

THE JUDICIAL WORKPLACE AND THE INTERSECTION WITH JUDICIAL INDEPENDENCE

Answer to the Fourth Study Commission Questionnaire-2023

1. APPOINTMENT TO JUDICIAL OFFICE

A. Please describe the process by which a person is appointed to judicial office in lower courts, intermediate courts and superior courts pointing out any relevant differences between appointment in criminal civil or appellate courts.

ANSWER:

The process by which a person is appointed to judicial office in lower courts, intermediate and superior courts is strict, long, tedious and political. The applicants shall apply before the Judicial and Bar Council (JBC or *Council* for brevity) and President of the Philippines shall choose among the shortlisted applicants chosen by the JBC.

Members of the Philippine Judiciary must be natural born Filipino citizen, and members of the Philippine Bar of proven competence, integrity, probity, and independence.¹

Additionally, Judges of first level courts (Metropolitan Trial Court [METC], Municipal Trial Court [MTC], Municipal Trial Courts in Cities [MTCC], Municipal Circuit Trial Court [MCTC] and Municipal Trial Court Judges-at-Large) must be at least thirty years (30) of age and, for at least five (5) years, have been engaged in the practice of law in the Philippines or have held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite.

Meanwhile, Regional Trial Court Judges, Regional Trial Court Judges-at-Large, and Family Court Judges must be at least thirty-five (35) years of age and, for at least ten (10) years, have been engaged in the practice of law in the Philippines or have held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite.²

Members of the Supreme Court must be at least forty (40) years of age and must have been, for fifteen (15) years or more, judges of a lower court or engaged in

¹ Section 7, Article VIII of the Constitution.

² Sec. 15, B.P. Blg. 129, as amended by Sec. 4, Family Courts Act and Sec. 3, Judges-at-Large Act.

the practice of law in the Philippines.³ Members of the Court of Appeals must possess the same qualifications as those prescribed for Members of the Supreme Court.⁴ Members of the Sandiganbayan must be at least forty (40) years of age and for at least ten (10) years have been judges of a court of record or have been engaged in the practice of law in the Philippines or have held office requiring admission to the bar as a pre-requisite for a like period.⁵

Application maybe filed by the applicant himself/herself or through the recommendation of another person, association or organization. In the latter case, the applicant concerned must manifest his pr her acceptance of the recommendation either in the recommendation itself or in a separate document.⁶

Applications should be accompanied with two (2) complete sets of duly accomplished and notarized Personal Data Sheet (PDS) and all other documentary requirements (one original or certified true copy and one duplicate photocopied on long bond paper), tabbed, and enclosed in long envelopes in a color prescribed by the Council, together with (a) a letter of intent to apply; (b) a transmittal letter indicating all the submitted documents; and (c) a flash drive containing scanned or electronic copies thereof. This is without prejudice and subject to the technological and other developments that the Council may later implement to enhance the application system.⁷

Interested applicants must visit the official JBC Website (www.jbc.judiciary.gov.ph) and access the Online Application Scheduler for purposes of reserving a schedule and selecting a mode of submission. The application and other documentary requirements shall be filed either personally, by registered mail, or by a private courier with the Council depending on the mode of submission selected by the applicant in the Online Application Scheduler.⁸

The filing of applications and complete documentary requirements shall be made within forty-five (45) days after the publication of the announcement of vacancies in two (2) newspapers of general circulation in the Philippines, on the date chosen by the applicant in the Online Application Scheduler. The Council may 4 shorten or extend the application period for justifiable reasons. The extensions shall in no case exceed thirty (30) days, which shall be reckoned from the original prescribed deadline. The date of receipt by the Council of the application with the complete documentary requirements shall be deemed as the date of filing. The Council shall reject applications (i) filed before the publication of the announcement of the

³ Section 7, Art. VIII of the Constitution.

⁴ Section 7, B.P. Blg. 129.

⁵ Section 1, P.D. 1606, as amended.

⁶ Section 5, Rule 1, The 2020 Revised Rules of the Judicial and Bar Council, JBC No. 2021-01.

⁷ *Ibid.*

⁸ Section 6, Rule 1, The 2020 Revised Rules of the Judicial and Bar Council, JBC No. 2021-01.

opening of vacancies or (ii) filed on a date other than the chosen date in the Online Application Scheduler. Applicants who fail to submit a complete set of the required documents within the prescribed period shall not be considered for nomination. Should there be less than five (5) qualified applicants after the first deliberation, the subject vacancy shall be reopened.⁹

The list of applicants who meet the minimum qualifications and the Council's evaluative criteria prescribed in Sections 2 and 3 of Rule 3 of these Rules, which the Council shall consider in a given time, shall be published once in two (2) newspapers of general circulation in the Philippines. The publication shall include a notice to the public that any complaint or opposition against applicants may be filed with the Council. A copy of the list shall likewise be posted in the JBC website.¹⁰

In determining the competence of applicants for nomination, the Council shall consider their educational preparation; relevant experience; work performance ratings; results of comprehensive medical examinations and psychological and psychiatric evaluations; performance in the written evaluative examinations and personal interviews; and other relevant accomplishments, such as, the performance in the Prejudicature Program of the Philippine Judicial Academy (PHILJA). The Council shall also consider the nature, designation, and case docket of the court where the vacancy exists in assessing the fitness, qualifications, and competence of the applicants. The Council shall evaluate the applicants' (a) scholastic record; (b) bar examination performance; (c) civil service eligibilities and grades in other government examinations; (d) academic awards, scholarships, or grants received or obtained; (e) membership in national or international honor societies or professional organizations; (f) performance in the Prejudicature Program of the PHILJA; and (g) compliance with the Rules on Mandatory Continuing Legal Education for members of the Integrated Bar of the Philippines (IBP), if applicable. Applicants who hurdled the Philippine Bar Examinations on their first attempt shall be given priority. Those who did not make it in their first try may, however, be considered if they have in their favor outstanding credentials to compensate for their Bar record, such as, impressive scholastic record, high ratings in examinations under the Prejudicature Program of the PHILJA, completion of post graduate degrees, and other awards or recognition.

In the selection of nominees for a vacancy in the Supreme Court, the Council must consider their age with a view to discourage the appointment of those who would not be able to serve it for a reasonably sufficient time. For the position of Associate Justice or Chief Justice of the Supreme Court, the Council shall consider applicants only if they have at least two and one-half (2.5) years remaining to serve as an Associate Justice or Chief Justice of the Supreme Court if they have served as a. Associate Justice or Presiding Justice of an appellate court; Court Administrator;

⁹ Section 7, Rule 1, The 2020 Revised Rules of the Judicial and Bar Council, JBC No. 2021-01.

¹⁰ Section 8, Rule 1, The 2020 Revised Rules of the Judicial and Bar Council, JBC No. 2021-01.

Chairperson of a Constitutional Commission; Solicitor General; or Department Secretary; or have at least five (5) years remaining to serve as an Associate Justice or Chief Justice of the Supreme Court, if they had not served any of the positions in the immediately preceding paragraph or if they are private practitioners. Applicants who are Division Chairpersons of the appellate courts shall be given preference to foster careerism in the Judiciary. The respective periods shall be reckoned from the expiration of the ninety (90)-day period for the President to appoint an Associate Justice or a Chief Justice of the Supreme Court up to the date of the compulsory retirement of the applicants. In every case involving an appointment to a seat in the Supreme Court, the Council shall give due weight and regard to the recommendees of the Supreme Court. For this purpose, the Council shall submit to the Court a list of candidates with their profile 16 matrices from which the Court may base the selection of its recommendees. The final voting of nominees for appointment may be done in an executive session after the Council En Banc shall have extensively discussed and meticulously deliberated on the qualifications and fitness of the applicants. For applicants to be included in the list of nominees, they should obtain the affirmative votes of at least four (4) Members of the Council. A deep selection process shall be adopted to nominate the brightest, most qualified, most competent, and most suitable applicants for the vacant posts. In no case shall the number of nominees for every vacancy be more than seven (7) unless there is a tie; provided, however, that when there are less than three (3) nominees obtaining at least four (4) votes, as required by the preceding paragraph, the Council En Banc shall conduct another round of voting from the remaining applicants until there are at least three (3) qualified nominees for every vacancy.¹¹

B. If applicable, please identify whether political influences of any description bear upon in any way the appointment of a particular person to judicial office.

ANSWER:

Although there is no direct evidence which proves that political influence is considered in the appointment of a particular person to judicial office, it appears, by inference, that political influence is considered in the appointment of some person to judicial office.

This is because the President of the Philippines is a political person/position and based on experience, some persons get recommendations from people in political power to get an appointment to the judiciary.

¹¹ Rule 8, The 2020 Revised Rules of the Judicial and Bar Council, JBC No. 2021-01.

C. Is ethnic or gender diversity in any way relevant to appointment to judicial office, and if so, please describe why and in what respect each may be relevant.

ANSWER:

No.

D. Describe whether and if so in what way the process of appointment to judicial office is independent of government.

ANSWER:

The process of appointment to judicial office is appears to be independent of government as the process is strict, long and tedious. The applicant must submit a lot of documents. There is an elimination process. Applicants who have criminal and administrative cases are automatically eliminated in the application process. There is a vetting process before an applicant can be included in the shortlist. Background investigation as to the character of the applicant is conducted by the JBC before selection. Likewise, a series of tests and interviews are conducted. Passing the Prejudicature Program is also a requirement to be appointed.

All told, the process is stringent making the process of appointment to judicial office independent of government.

2. PROMOTION WITHIN THE JUDICIARY

A. Does scope exist for promotion within the judiciary and if so, please describe how and in what circumstances a magistrate or judge may be promoted

There is no automatic promotion or nomination to a higher position in the Philippine Judiciary. To step up the ladder in Philippine Judiciary, one must apply for that particular higher position. Nonetheless, stepping up the ladder in Philippine Judiciary is still called promotion even if it is not automatic nomination. Promotion is per se defined as nomination to the higher position.

Justices and Judges who seek promotion must have served for at least five (5) years in their present judicial rank to be considered for nomination to the next higher level courts.¹² Justice applicants and Judge applicants shall be accorded preference to encourage and promote careerism in the Judiciary.¹³ For incumbent members of the Judiciary who seek promotional or lateral appointment, their performance may be based, inter alia, on their landmark decisions; court records

¹² Section 3, Rule 3, The 2020 Revised Rules of the Judicial and Bar Council, JBC No. 2021-01.

¹³ *Ibid.*

as to status of their docket; reports of the Office of the Court Administrator; validated feedback from the IBP and other law organizations; and a verified statement as to their performance for the past three (3) years, which shall include their caseload, their average monthly output in all actions and proceedings, the number of cases deemed submitted for decision and the date they were submitted for decision, and the number of their decisions or rulings during the immediately preceding two (2) years appealed to a higher court, and the percentages of full or partial affirmance thereof.¹⁴ The Council may likewise consider other accomplishments of the applicants, such as awards for judicial excellence; authorship of law books, treatises, articles, and other legal writings, whether published or not; and leadership in professional, civic, or other organizations.¹⁵

B. To what extent is political affiliation of political partisanship relevant to promotion within the judiciary

ANSWER:

While it appears that there are some judges who were promoted to a higher post in the judiciary due to political affiliations, there is no direct evidence pointing to such. These are mere conjectures which were not backed up by hard evidence. This is because in the Philippines, judges should not participate in partisan political activities.¹⁶

C. Describe the transparency involved in the process of promotion within the judiciary.

ANSWER:

While the rules and requirements for promotion are clear, we cannot state with certainty that the process of promotion in the judiciary is transparent. We can say that the rules and requirements are transparent, but, there is a gray area as to how and why the particular applicant is chosen by the President. This part of the process is not transparent and unclear.

3. WORKLOAD WITHIN THE JUDICIARY

A. In broad terms, what are the requirements for magistrates and judges in relation to the number of sitting days per year or other measurement of judicial workload requirements?

ANSWER:

¹⁴ Section 4, Rule 3, The 2020 Revised Rules of the Judicial and Bar Council, JBC No. 2021-01.

¹⁵ Section 5, Rule 3, The 2020 Revised Rules of the Judicial and Bar Council, JBC No. 2021-01.

¹⁶ Rule 5.10 of the Revised Rules of Court (as amended).

There is no hard and fast answer to this question. It all depends upon the area of jurisdiction of the Presiding Judge or the location of his or her court. There are areas which have low case dockets such as far-flung areas or provinces where crimes are not numerous. But in the metropolitan areas, the case load is heavy, therefore, the judicial workload requirements of the judge are likewise heavy. The number of days to resolve the cases is sometimes not commensurate with the number of cases submitted for decision or resolution. Aside from the number of cases to be resolved, there are times that the issues to be decided upon are complex which would entail more time for research, study and writing. For the judge to effectively do his or her function, there must be flexibility also with the number of days in resolving cases because not all areas of jurisdiction and issues are the same.

B. If a judge is encountering trouble keeping up with the workload, describe the regime that applies by which –

- (i) that judge's workload is allocated to other judges;**
- (ii) the overloaded judge can recover from workload arrears and from any other disabling factor that led to overload**
- (iii) there are other mechanisms to address judicial delinquency.**

ANSWER:

(iii) There are other mechanisms to address judicial delinquency.

In the Philippines, if the Judge cannot keep up with the workload, he or she shall write a letter of extension in resolving his or her cases.

c. Are judges expected or required to assist other judges who may be adversely affected from overload so as to ensure that the business of the court is discharged in a timely manner.

ANSWER:

The answer is in the negative.

In the Philippines, judges are not required to assist other judges who may be adversely affected from overload so as to ensure that the business of the court is discharged in a timely manner.

However, in the Philippines, we have a pairing system wherein when the presiding judge of a court cannot act upon on some matters as the presiding judge is on leave or promoted, there is a pairing judge who will act upon on matters within that court.

4. REMOVAL FROM JUDICIAL OFFICE

A. Does a regime currently exist in your country pursuant to which a sitting judge may be removed from office.

ANSWER:

Yes.

If so, please describe any such regime, giving all relevant details including-

(i) who decides that the judge is to be removed from office;

ANSWER:

The Supreme Court of the Philippines decides on whether or not the judge may be removed from office.

(ii) does the judge have a right of audience on any such motion or otherwise possess a right to be heard against the removal and is there an appeal process if removed;

ANSWER:

Yes. The Judge has the right to due process or right to be heard. He has remedies under the law too such as filing a Motion for Reconsideration from the Decision of the Supreme Court.

(iii) what are the grounds for seeking the removal of a sitting judge;

ANSWER:

Based on Decisions by the Supreme Court, the judge may be removed from office on the following grounds: (1) Dishonesty; (2) Graft and Corruption; (3) Grave Misconduct; (4) Immorality; and Falsification.

Grounds for the disciplinary action of members of the Bar for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers are also grounds to discipline judges and remove them from office as they too are members of the bar.

Pursuant to A.M. No. 02-9-02-SC22, administrative cases against a judge for grave misconduct, dishonesty, and falsification are automatically considered as disciplinary proceedings against him or her as a member of the Bar.

(iv) what is the relationship between violation of the ethics code/principles and removal; and

ANSWER:

Pursuant to A.M. No. 02-9-02-SC22, administrative cases against a judge for grave misconduct, dishonesty, and falsification are automatically considered as disciplinary proceedings against him or her as a member of the Bar.

Grounds for the disciplinary action of members of the Bar for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers are also grounds to discipline judges and remove them from office as they too are members of the bar.

Therefore, violation of Code of Professional Responsibility and Code of Judicial Conduct are grounds for removal from office of the judge.

(v) describe the transparency in the process.

ANSWER:

Processes are transparent as the judge will be given his day in court and be granted his or her right to due process.

B. If removed from office, describe the adverse consequences that may affect the removed judge including - (a) financial (especially pension) consequences; (b) future employment consequences following removal; (c) societal consequences including loss of title or civic decorations; and (d) disciplinary steps that may be taken against the removed judge.

ANSWER:

If the Judge is found guilty and removed or dismissed from the service, he will lose all his rights to pension, he or she will not be allowed to hold government office or position in the future; and he or she will be disbarred from the practice of law.