

**G.R. No. 196804 – MAYOR BARBARA RUBY C. TALAGA, *petitioner* – versus– COMMISSION ON ELECTIONS and RODERICK A. ALCALA, *respondents*.**

**G.R. No. 197015 – PHILIP M. CASTILLO, *petitioner* – versus– COMMISSION ON ELECTIONS, MAYOR BARBARA RUBY TALAGA and RODERICK A. ALCALA, *respondents*.**

Promulgated:

OCTOBER 09, 2012

X-----X

### **CONCURRING AND DISSENTING OPINION**

**BRION, J.:**

I **concur** with the *ponencia* in dismissing Mayor Barbara Ruby Talaga’s petition against the assailed Commission on Elections (COMELEC) *en banc* Resolution of May 20, 2011 in SPC No. 10-024; but I **dissent** with the *ponencia*’s reasoning that the cause of invalidity of Ruby’s substitution of Ramon Talaga is the cancellation of Ramon’s certificate of candidacy (CoC). I **dissent**, too, with the *ponencia*’s ruling that it is the Vice-Mayor who should be seated as Mayor, applying the rules of succession under the Local Government Code (LGC).

Ramon and Philip Castillo were the original candidates for the mayoralty post in Lucena City for the May 10, 2010 elections.<sup>1</sup> Soon after they filed their CoCs, Castillo filed a petition to “deny due course to or to cancel the certificate of candidacy” of Ramon on the ground that he had served for three consecutive terms as mayor.<sup>2</sup>

Ramon defended himself by citing the then COMELEC ruling that his preventive suspension in the course of his three terms as mayor prevented

<sup>1</sup> *Rollo* (G.R. No. 196804), p. 42.

<sup>2</sup> *Id.* at 88-92.

him from serving continuously.<sup>3</sup> On December 23, 2009, however, the Supreme Court issued a contrary ruling in *Aldovino, Jr. v. Commission on Elections*<sup>4</sup> and held that preventive suspension is only a temporary incapacity that does not interrupt a local official's term of office for purposes of the three-term limit rule.

In light of this development, Ramon manifested before the COMELEC that he made no misrepresentation in his CoC because of the prevailing COMELEC ruling; he acknowledged that he was disqualified to run for mayor, and he prayed for a ruling declaring him disqualified.<sup>5</sup>

The requested ruling came on April 19, 2010, through the grant of Castillo's petition by the COMELEC First Division.<sup>6</sup> Ramon responded to the ruling by filing a motion for reconsideration,<sup>7</sup> but he withdrew his motion on May 4, 2010 through an *ex parte* manifestation of withdrawal.<sup>8</sup> Later, on the same day, Ruby – Ramon's wife – filed her CoC, attaching thereto the required Certificate of Nomination by Ramon's party.<sup>9</sup>

The COMELEC *en banc*'s action on Ramon's manifestation of withdrawal did not come until the next day – May 5, 2010. The *en banc*, in its Order, considered the April 19, 2010 Resolution of the COMELEC First Division final and executory.<sup>10</sup>

On election day, May 10, 2010, Ramon's name remained in the printed ballot, but votes for him were counted in Ruby's favor as votes for the substitute candidate.<sup>11</sup>

---

<sup>3</sup> *Id.* at 229.

<sup>4</sup> G.R. No. 184836, December 23, 2009, 609 SCRA 234.

<sup>5</sup> *Rollo* (G.R. No. 196804), pp. 98-101.

<sup>6</sup> *Id.* at 102-105.

<sup>7</sup> *Id.* at 106-124.

<sup>8</sup> *Id.* at 126-129.

<sup>9</sup> *Id.* at 130-131.

<sup>10</sup> *Id.* at 133-134.

<sup>11</sup> *Id.* at 136.

Castillo sought to suspend the proclamation of Ramon or Ruby who had garnered 44,099 votes as against Castillo's 39,615.<sup>12</sup> On May 13, 2010, the COMELEC gave due course to Ruby's CoC as substitute candidate.<sup>13</sup> The Board of Canvassers, on the other hand, did not suspend the proclamation as Castillo had requested, and instead proclaimed Ruby as winner and elected Mayor of Lucena City on that same day.<sup>14</sup>

Castillo sought to annul Ruby's proclamation through another petition<sup>15</sup> while the elected Vice Mayor, Roderick Alcala, moved to intervene in Castillo's petition.<sup>16</sup> On January 11, 2011, the COMELEC Second Division dismissed Castillo's petition and denied Alcala's motion. The COMELEC Second Division reasoned out that the substitution became final and executory when Castillo failed to act after receiving a copy of the COMELEC resolution giving due course to Ruby's substitution.<sup>17</sup>

Both parties went to the COMELEC *en banc* for the reconsideration of the COMELEC Second Division's ruling. The COMELEC *en banc* reversed the January 11, 2011 ruling of the COMELEC Second Division on due process consideration and on the ground that the filing of Ruby's CoC was not a proper substitution for being premature and for being filed out of time.<sup>18</sup> Against this COMELEC *en banc* ruling, both parties went to the Court.

The issues raised by the parties before the Court can be condensed as follows:

- a. Whether Ruby validly substituted for Ramon as candidate for mayor of Lucena City;

---

<sup>12</sup> *Id.* at 135-138.

<sup>13</sup> *Id.* at 142-144.

<sup>14</sup> *Id.* at 145.

<sup>15</sup> *Id.* at 185-214.

<sup>16</sup> *Id.* at 305-318.

<sup>17</sup> *Id.* at 361-375.

<sup>18</sup> *Id.* at 42-52.

- b. In the negative, whether the cause of the invalidity of the substitution is Ramon's disqualification or the cancellation of his CoC;
- c. Who between Castillo and Alcala should assume the position of mayor of Lucena City?

The *ponencia* dismissed Ruby's petition (G.R. No. 196804) and Castillo's petition (G.R. No. 197015) for lack of merit; and upheld the COMELEC *en banc*'s resolution of May 20, 2011 in SPC No. 10-024.

I agree with the *ponencia*'s conclusion that Ruby never validly substituted Ramon, and, therefore, she never became a candidate who can be validly voted for in the May 2010 elections. The *ponencia* considers Ruby's substitution as invalid because Ramon's CoC contains an "incurable defect consisting in his false declaration of his eligibility to run"<sup>19</sup> for a fourth consecutive term. The *ponencia* adds that despite the absence of an express finding of material misrepresentation by the COMELEC, the fact that it granted Castillo's petition "without express qualifications"<sup>20</sup> manifested that the COMELEC had cancelled Ramon's CoC. In short, the *ponencia* considers the CoC of a three-term candidate as invalid, warranting its cancellation.

I dissent with the reasoning of the *ponencia*. I base my position of dissent on the following grounds – the same grounds which would later support my position that it is Castillo who should be seated as Mayor -

- a. the violation of the three-term limit rule is a unique but proper ground for disqualification and not for the cancellation of a CoC under Section 78 of the Omnibus Election Code (*OEC*);
- b. the petition filed by Castillo against Ramon was based on the three-term limit rule and, hence, was a petition for

---

<sup>19</sup> Decision, p. 17.

<sup>20</sup> *Id.* at 20.

disqualification, but no effective disqualification ever took place since Ramon never qualified to serve for a fourth term; and

- c. since Ruby did not validly substitute Ramon and Ramon opted to exit out of the election race (although through an erroneous mode of asking for a ruling disqualifying him), neither of the two can be considered candidates and the votes cast in their favor should be considered stray; thus, Castillo should be proclaimed as Mayor of Lucena City.

Hidden behind but not erased by this simplistic recital of the issues, rulings and dissent is the legal reality that these cases pose issues way beyond the question of substitution that appears on the surface. They require a look into the nature of a CoC; distinctions between eligibility, or lack of it, and disqualification; the effects of cancellation and disqualification; the applicable remedies; and the unique nature and the effect of the constitutional three-term limit for local elective officials.

***The CoC and the Qualifications for its Filing.***

A basic rule and one that cannot be repeated often enough is that the CoC is the document that creates the status of a candidate. In *Sinaca v. Mula*,<sup>21</sup> the Court described the nature of a CoC as follows –

A certificate of candidacy is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated.

Both the 1973 and 1987 Constitutions left to Congress the task of providing the qualifications of ***local elective officials***. Congress undertook

---

<sup>21</sup> 373 Phil. 896, 908 (1999).

this task by enacting Batas Pambasa Bilang (*B.P. Blg.*) 337 (LGC), the OEC and, later, Republic Act (*R.A.*) No. 7160 (*Local Government Code of 1991 or LGC 1991*).<sup>22</sup>

Under Section 79 of the OEC, a political aspirant legally becomes a “candidate” only upon the due filing of his sworn CoC.<sup>23</sup> In fact, Section 73 of the OEC makes the filing of the CoC a condition *sine qua non* for a person to “be eligible for any elective public office”<sup>24</sup> – *i.e.*, to be validly voted for in the elections. Section 76 of the OEC makes it a “ministerial duty” for a COMELEC official “to receive and acknowledge receipt of the certificate of candidacy”<sup>25</sup> filed.

COMELEC Resolution No. 8678 provides what a CoC must contain or state.<sup>26</sup>

---

<sup>22</sup> Prior to these laws, the applicable laws were the Revised Administrative Code of 1917, R.A. No. 2264 (An Act Amending the Laws Governing Local Governments by Increasing Their Autonomy and Reorganizing Provincial Governments); and B.P. Blg. 52 (An Act Governing the Election of Local Government Officials).

<sup>23</sup> See, however, Section 15 of R.A. No. 8436, as amended. *Penera v. Commission on Elections*, G.R. No. 181613, November 25, 2009, 605 SCRA 574, 581-586, citing *Lanot v. COMELEC*, G.R. No. 164858, November 16, 2006, 507 SCRA 114.

<sup>24</sup> Section 73 of OEC reads:

Section 73. *Certificate of candidacy.* - No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.

No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them.

However, before the expiration of the period for the filing of certificates of candidacy, the person who has filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices.

The filing or withdrawal of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred. [*italics supplied*]

Section 13 of R.A. No. 9369, however, adds that “[a]ny person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy: *Provided, That, unlawful acts or omissions applicable to a candidate shall effect only upon that start of the aforesaid campaign period[.]*” (*italics supplied*)

<sup>25</sup> See *Cipriano v. Commission on Elections*, 479 Phil. 677, 689 (2004).

<sup>26</sup> The statutory basis is Section 74 of OEC which provides:

Section 74. *Contents of certificate of candidacy.* - The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province,

Section 2. *Contents of certificate of candidacy.* - The certificate of candidacy shall be under oath and shall state that the person filing it is announcing his candidacy for the office and constituency stated therein; that he is eligible for said office, his age, sex, civil status, place and date of birth, his citizenship, whether natural-born or naturalized; the registered political party to which he belongs; if married, the full name of the spouse; his legal residence, giving the exact address, the precinct number, barangay, city or municipality and province where he is registered voter; his post office address for election purposes; his profession or occupation or employment; that he is not a permanent resident or an immigrant to a foreign country; that he will support and defend the Constitution of the Republic of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, decrees, resolution, rules and regulations promulgated and issued by the duly-constituted authorities; that he assumes the foregoing obligations voluntarily without mental reservation or purpose of evasion; and that the facts stated in the certificate are true and correct to the best of his own knowledge. [italics supplied]

From the point of view of the common citizen who wants to run for a local elective office, the above recital contains all the requirements that he must satisfy; it contains the basic and essential requirements applicable **to all citizens to qualify for candidacy** for a local elective office. These are their formal terms of entry to local politics. A citizen must not only possess all these requirements; he must positively represent in his CoC application that he possesses them. Any falsity on these requirements constitutes a material misrepresentation that can lead to the cancellation of the CoC. On this point, Section 78 of the OEC provides:

---

including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy.* – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by [any] person **exclusively** on the ground that any **material representation contained therein as required under Section 74** hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. [italics, emphases and underscores ours]

A necessarily related provision is Section 39 of LGC 1991 which states:

Sec. 39. *Qualifications.* – (a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city, or province or, in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sanggunian bayan*, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

X X X X

(c) Candidates for the position of Mayor or vice-mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day. [italics ours]

Notably, Section 74 of the OEC does not require any negative qualification except only as expressly required therein. A specific negative requirement refers to the representation that the would-be candidate is *not* a permanent resident nor an immigrant in another country. This requirement, however, is in fact simply part of the positive requirement of residency in the locality for which the CoC is filed and, in this sense, it is not strictly a negative requirement. **Neither does Section 74 require any statement that the would-be candidate does not possess any ground for disqualification specifically enumerated by law, as disqualification is a matter that the OEC and LGC 1991 separately deal with, as discussed below. Notably, Section 74 does not *require* a would-be candidate to state that he has *not* served for three consecutive terms in the same elective position immediately prior to the present elections.**

With the accomplishment of the CoC and its filing, a political aspirant officially acquires the status of a candidate and, at the very



least, the prospect of holding public office; he, too, formally opens himself up to the complex political environment and processes. The Court cannot be more emphatic in holding “that **the importance of a valid certificate of candidacy rests at the very core of the electoral process.**”<sup>27</sup>

Pertinent laws<sup>28</sup> provide the specific periods when a CoC may be filed; when a petition for its cancellation may be brought; and the effect of its filing. These measures, among others, are in line with the State policy or objective of ensuring “equal access to opportunities for public service,”<sup>29</sup> bearing in mind that the limitations on the privilege to seek public office are within the plenary power of Congress to provide.<sup>30</sup>

***The Concept of Disqualification and its Effects.***

To disqualify, in its simplest sense, is (1) to deprive a person of a power, right or privilege; or (2) to make him or her ineligible for further competition because of violation of the rules.<sup>31</sup> It is in these senses that the term is understood in our election laws.

Thus, anyone who may qualify or may have qualified under the general rules of eligibility applicable to all citizens may be **deprived of the right to be a candidate or may lose the right to be a candidate** (if he has filed his CoC) because of a trait or characteristic that applies to him or an act that can be imputed to him *as an individual, separately from the general qualifications that must exist for a citizen to run for a local public office*. Notably, **the breach of the three-term limit** is a trait or condition that can possibly apply *only* to those who have previously served for three

---

<sup>27</sup> *Miranda v. Abaya*, 370 Phil. 642, 658 (1999). See also *Bautista v. Commission on Elections*, 359 Phil. 1 (1998).

<sup>28</sup> Section 13 of R.A. No. 9369, COMELEC Resolution No. 8678 and Section 78 of OEC.

<sup>29</sup> 1987 Constitution, Article II, Section 26.

<sup>30</sup> See *Pamatong v. Commission on Elections*, G.R. No. 161872, April 13, 2004, 427 SCRA 96, 100-103.

<sup>31</sup> Merriam-Webster’s 11<sup>th</sup> Collegiate Dictionary, p. 655.

consecutive terms in the same position sought immediately prior to the present elections.

In a disqualification situation, the grounds are the individual traits or conditions of, or the individual acts of disqualification committed by, a candidate as provided under Sections 68 and 12 of the OEC and Section 40 of LGC 1991, and which generally have nothing to do with the eligibility requirements for the filing of a CoC.<sup>32</sup>

Sections 68 and 12 of the OEC (together with Section 40 of LGC 1991, outlined below) cover the following as traits, characteristics or acts of disqualification: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) overspending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

Section 40 of LGC 1991, on the other hand, essentially repeats those already in the OEC under the following disqualifications:

- a. Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

---

<sup>32</sup> If at all, only two grounds for disqualification under the Local Government Code *may* as well be considered for the cancellation of a CoC, *viz.*: those with dual citizenship and permanent residence in a foreign country, or those who have acquired the right to reside abroad and continue to avail of the same right after January 1, 1992. It may be argued that these two disqualifying grounds likewise go into the eligibility requirement of a candidate, as stated under oath by a candidate in his CoC.

- b. Those removed from office as a result of an administrative case;
- c. Those convicted by final judgment for violating the oath of allegiance to the Republic;
- d. Those with dual citizenship;
- e. Fugitives from justice in criminal or non-political cases here or abroad;
- f. Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and
- g. The insane or feeble-minded.

Together, these provisions embody the disqualifications that, by statute, can be imputed against a candidate or a local elected official to deny him of the chance to run for office or of the chance to serve if he has been elected.

A unique feature of “disqualification” is that under Section 68 of the OEC, it **refers only to a “candidate,”** not to one who is not yet a candidate. Thus, the grounds for disqualification do not apply to a would-be candidate who is still at the point of filing his CoC. **This is the reason why no representation is required in the CoC that the would-be candidate does not possess any ground for disqualification. The time to hold a person accountable for the grounds for disqualification is after attaining the status of a candidate, with the filing of the CoC.**

To sum up and reiterate the essential differences between the eligibility requirements and disqualifications, the former are the requirements that apply to, and must be complied by, all citizens who wish to run for local elective office; these must be positively asserted in the CoC. The latter refer to individual traits, conditions or acts that serve as grounds against one who has qualified as a candidate to lose this status or privilege; essentially, they have nothing to do with a candidate’s CoC.

When the law allows the **cancellation of a candidate’s CoC, the law considers the cancellation from the point of view of the requirements that every citizen who wishes to run for office must commonly satisfy.** Since the elements of “eligibility” are common, the vice of ineligibility

attaches to and affects both the candidate *and* his CoC. In contrast, when the law allows the disqualification of a candidate, the law looks only at the disqualifying trait or condition specific to the individual; if the “eligibility” requirements have been satisfied, the disqualification applies only to the person of the candidate, leaving the CoC valid. A previous conviction of subversion is the best example as it applies not to the citizenry at large, but only to the convicted individuals; a convict may have a valid CoC upon satisfying the eligibility requirements under Section 74 of the OEC, but shall nevertheless be disqualified.

***Distinctions among (i) denying due course to or cancellation of a CoC, (ii) disqualification, and (iii) quo warranto***

The nature of the eligibility requirements for a local elective office and the disqualifications that may apply to candidates necessarily create distinctions on the remedies available, on the effects of lack of eligibility and on the application of disqualification. The remedies available are essentially: the **cancellation of a CoC, disqualification from candidacy or from holding office**, and **quo warranto**, which are distinct remedies with varying applicability and effects. For ease of presentation and understanding, their availability, grounds and effects are topically discussed below.

***As to the grounds:***

In the **denial of due course to or cancellation of a CoC**, the ground is essentially lack of eligibility under the pertinent constitutional and statutory provisions on qualifications or eligibility for public office;<sup>33</sup> the governing provisions are *Sections 78 and 69 of the OEC*.<sup>34</sup>

---

<sup>33</sup> *Fermin v. Commission on Elections*, G.R. Nos. 179695 and 182369, December 18, 2008, 574 SCRA 782, 792-794.

<sup>34</sup> See Section 7 of R.A. No. 6646.

In a **disqualification case**, as mentioned above, the grounds are traits, characteristics or acts of disqualification,<sup>35</sup> individually applicable to a candidate, as provided under Sections 68 and 12 of the OEC; Section 40 of LGC 1991; and, as discussed below, Section 8, Article X of the Constitution. As previously discussed, the grounds for disqualification are different from, and have nothing to do with, a candidate's CoC although they may result in disqualification from candidacy whose immediate effect **upon finality before the elections** is the same as a cancellation. If they are cited in a petition filed before the elections, they remain as disqualification grounds and carry effects that are distinctly peculiar to disqualification.

In a quo warranto petition, the grounds to oust an elected official from his office are ineligibility and disloyalty to the Republic of the Philippines. This is provided under Section 253 of the OEC and governed by the Rules of Court as to the procedures. While *quo warranto* and cancellation share the same ineligibility grounds, **they differ as to the time these grounds are cited**. A cancellation case is brought before the elections, while a *quo warranto* is filed after and may still be filed even if a CoC cancellation case was not filed before elections, *viz.*:

The only difference between the two proceedings is that, under section 78, the qualifications for elective office are misrepresented in the certificate of candidacy and the proceedings must be initiated before the elections, whereas a petition for *quo warranto* under section 253 may be brought on the basis of two grounds - (1) ineligibility or (2) disloyalty to the Republic of the Philippines, and must be initiated within ten days after the proclamation of the election results. Under section 253, a candidate is ineligible if he is disqualified to be elected to office, and he is disqualified if he lacks any of the qualifications for elective office.<sup>36</sup>

---

<sup>35</sup> Sections 68 and 12 of OEC cover these acts: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) over spending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

<sup>36</sup> *Salcedo II v. COMELEC*, 371 Phil. 377, 387 (1999), citing *Aznar v. Commission on Elections*, 185 SCRA 703 (1990).

Note that the question of what would constitute acts of disqualification – under Sections 68 and 12 of the OEC and Section 40 of LGC 1991 – is best resolved by directly referring to the provisions involved. On the other hand, what constitutes a violation of the three-term limit rule under the Constitution has been clarified in our case law.<sup>37</sup> The approach is not as straight forward in a petition to deny due course to or cancel a CoC and also to a quo warranto petition, which similarly covers the ineligibility of a candidate/elected official. In *Salcedo II v. COMELEC*,<sup>38</sup> we ruled that –

[I]n order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the **false representation** mentioned therein pertain to a **material matter** for the sanction imposed by this provision would affect the substantive rights of a candidate — the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation," the Court has interpreted this phrase in a line of decisions applying Section 78 of the Code.

X X X X

Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refer to **qualifications for elective office**. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave — to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake. [emphases ours, citation omitted]

Thus, in addition to the failure to satisfy or comply with the eligibility requirements, a material misrepresentation must be present in a cancellation of CoC situation. The law apparently does not allow material divergence from the listed requirements to qualify for candidacy and enforces its edict by requiring positive representation of compliance under oath. Significantly, where disqualification is involved, the mere existence of a ground appears sufficient and a material representation assumes no relevance.

---

<sup>37</sup> *Lonzanida v. Commission on Elections*, 311 SCRA 602 [1999]; *Borja v. Commission on Elections* 295 SCRA 157 (1998); *Socrates v. Commission on Elections*, G.R. No. 154512, November 12, 2002; *Latasa v. Commission on Elections*, G.R. No. 154829, December 10, 2003, 417 SCRA 601; *Montebon v. Commission on Elections*, G.R. No. 180444, April 9, 2008, 551 SCRA 50; *Aldovino v. Commission on Elections*, G.R. No. 184836 December 23, 2009.

<sup>38</sup> *Supra* note 36, at 386-389.

*As to the period for filing:*

The period to file a petition to deny due course to or cancel a CoC depends on the provision of law invoked. If the petition is filed under **Section 78 of the OEC**, the petition must be filed within twenty-five (25) days from the filing of the CoC.<sup>39</sup> However, if the petition is brought under **Section 69** of the same law, the petition must be filed within five (5) days from the last day of filing the CoC.<sup>40</sup>

On the other hand, the period to file a **disqualification case** is at any time before the proclamation of a winning candidate, as provided in COMELEC Resolution No. 8696.<sup>41</sup> **The three-term limit disqualification, because of its unique characteristics, does not strictly follow this time limitation** and is discussed at length below. At the very least, it should follow the temporal limitations of a quo warranto petition which must be filed within ten (10) days from proclamation.<sup>42</sup> The constitutional nature of the violation, however, argues against the application of this time requirement; the *rationale* for the rule and the role of the Constitution in the country's legal order dictate that a petition should be allowed while a consecutive fourth-termers is in office.

<sup>39</sup> *Loong v. Commission on Elections*, G.R. No. 93986, December 22, 1992, 216 SCRA 760, 765-766.

<sup>40</sup> Section 5(a) of R.A. No. 6646.

<sup>41</sup> Section 4(B) of COMELEC Resolution No. 8696 reads:

SEC. 4. Procedure in filing petitions. - For purposes of the preceding sections, the following procedure shall be observed:

x x x x

B. PETITION TO DISQUALIFY A CANDIDATE PURSUANT TO SECTION 68 OF THE OMNIBUS ELECTION CODE AND PETITION TO DISQUALIFY FOR LACK OF QUALIFICATIONS OR POSSESSING SOME GROUNDS FOR DISQUALIFICATION

1. A verified petition to disqualify a candidate pursuant to Section 68 of the OEC and the verified petition to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification may be filed on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation[.]

<sup>42</sup> Section 253 of OEC.

*As to the effects of a successful suit:*

A candidate whose CoC was **denied due course or cancelled** is not considered a candidate at all. Note that the law fixes the period within which a CoC may be filed.<sup>43</sup> After this period, generally no other person may join the election contest. A notable exception to this general rule is the rule on substitution: when an official candidate of a registered political party dies, withdraws or is disqualified for any cause after the last day for filing a CoC, the law allows the substitution of the dead, withdrawing or disqualified candidate, provided that he or she had a valid and subsisting CoC at the time of death, withdrawal or substitution. This proviso is necessary since the entry of a new candidate after the regular period for filing the CoC is exceptional. Unavoidably, a “candidate” **whose CoC has been cancelled or denied due course cannot be substituted for lack of a CoC**, to all intents and purposes.<sup>44</sup> Similarly, a successful *quo warranto* suit results in the ouster of an already elected official from office; substitution, for obvious reasons, can no longer apply.

On the other hand, a candidate who was **simply disqualified** is merely prohibited from continuing as a candidate or from assuming or continuing to assume the functions of the office;<sup>45</sup> substitution can thus take place before election under the terms of Section 77 of the OEC.<sup>46</sup> **However, a three-term candidate with a valid and subsisting CoC cannot be substituted if the basis of the substitution is his disqualification on account of his three-term limitation. Disqualification that is based on a breach of the three-term limit rule cannot be invoked as this disqualification can only take place after election where the three-term official emerged as winner.** As in a *quo warranto*, any substitution is too late at this point.

---

<sup>43</sup> Section 15 of R.A. No. 9369.

<sup>44</sup> *Miranda v. Abaya*, *supra* note 27, at 658-660.

<sup>45</sup> See: Section 72, OEC; Section 6, R.A. No. 6646.

<sup>46</sup> Section 77 of OEC expressly allows substitution of a candidate who is “disqualified for any cause.”



***As to the effects of a successful suit on  
the right of the second placer in the elections:***

In any of these three remedies, the doctrine of rejection of the second placer applies for the simple reason that –

To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under such circumstances.<sup>47</sup>

With the disqualification of the winning candidate and the application of the doctrine of rejection of the second placer, the **rules on succession** under the law accordingly apply.

As an **exceptional situation**, however, the candidate with the second highest number of votes (*second placer*) may be validly proclaimed as the winner in the elections should the winning candidate be **disqualified** by final judgment **before the elections**, as clearly provided in Section 6 of R.A. No. 6646.<sup>48</sup> The same effect obtains when the electorate is fully aware, in fact and in law and within the realm of notoriety, of the disqualification, yet they still voted for the disqualified candidate. In this situation, the electorate that cast the plurality of votes in favor of the notoriously disqualified candidate is simply deemed to have waived their right to vote.<sup>49</sup>

In a **CoC cancellation** proceeding, the law is silent on the legal effect of a judgment cancelling the CoC and does not also provide any temporal distinction. Given, however, the formal initiatory role a CoC plays and the standing it gives to a political aspirant, the cancellation of the CoC based on a finding of its invalidity effectively results in a vote for an *inexistent*

---

<sup>47</sup> *Aquino v. Commission on Elections*, G.R. No. 120265, September 18, 1995, 248 SCRA 400, 424.

<sup>48</sup> *Cayat v. Commission on Elections*, G.R. Nos. 163776 and 165736, April 24, 2007, 522 SCRA 23, 43-47; Section 6 of R.A. No. 6646.

<sup>49</sup> *Grego v. Commission on Elections*, G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501.

“candidate” or for one who is deemed not to be in the ballot. Although legally a misnomer, the “second placer” should be proclaimed the winner as the candidate with the highest number of votes for the contested position. **This same consequence should result if the cancellation case becomes final after elections**, as the cancellation signifies non-candidacy from the very start, *i.e.*, from before the elections.

### **Violation of the three-term limit rule**

#### **a. The Three-Term Limit Rule.**

The three-term limit rule is a creation of Section 8, Article X of the Constitution. This provision fixes the maximum limit an elective local official can consecutively serve in office, and at the same time gives the command, in no uncertain terms, that *no such official shall serve for more than three consecutive terms*. Thus, a three-term local official is barred from serving a fourth and subsequent consecutive terms.

This bar, as a constitutional provision, must necessarily be read into and interpreted as a component part of the OEC under the legal reality that **neither this Code nor the LGC provides for the three-term limit rule’s operational details; it is not referred to as a ground for the cancellation of a CoC nor for the disqualification of a candidate, much less are its effects provided for.** Thus, the need to fully consider, reconcile and harmonize the terms and effects of this rule on elections in general and, in particular, on the circumstances of the present case.

#### **b. Is the Rule an Eligibility Requirement or a Disqualification?**

In practical terms, the question of whether the three-term limit rule is a matter of “eligibility” that must be considered in the filing of a CoC translates to the need to state in a would-be candidate’s CoC application that

he is eligible for candidacy because he has not served for three consecutive terms immediately before filing his application.

**The wording of Section 8, Article X of the Constitution, however, does not justify this requirement as Section 8 simply sets a limit on the number of consecutive terms an official can serve. It does not refer to elections, much less does it bar a three-termers' candidacy. As previously discussed, Section 74 of the OEC does not expressly require a candidate to assert the *non-possession* of any disqualifying trait or condition, much less of a candidate's observance of the three-term limit rule. In fact, the assertion of a would-be candidate's eligibility, as required by the OEC, could not have contemplated making a three-term candidate ineligible *for candidacy* since that disqualifying trait began to exist only later under the 1987 Constitution.**

What Section 8, Article X of the Constitution indisputably mandates is solely a bar against serving for a fourth consecutive term, not a bar against candidacy. Of course, **between the filing of a CoC (that gives an applicant the status of a candidate) and assumption to office as an election winner is a wide expanse of election activities whose various stages our election laws treat in various different ways. Thus, if candidacy will be aborted from the very start (*i.e.*, at the initial CoC-filing stage), what effectively takes place – granting that the third-termers possess all the eligibility elements required by law – is a shortcut that is undertaken on the theory that the candidate cannot serve in any way if he wins a fourth term.**

I submit that while simple and efficient, **essential legal considerations should dissuade the Court from using this approach. To make this shortcut is to incorporate into the law, by judicial fiat, a requirement that is not expressly there.** In other words, such shortcut may go beyond allowable interpretation that the Court can undertake, and cross over into prohibited judicial legislation. Not to so hold, on the other

hand, does not violate the three-term limit rule even in spirit, since its clear and undisputed mandate is to disallow serving for a fourth consecutive term; this objective is achieved when the local official does not win and can always be attained by the direct application of the law if he does win.

Another reason, and an equally weighty one, is that a shortcut would run counter to **the concept of commonality that characterizes the eligibility requirements**; it would allow the introduction of an element that does not apply to all citizens as an entry qualification. Viewed from the prism of the general distinctions between eligibility and disqualification discussed above, the three-term limit is unavoidably a restriction that applies only to local officials who have served for three consecutive terms, not to all would-be candidates at large; it applies only to *specific individuals* who may have otherwise been eligible were it not for the three-term limit rule and is thus a defect that attaches only to the candidate and not to his CoC. In this sense, it cannot but be a disqualification and at that, a very specific one.

That the prohibited fourth consecutive term can only take place after a three-term local official wins his fourth term signifies too that the prohibition (and the resulting disqualification) only takes place after elections. This circumstance, to my mind, supports the view that the three-term limit rule does not at all involve itself with the matter of candidacy; it only regulates service beyond the limits the Constitution has set. **Indeed, it is a big extrapolative leap for a prohibition that applies after election, to hark back and affect the initial election process for the filing of CoCs.**

Thus, on the whole, I submit that the legally sound view is ***not*** to bar a three-termers' candidacy for a fourth term if the three-term limit rule is the only reason for the bar. In these lights, the three-term limit rule – as a bar against a fourth consecutive term – is effectively a disqualification against such service rather than an eligibility requirement.<sup>50</sup>

---

<sup>50</sup> Separate from these considerations is the possibility that the candidacy of a third-termers may be considered a nuisance candidate under Section 69 of the Omnibus Election Code. Nuisance candidacy, by

### c. Filing of Petition and Effects.

As a disqualification that can only be triggered after the elections, it is not one that can be implemented or given effect before such time. The reason is obvious; before that time, the gateway to the 4<sup>th</sup> consecutive term has not been opened because the four-term re-electionist has not won. This reality brings into sharp focus the timing of the filing of a petition for disqualification for breach of the three-term limit rule. Should a petition under the three-term limit rule be allowed only after the four-term official has won on the theory that it is at that point that the Constitution demands a bar?

The timing of the filing of the petition for disqualification is a matter of procedure that primarily rests with the COMELEC. Of course, a petition for disqualification cannot be filed against one who is *not yet* a candidate as only candidates (and winners) can be disqualified. Hence, the filing should be done after the filing of the CoC. On the backend limitation of its filing, I believe that the petition does not need to be hobbled by the terms of COMELEC Resolution No. 8696<sup>51</sup> because of the **special nature and characteristics of the three-term limit rule** – *i.e.*, the constitutional breach involved; the fact that it can be effective only after a candidate has won the election; and the lack of specific provision of the election laws covering it.

To be sure, a constitutional breach cannot be allowed to remain unattended because of the procedures laid down by administrative bodies. While *Salcedo* considers the remedy of *quo warranto* as almost the same as the remedy of cancellation on the question of eligibility, the fact that the remedies can be availed of only at particular periods of the election process signifies more than temporal distinction.

---

itself, is a special situation that has merited its own independent provision that calls for the denial or cancellation of the CoC if the bases required by law are proven; thus, it shares the same remedy of cancellation for material misrepresentation on the eligibility requirements. The possibility of being a nuisance candidate is not discussed as it is not in issue in the case.

<sup>51</sup> *Supra* note 41.

From the point of view of eligibility, one who merely seeks to hold public office through a valid candidacy cannot wholly be treated in the same manner as one who has won and is at the point of assuming or serving the office to which he has been elected; the requirements **to be eligible as a candidate** are defined by the election laws and by the local government code, but beyond these are **constitutional restrictions on eligibility to serve**. The three-term limit rule serves as the best example of this fine distinction; a local official who is allowed to be a candidate under our statutes but who is effectively in his fourth term should be considered *ineligible to serve* if the Court were to give life to the constitutional provision, couched in a strong prohibitory language, that “no such official shall serve for more than three consecutive terms.”

A possible legal stumbling block in allowing the filing of the petition before the election is the lack of a cause of action or prematurity at that point. If disqualification is triggered only after a three-termer has won, then it may be argued with some strength that a petition, filed against a respondent three-term local official before he has won a fourth time, has not violated any law and does not give the petitioner the right to file a petition for lack of cause of action or prematurity.<sup>52</sup>

I take the view, however, that the petition does not need to be immediately acted upon and can merely be docketed as a cautionary petition reserved for future action if and when the three-term local official wins a fourth consecutive term. If the parties proceed to litigate without raising the prematurity or lack of cause of action as objection, a ruling can be deferred until after the cause of action accrues; if a ruling is entered, then any decreed disqualification cannot be given effect and implemented until a violation of the three-term limit rule occurs.

---

<sup>52</sup> See comments at footnote 49 on the possibility of using the nuisance candidate provision under Section 69 of the OEC.

As a last point on the matter of substitution, a candidate with a valid and subsisting CoC can only be validly substituted on the basis of a withdrawal before the elections, or by reason of death. Disqualification that is based on a breach of the three-term limit rule cannot be invoked as this disqualification can only take place after election. As in a *quo warranto* situation, any substitution is too late at this point.

I shall consider the case on the basis of these positions.

***Castillo's Petition is Properly a  
Petition for Disqualification against  
Ramon for Possessing some Grounds  
for Disqualification***

On the basis of my views on the effect of the three-term limit rule, I disagree with the *ponencia's* conclusion that Castillo's petition is one for the cancellation or denial of due course of Ramon's CoC. I likewise so conclude after examining Castillo's petition, its allegations and the grounds it invoked.

As a rule, the nature of the action is determined by the allegations in the complaint or petition. The cause of action is not what the title or designation of the petition states; the acts defined or described in the body of the petition control. The designation or caption and even the prayer, while they may assist and contribute their persuasive effect, cannot also be determinative of the nature or cause of action for they are not even indispensable parts of the petition.<sup>53</sup>

In this sense, any question on the nature of Castillo's petition against Ramon cannot ignore the pertinent allegations of the petition, and they state:

4. Respondent was successively elected mayor of Lucena City in 2001, 2004, and 2007 local elections based on the records of the Commission on

---

<sup>53</sup>

See *Sumulong v. Court of Appeals*, G.R. No. 108817, May 10, 1994, 232 SCRA 372, 385-386.

Elections of Lucena City and had fully served the aforesaid three (3) terms without any voluntary and involuntary interruption.

x x x x

7. Respondent, knowing well that he was elected for and had fully served three (3) consecutive terms as a city mayor of Lucena, he still filed his Certificate of Candidacy for City Mayor of Lucena for this coming 10 May 2010 national and local elections;

x x x x

8. Under the Constitution and existing Election laws, New Local Government Code of the Philippines, and jurisprudence the respondent **is no longer entitled and is already disqualified to be a city mayor for the fourth consecutive term**[.] [emphasis supplied]

These allegations, on their face, did not raise any of the specified grounds for cancellation or denial of due course of a CoC under Sections 69 and 78 of the OEC. Specifically, Castillo's petition did not allege that Ramon was a nuisance candidate or that he had committed a misrepresentation on a material fact in his CoC; the petition failed to allege any deliberate attempt, through material misrepresentation, to mislead, misinform or deceive the electorate of Lucena City as to Ramon's qualifications for the position of Mayor. More importantly, and as previously discussed, the non-possession of any disqualifying ground, much less of a *potential* breach of the three-term limit rule, is not among the matters of qualification or eligibility that a candidate is required to assert in his CoC.

Castillo's allegations simply articulate the fact that Ramon had served for three consecutive terms and the legal conclusion that the three-term limit rule under the Constitution and LGC 1991 disqualifies him from running for a fourth consecutive term. Under these allegations, Castillo's petition cannot come within the purview of Section 78 of the OEC; Ramon's status as a three-term candidate is a ground to disqualify him (as precautionary measure before elections) for possessing a ground for disqualification under the Constitution and the LGC, specifically, for running for the same office after having served for three continuous terms.



From the given facts and from the standards of strict legality based on my discussions above, I conclude that the COMELEC was substantially correct in treating the case as one for disqualification – that is, *without cancelling his CoC* - in its April 19, 2010 Resolution and in ruling for disqualification, subject to my reservation about prematurity and the existence of a ripe cause of action. This reservation gathers strength in my mind as I consider that most of the developments in the case took place before the May 10, 2010 elections under the standards of Section 8, Article X of the Constitution. Brought to its logical end, this consideration leads me to conclude that while the COMELEC might have declared Ramon's disqualification to be final, its declaration was ineffectual as no disqualification actually ever took effect. None could have taken place as the case it ruled upon was not ripe for a finding of disqualification; Ramon, although a three-term local official, had not won a fourth consecutive term and, in fact, could not have won because he gave way to his wife in a manner not amounting to a withdrawal.

***Ruby's Substitution of Ramon is  
Invalid not because Ramon's CoC  
was cancelled but because of its non-  
conformity with the Conditions  
Required by Section 77 of the OEC***

As a rule, a CoC must be filed only within the timelines specified by law. This temporal limitation is a mandatory requirement to qualify as a candidate in a national or local election.<sup>54</sup> It is only when a candidate with a valid and subsisting CoC is *disqualified, dies or withdraws* his or her CoC before the elections that the remedy of substitution under Section 77 of the OEC is allowed. Section 77 states:

Section 77. *Candidates in case of death, disqualification or withdrawal of another.* - **If after the last day for the filing of**

---

<sup>54</sup> Section 73 of the OEC states:

Section 73. *Certificate of Candidacy* – No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed....  
[italics supplied]

**certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified.** The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission. [italics supplied, emphasis and underscoring ours]

In the present case, the grounds that would give rise to the substitution had to be present for Ruby's substitution to be valid. Specifically, she had to show that either Ramon had died, had withdrawn his valid and subsisting CoC, or had been disqualified for any cause. All these are best determined by considering the antecedents of the present case. To recall:

1. On April 19, 2010, the Comelec First Division disqualified Ramon in SPA No. 09-929 (DC). The Resolution did not contain any order to deny due course or to cancel Ramon's CoC;
2. On April 21, 2010, Ramon filed a *Verified Motion for Reconsideration* seeking a reversal of the April 19, 2010 Resolution;
3. On May 4, 2010, at exactly 9:00 a.m., Ramon filed an *Ex-Parte Manifestation of the Pending Motion for Reconsideration* dated May 3, 2010 praying that the COMELEC issue an "Order to NOTE the instant Manifestation and DEEM the Resolution promulgated on April 19, 2010 as final and executory";
4. On the same day at 4:30, Ruby filed her CoC for Mayor of Lucena City in substitution of her husband, Ramon;
5. In an Order dated May 5, 2010, the COMELEC *en banc* issued an Order in response to Ramon's Manifestation which stated: "(a) To NOTE this instant Manifestation; and (b) To consider

the April 19, 2010 Resolution of the Commission First Division final and executory”;

6. On the May 10, 2010 elections, Ramon garnered the highest number of votes with 44,099 votes, while Castillo garnered only 39,615 votes;
7. Three days after the elections or on May 13, 2010, the COMELEC *en banc* issued Resolution No. 8917 that gave due course to Ruby’s CoC. This Resolution was premised on the Memorandum of the Law Department dated May 8, 2010 which erroneously stated that Ruby filed her CoC on May 5 not May 4, 2010; and
8. On the basis of Resolution No. 8917, the City Board of Canvassers proclaimed Ruby as the duly elected mayor of Lucena City.<sup>55</sup>

All these, of course, will have to be viewed from the prism of the three-term limit rule.

Substitution refers to an exceptional situation in an election scenario where the law leans backwards to allow a registered party to put in place a replacement candidate when the death, withdrawal or disqualification of its original candidate occurs. The question that arises under the bare provisions of Section 77 of the OEC is how the COMELEC should handle the law’s given conditions and appreciate the validity of a substitution. The approaches to be made may vary on a case-to-case basis depending on the attendant facts, but a failsafe method in an election situation is to give premium consideration not to the candidates or their parties, but to the electorate’s process of choice and the integrity of the elections. In other words, in a legal or factual equipoise situation, the conclusion must lean towards the integrity of the electoral process.

---

<sup>55</sup>

*Rollo* (G.R. No. 196804), pp. 56-59.

Death as basis for substitution obviously does not need to be considered, thus leaving withdrawal and disqualification as grounds for the validity of Ruby's substitution.

On the matter of withdrawal, two significant developments could possibly serve as indicators of withdrawal and should be examined for their legal effects.

The *first* development relates to the aftermath of the Court's ruling in *Aldovino* regarding the interruption of service for purposes of the three-term limit rule. Although the *Aldovino* ruling still had to lapse to finality, Ramon almost immediately manifested before the COMELEC First Division his recognition that *he was disqualified and asked for a ruling*. The requested ruling, of course, was on the case that Castillo had filed. This ruling did not come until April 19, 2010 when the COMELEC First Division granted Castillo's petition, to which Ramon responded with a verified motion for reconsideration.

A significant aspect (although a negative one) of this development is that Ramon never indicated his clear intention to withdraw his CoC. Despite the *Aldovino* ruling, he only manifested his recognition that he was disqualified and had asked for a ruling on Castillo's petition. To be sure, he could have made a unilateral withdrawal with or without any intervention from the COMELEC First Division. The reality, however, was that he did not; he did not withdraw either from his disqualification case nor his CoC, pursuant to Section 73 of the OEC; he opted and continued to act within the confines of the pending case.

A question that may possibly be asked is whether Ramon's Manifestation recognizing his disqualification can be considered a withdrawal. The short answer, in my view, is that it cannot be so considered. Withdrawal and disqualification are separate grounds for substitution under Section 77 of the OEC and one should not be confused

with the other. Recognition of disqualification, too, without more, cannot be considered a withdrawal. Disqualification results from compulsion of law while withdrawal is largely an act that springs from the candidate's own volition. Ramon's obvious submission to the COMELEC First Division, by asking for a ruling, cannot in any sense be considered a withdrawal.

The *second* occasion was in early May 2010 when he withdrew, through a Manifestation, his motion for reconsideration of the First Division's ruling finding him disqualified for violation of the three-term limit rule. To recall, he made his *ex parte* manifestation of withdrawal in the morning of May 4, 2010, while his wife filed her CoC in substitution in the afternoon of the same day, on the apparent theory that his acceptance of the First Division disqualification ruling qualified her for substitution under Section 77 of the OEC.

I cannot view these moves as indicative of withdrawal because the parties' main basis, as shown by their moves, was to take advantage of a final ruling decreeing disqualification as basis for Ruby's substitution. Plainly, no withdrawal of the CoC was ever made and no withdrawal was also ever intended as they focused purely on the effects of Ramon's disqualification. This intent is evident from their frantic efforts to secure a final ruling by the COMELEC *en banc* on Ramon's disqualification.

But neither can I recognize that there was an effective disqualification that could have been the basis for a Section 77 substitution. As repeatedly discussed above, the constitutional prohibition and the disqualification can only set in after election, when a three-term local official has won for himself a fourth term. Quite obviously, Ramon – without realizing the exact implications of the three-term limit rule – opted for a disqualification as his mode of exit from the political scene. This is an unfortunate choice as he could not have been disqualified (or strictly, his disqualification could not have taken effect) until after he had won as Mayor in the May 2010 elections – too late in time if the intention was to secure a substitution for Ruby.

Additionally, there was no way that Ramon could have won as he had opted out of the race, through his acceptance of an ineffectual disqualification ruling, in favor of his wife, Ruby. I hark back, too, to the reason I have given on why the constitutional three-term limit rule cannot affect, and does not look back to, the candidate's CoC which should remain valid if all the elements of eligibility are otherwise satisfied.

Whatever twists and turns the case underwent through the series of moves that Ramon and his wife made after the First Division's April 19, 2010 ruling cannot erase the legal reality that, at these various points, no disqualification had ripened and became effective. To repeat, the cause for disqualification is the election of the disqualified candidate to a fourth term – a development that never took place. Without a disqualified candidate that Ruby was replacing, no substitution pursuant to Section 77 of the OEC could have taken place.<sup>56</sup> This reality removes the last ground that would have given Ruby the valid opportunity to be her husband's substitute. To note an obvious point, the CoC that Ruby filed a week before the May 10, 2010 elections could not have served her at all as her filing was way past the deadline that the COMELEC set.

To return to the immediate issue at hand and as previously discussed, a substitution under Section 73 of the OEC speaks of an exceptional, not a regular, situation in an election and should be strictly interpreted according to its terms. In the clearest and simplest terms, without a dead, withdrawing or disqualified candidate of a registered party, there can be no occasion for substitution. This requirement is both temporal and substantive. In the context of this case and in the absence of a valid substitution of Ramon by Ruby, votes for Ramon appearing in the ballots on election day could not have been counted in Ruby's favor.<sup>57</sup>

---

<sup>56</sup> See the analogous ruling of *Miranda v. Abaya*, 370 Phil. 642 (1999) on the principles of valid substitution.

<sup>57</sup> See the related case of *Cayat v. COMELEC*, G.R. No. 163776, April 24, 2007, 523 SCRA 23.

***With a fatally flawed substitution,  
Ruby was not a candidate.***

In view of the invalidity of Ruby's substitution, her candidacy was fatally flawed and could not have been given effect. Her CoC, standing by itself, was filed late and cannot be given recognition. Without a valid CoC, either by substitution or by independent filing, she could not have been voted for, for the position of Mayor of Lucena City. Thus, the election took place with only one valid candidate standing – Castillo – who should now be proclaimed as the duly elected Mayor.

The *ponencia* justifies the Vice-Mayor's succession to the office of the Mayor in this wise:

The only time that a second placer is allowed to take the place of a disqualified winning candidate is when two requisites concur, namely: (a) the candidate who obtained the highest number of votes is disqualified; and (b) the electorate was fully aware in fact and in law of that candidate's disqualification as to bring such awareness within the realm of notoriety but the electorate still cast the plurality of votes in favor of the ineligible candidate. xxx But the exception did not apply in favor of Castillo simply because the second element was absent. xxx

On the other hand, Barbara Ruby was properly disqualified by the COMELEC En Banc from assuming the position of Mayor of Lucena City. She was not a substitute candidate because Ramon's disqualification was confirmed only after the elections.

The *ponencia*'s reasoning would have been sound had Ruby been a candidate, who for one reason or another simply cannot assume office. **The harsh legal reality however is that she never was and never became a candidate** - a status which must be present before the doctrine of rejection of second placer may apply - either through the ordinary method of filing within the period allowed by law or through the extraordinary method of substitution. Ruby's status is comparable to (or even worse than) a candidate whose CoC was cancelled after the elections. As previously discussed, the cancellation of a CoC signifies non-candidacy from the very start, *i.e.*, before the elections, which entitles the "second placer" to assume office. The same result should obtain in this case.

From the perspective of Vice Mayor Alcala's intervention, Ruby did not validly assume the mayoralty post and could not have done so as she was never a candidate with a valid CoC. To recall my earlier discussions, it is only the CoC that gives a person the status of being a candidate. No person who is not a candidate can win. Thus, Ruby -- despite being seated -- never won. In the absence of any permanent vacancy occurring in the Office of the Mayor of Lucena City, no occasion arises for the application of the law on succession under Section 44 of the Local Government Code<sup>58</sup> and established jurisprudence.<sup>59</sup> **Thus, I dissent as the petition of Vice-Mayor Roderick Alcala should have failed.**

  
ARTURO D. BRION  
Associate Justice

<sup>58</sup> Section 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor and Vice-Mayor.* -- (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor shall become the governor or mayor.

x x x x

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

<sup>59</sup> See *Gonzales v. Comelec* (G.R. No. 192856, March 8, 2011, 644 SCRA 761, 800) where the Court held that "the ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office. The votes intended for the disqualified candidate should not be considered null and void, as it would amount to disenfranchising the electorate in whom sovereignty resides. The second place is just that, a second placer -- he lost in the elections and was repudiated by either the majority or plurality of voters."

