wrong impression: i.e., selecting people based on political or social “connections” or considerations. The discipline of its members is also solely relegated to the Supreme Court to ensure that the image of the judiciary as an independent and impartial branch of government is maintained.

In terms of funding and other resources, the independence of the judiciary as an institution is guaranteed when Sec. 3 of Article VIII of the 1987 Constitution clearly provides that:

The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

One of the most important aspects of judicial independence is the constitutional grant of fiscal autonomy. Just as the Executive may not prevent a judge from discharging his or her judicial duty (for example, by physically preventing a court from holding its hearings) and just as the Legislature may not enact laws removing all jurisdiction from courts, the courts may not be obstructed from their freedom to use or dispose of their funds for purposes germane to judicial functions. While, as a general proposition, the authority of legislature to control the purse in the first instance is unquestioned, any form of interference by the

Legislative or the Executive on the Judiciary's fiscal autonomy amounts to an improper check on a co-equal branch of government. If the judicial branch is to perform its primary function of adjudication, it must be able to command adequate resources for that purpose. This authority to exercise (or to compel the exercise of) legislative power over the national purse (which at first blush appears to be a violation of concepts of separateness and an invasion of legislative autonomy) is necessary to maintain judicial independence.⁴

Barriers and practices that impede or negatively impact judicial independence

While the Constitution and the Code of Judicial Conduct provide the standards and safeguards in maintaining said judicial independence, there are still some limitations borne out the inherent institutional limitations and socio-political realities.

First, while the JBC may properly vet nominees to the Bench and the present set up has indeed made the selection and nomination process more competitive and transparent, the 1987 Constitution clearly provides that judges must be appointed by the Chief Executive. Appointments being an essentially political process, and if not wielded properly by the Chief Executive, can realistically “negatively” impact the independence of the judiciary as the appointees may still be those person/s the Chief Executive favors politically or personally.

Second, while Canon 1 of the Code of Judicial Conduct may provide for the standards on how to preserve and maintain judicial independence, it is regrettable that there are still some judges who fail to uphold the same. Cases of judges being seen with litigants outside of the courtroom and in a purely social setting, i.e. a dinner meeting, knowing fully well that participants in said meeting have pending cases before him⁵ cast the judiciary in a questionable light --- making the general public doubt the image of the judiciary as an “independent body.”

Also regrettable is the observation that judges and the judiciary as an institution are not shielded from baseless attacks on their credibility especially from the media – which attacks also negatively impact the independence of the Bench (both individually and on the institution as a whole.)

With the advent of social media, these attacks are more prevalent and more “real-time” than ever, making the refutation of allegations very difficult if not, impossible. Its ultimate effect? It painfully depicts the judiciary in a negative light.

In fact, in the 2018 case entitled **RE: SHOW CAUSE ORDER IN THE DECISION DATED MAY 11, 2018 IN G.R. No. 237428 (REPUBLIC OF THE PHILIPPINES, REPRESENTED BY**

⁴ https://lawphil.net/judjuris/juri2012/jul2012/am_11-7-10-sc_2012.html#fnt22

⁵ https://lawphil.net/judjuris/juri2014/jun2014/am_rtj-14-2388_2014.html

SOLICITOR GENERAL JOSE C. CALIDA v. MARIA LOURDES P.A. SERENO)⁶, the Supreme Court had the occasion to discuss the “sub-judice” principle in light of several public appearances made by the respondent (resigned Chief Justice) Sereno who issued statements that questioned the integrity and independence of the SC Justices and of the Judiciary as a whole. Regardless of political convictions and whether or not respondent’s cause stems from a righteous indignation, the stark reality of her acts – that of making several public appearances and issuing statements while an impeachment proceeding was ongoing – indubitably cast light on the integrity and independence of the judiciary.

Third, while the constitution indeed guarantees that the judiciary enjoys fiscal autonomy, in reality, this concept also puts limitations on the exercise of institutional judicial independence.

In the case entitled “**IN THE MATTER OF: SAVE THE SUPREME COURT JUDICIAL INDEPENDENCE AND FISCAL AUTONOMY MOVEMENT VS. ABOLITION OF JUDICIARY DEVELOPMENT FUND (JDF) AND REDUCTION OF FISCAL AUTONOMY**”⁷ (UDK-15143 January 21, 2015) the Supreme Court clearly articulates this:

Final note

The judiciary is the weakest branch of government. It is true that courts have power to declare what law is given a set of facts, but it does not have an army to enforce its writs. Courts do not have the power of the purse. "Except for a constitutional provision that requires that the budget of the judiciary should not go below the appropriation for the previous year, it is beholden to the Congress depending on how low the budget is."⁴²

Despite being the third co-equal branch of the government, the judiciary enjoys less than 1%⁵⁰ of the total budget for the national government. Specifically, it was a mere 0.82% in 2014,⁵¹ 0.85% in 2013,⁵² 0.83% in 2012,⁵³ and 0.83% in 2011.⁵⁴

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*The entire budget for the judiciary, however, does not only come from the national government. The Constitution grants fiscal autonomy to the judiciary to maintain its independence.⁴⁴ In *Bengzon v. Drilon*:⁵²*

The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based.⁶³

⁶ https://www.lawphil.net/judjuris/juri2018/jul2018/am_18-06-01-sc_2018.html

⁷ https://lawphil.net/judjuris/juri2015/jan2015/udk_15143_2015.html

Courts, therefore, must also be accountable with their own budget. The Judiciary Development Fund, used to augment the expenses of the judiciary, is regularly accounted for by this court on a quarterly basis. The financial reports are readily available at the Supreme Court website.⁶⁴ These funds, however, are still not enough to meet the expenses of lower courts and guarantee credible compensation for their personnel. **The reality is that halls of justice exist because we rely on the generosity of local government units that provide additional subsidy to our judges.**⁶⁵ If not, the budget for the construction, repair, and rehabilitation of halls of justice is with the Department of Justice.⁶⁶ (emphasis and underscoring supplied.)

As a result, our fiscal autonomy and judicial independence are often undermined by low levels of budgetary outlay, the lack of provision for maintenance and operating expenses, and the reliance on local government units and the Department of Justice. (emphasis and underscoring supplied.)