A.M. No. 10-9-15-SC – Re: Request of (ret.) CJ Artemio V. Panganiban for Re-Computation of His Creditable Service for the Purpose of Re-Computing His Retirement Benefits.

Promulgated:

FEBRUARY 12, 2013

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DISSENTING OPINION

BRION, *J.*:

This case involves the request of former Chief Justice Artemio Panganiban for the re-computation of his retirement benefits and his entitlement to **lifetime annuity** under the provisions of Republic Act (*R.A.*) No. 910, as amended by R.A. No. 9946, based on the crediting as **government service** of the work he rendered (1) as consultant of the Board of National Education (*BNE*) and (2) as legal counsel to former Department of Education (*DepEd*) Secretary Alejandro Roces.

I dissent and vote for the denial of the request as the crediting sought is not justified under the law, the rules and established jurisprudence. I respectfully submit the following reasons for this dissent:

First, the Court has twice previously rejected this request. Former Chief Justice Panganiban has not given the Court any reason to reconsider the rejection.

1. Former Chief Justice Panganiban's request to include his four-year service as consultant of the BNE and as legal counsel to Secretary Roces as "creditable government service" has already been **rejected** by this Court several times.[1] The present letter-request dated September 27, 2010 is effectively the **third request** that former Chief Justice Panganiban has made for the inclusion of the **same consultancy services**.

2. **Absence of Supervening Event to Justify Change of Previous Decision.** No supervening event or any compelling reason exists for this

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[1] These were embodied in (1) the Letter dated November 14, 2006 of Atty. Candelaria on the Application for Compulsory Retirement under R.A. No. 910 (*rollo*, p. 7); and (2) the Letter dated June 10, 2008 of Atty. Candelaria in response to the query made by Ms. Vilma M. Tamorio (id. at 3).

Court to reverse the exclusion of the consultancy former Chief Justice Panganiban rendered. R.A. No. 9946 (which changed the qualifying period for the receipt of full retirement benefits from 20 years under R.A. No. 910 to the current 15 years) did not affect at all the character of the ***government service*** that the law requires for retirement purposes.

Second, **the request does not rest on meritorious legal and factual grounds:**

1. **The Cited Factual Basis is Contrary to Indisputable Record on File with the Court.** Former Chief Justice Panganiban's own record – **his Bio Data and Personal Data Sheet *filed immediately after he joined the Court* –** shows that he was in **private law practice** at the time he now claims to have been in government service. This record shows that he was then in private law practice as Senior Partner of *Panganiban, Benitez, Parlade Africa & Barinaga Law Office (PABLAW)* from 1963-1995.[2]

2. **No Government Service Involved**. Assuming that he did render consultancy service, this service is not "government service" that can be credited for retirement purposes.

a. **Elements of Public Office and Public Officer Do Not Exist.** The consultancy work did not qualify former Chief Justice Panganiban as a "public officer" occupying a "public office" as the law and the Civil Service rules require:

(i) he was neither elected nor appointed to a public office that was created by law, not simply by a mere contract;

(ii) he did not render service in the performance of a governmental function.

b. **No Employer-Employee Relationship was Involved in the Service He Rendered.** "Consultancy" service does not amount to "government service" in the absence of an employer-employee relationship.

3. **No Sufficient Evidence was Submitted to Support the Request.** Former Chief Justice Panganiban's evidentiary submissions do not show that he was ever engaged in government service prior to his judicial service.

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[2] Even his **Bio Data of July 1, 2012** indicates that he was in law practice as an Associate at the *Salonga, Ordonez and Associates Law Offices* from 1961 to 1963; http://cjpanganiban.ph/bio-data (visited February 7, 2013).

a. Former Chief Justice Panganiban's request rests solely on the Sworn Certifications he submitted, which do not show compliance with the requirements of having been engaged in government service.

b. The Sworn Certifications attest to the presence of "consultancy" and do not prove that former Chief Justice Panganiban was ever appointed to or ever took an oath of office as a public officer.

c. The absence of appointment papers and evidence of the required oath cannot be excused by the simple appeal to the passage of time.

Third, the rulings in the cases of former Chief Justice Andres R. Narvasa[3] and of former Justice Abraham Sarmiento[4] are not applicable.

1. The factual backgrounds in the two cases are different from the case of former Chief Justice Panganiban.

Former Chief Justice Panganiban is not on the same or equal footing with Chief Justice Narvasa and with Justice Sarmiento –

(i) Position: Former Chief Justice Panganiban was a consultant who had not been appointed to any specific office in the BNE or the DepEd, while the Justices in the cited cases were appointed to specific offices.

(ii) Service: former Chief Justice Panganiban rendered consultancy service, while the cited Justices rendered services defined by law or by administrative issuances.

(iii) Creation of office: former Chief Justice Panganiban did not occupy any office created by law as the position of consultant was not part of the existing DepEd *plantilla* under Executive Order (*E.O.*) No. 94, while the cited Justices occupied offices created by law and/or administrative issuance:

Former Chief Justice Narvasa was appointed under Presidential Decree No. 1886 (Agrava Board); E.O. No. 43 (Commission on Constitutional Reforms); and

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[3] *Re: Request of Chief Justice Andres R. Narvasa (Ret.) for Recomputation of His Creditable Government Service,* A.M. No. 07-6-10-SC, January 15, 2008.

[4] *Re: Request of Justice Abraham F. Sarmiento (Ret.) for Monthly Retirement Pension and All Upward Adjustment of Benefits,* A.M. NO. 03-13-8-SC, February 13, 2007.

> Administrative Order No. 164 (Court Studies Committee); and
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> Justice Sarmiento was appointed pursuant to Section 2(12) of the Administrative Code of 1987 which provides that "[*c*]*hartered institution refers to any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives. This term includes the state universities and colleges and the monetary authority of the State*" and under Act No. 1870, as amended by R.A. No. 9500 (1908 UP Charter).

Fourth, the Court's exercise of liberality is not justified in the case of former Chief Justice Panganiban.

No compelling reason exists to warrant the exercise of ***liberality*** in applying retirement laws to former Chief Justice Panganiban's request.

a. **Failure to Fully Comply with the Court's Directive.** Former Chief Justice Panganiban did not present the additional or sufficient documentary evidence that the Court required him to submit in the Resolution dated December 14, 2010. The present request rests on the same evidence previously found insufficient. In the absence of any new and significant evidence, the previous denials should stand.

b. **Lack of Clean Hands Bars a Liberal Approach.** Former Chief Justice Panganiban cannot now deny the presentations he made with this Court in his Bio Data and Personal Data Sheet; the Court's denial in 2006 and 2008 of his request for crediting and by his acceptance and receipt (without or with delayed objection) of his retirement benefits without the presently claimed annuity, should now bar the grant of former Chief Justice Panganiban's present request.

c. **Far-reaching Consequences.** A grant by this Court of former Chief Justice Panganiban's request through an unjustified liberal approach carries far-reaching implications that may go beyond the grant's immediate financial cost to the government.

(i) Impact on Retired Magistrates. The ruling will open the door to other submissions from many ***retired magistrates*** whose requests for liberality were not entertained by this Court.

(ii) Impact on the Supreme Court itself. A *pro hac vice* or "for former Chief Justice Panganiban only" ruling may particularly be objectionable to retired magistrates whose past applications for liberality have been strictly viewed by the Court. Such kind of ruling opens the Court itself to charges of selfishly ruling for its own interests.

(iii) Impact on Retirement in General. A ruling that certifications alone, without more, leaves the door open for the deluge of similar claims from those who might have in the past entered into consultancy service with the government.

THE ANTECEDENT FACTS

1. The Retirement and the Applicable Law.

Former Chief Justice Panganiban retired on December 6, 2006 under the provisions of R.A. No. 910, which provided the following age and service requirements in the determination of retirement benefits:

> Section 1. When a Justice of the Supreme Court or of the Court of Appeals who has rendered at least twenty years' service either in the judiciary or in any other branch of the Government, or in both, (a) retires for having attained the age of seventy years, or (b) resigns by reason of his incapacity to discharge the duties of his office, he shall receive during the residue of his natural life, in the manner hereinafter provided, the salary which he was receiving at the time of his retirement or resignation. And when a Justice of the Supreme Court or of the Court of Appeals has attained the age of fifty-seven years and has rendered at least twenty-years' service in the Government, ten or more of which have been continuously rendered as such Justice or as judge of a court of record, he shall be likewise entitled to retire and receive during the residue of his natural life, in the manner also hereinafter prescribed, the salary which he was then receiving. It is a condition of the pension provided for herein that no retiring Justice during the time that he is receiving said pension shall appear as counsel before any court in any civil case wherein the Government or any subdivision or instrumentality thereof is the adverse party, or in any criminal case wherein an officer or employee of the Government is accused of an offense committed in relation to his office, or collect any fee for his appearance in any administrative proceedings to maintain an interest adverse to the Government, insular, provincial or municipal, or to any of its legally constituted officers.

Thus, for purposes of lifetime annuity, R.A. No. 910 at that time required the minimum age and service requirements: (1) of at least 20 years

of service either in the Judiciary or in any other branch of the Government, or in both; (2) retirement for having attained the age of 70, or resignation by reason of his incapacity to discharge the duties of his office.

Former Chief Justice Panganiban compulsorily retired at the age of 70 in December 2006, with 11 years, one month and 27 days or 11.15844 years of government service, as computed by the Office of Administrative Services (*OAS*).[5] **This computation was never disputed.** These years were wholly spent as a Justice of the Supreme Court.

2. <u>The Computation of Benefits and Request for Re-Computation</u>.

a. The current request is **not the first** that former Chief Justice Panganiban made for re-computation. Prior to his retirement in 2006, former Chief Justice Panganiban had made a **first request** that his four-year service as consultant of the BNE and as legal counsel to Secretary Roces be considered as "creditable government service" for purposes of his retirement benefits. **He attached to this earlier application Secretary Roces' Sworn Certification[6] dated November 14, 2006**. This Sworn Certification reads –

> November 14, 2006
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> To Whom It May Concern:
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> This is to certify that during my incumbency as Secretary of Education under President Diosdado Macapagal, from January 1962 to December 1965, Attorney, now Chief Justice, Artemio V. Panganiban, Jr. served officially as *consultant* to the Board of National Education (of which I was ex-officio chairman) and *concurrently, legal counsel to the Secretary of Education.*
>
> I am executing this certification for whatever purpose it may serve, particularly to show that he served the government during the period mentioned.
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> (Sgd.) ALEJANDRO R. ROCES

In a **letter dated November 14, 2006**, Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, OAS, merely noted former Chief Justice Panganiban's claimed consultancy services. He was credited with only 11 years, one month, and 27 days of government service,

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[5] Application for Compulsory Retirement under R.A. No. 910, Letter of Atty. Candelaria dated November 14, 2006.

[6] *Rollo*, p. 4.

lasting from October 10, 1995 to December 6, 2006 (the period of his incumbency in the Court as Associate Justice and, later, as Chief Justice), clearly excluding the consultancy service now being claimed.[7] Thus, former Chief Justice Panganiban was given his five-year lump sum benefit under R.A. No. 910 and was not granted the lifetime annuity that begins five (5) years after retirement.

b. A **second request** for crediting was made sometime in 2008, through a query made by Ms. Vilma M. Tamorio, former Chief Justice Panganiban's personal secretary, addressed to Atty. Candelaria.[8] Atty. Candelaria responded through a letter[9] dated June 10, 2008, explaining the exclusion:

> **Consultancy or Contract of Service is not considered government service** pursuant to Rule XI (Contract of Services/Job Orders) of the Omnibus Rules Implementing Book V of Executive Order No. 292. **Hence, your Honor's service as consultant to the Board of National Education from January 1962 to December 1965 was not credited in the computation of creditable government service**.[10] (emphasis ours)

c. **More than two years after Atty. Candelaria denied the second request for crediting,** former Chief Justice Panganiban filed his letter[11] to the Court dated September 27, 2010 – effectively **his third request** – reiterating his request and claiming the existence of supervening events that would justify a different and favorable interpretation.

First, he cited the enactment of **R.A. No. 9946** which amended R.A. No. 910 by reducing the minimum service requirement for eligibility to lifetime annuity from 20 years to 15 years of government and/or judicial service. ***Second***, he invoked the rulings in the cases of former Chief Justice

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[7] Based on the records submitted, **former Chief Justice Panganiban** would be 70 years old on December 7, 2006, and he has to his credit a total of 11 years, one month and 27 days or 11.15844 years of government service, broken down as follows:

Inclusive Dates		*Office*		*Yrs.*	*Mos.*	*Days*		*Decimal Equiv.*
10-10-1995 to 12-6-2006	=	Supreme Court	=	11	1	27	=	11.15844

Further, former Chief Justice Panganiban served as consultant of the BNE from January 1962 to December 1965. As per the attached certification dated November 14, 2006 issued by Secretary Roces; id. at 7-8.

[8] As mentioned in the letter dated June 10, 2008 of Atty. Candelaria; id. at 3-4.

[9] Ibid.

[10] Ibid.

[11] Id. at 1-2.

Narvasa[12] and retired Justice Sarmiento[13] where the Court included the services rendered by the two justices as general counsel of the Agrava Board and as special legal counsel of the University of the Philippines, respectively, as creditable government service.

Using these cited reasons, former Chief Justice Panganiban (who is **short by three years, seven months and 13 days** or 3.84156 years of government and/or judicial service **from the minimum service requirement of 15 years**) argued that he should be considered eligible to lifetime annuity because his four-year service as consultant of the BNE and as legal counsel to Secretary Roces should be added as "creditable government service," resulting in his completion of the required 15 years of government and/or judicial service.

Atty. Candelaria, in her comment[14] on the present letter-request, recommended its denial, as follows:

> With due respect, it is our view that **the services of CJ Panganiban as legal counsel to then Secretary Roces was rendered only to the Board of National Education (BNE) in the practice of his legal profession.** While Secretary Roces was a member of the BNE in an ex-oficio capacity as Secretary of Education, there is no showing that CJ Panganiban actually rendered legal services directly to the Department of Education.
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> On the other hand, CJ Narvasa was appointed by then President Ferdinand E. Marcos as Special Legal Counsel to the Agrava Fact-Finding Board, which had in its organizational set up a position of Special Counsel. Hence, the service of CJ Narvasa in the said Board is considered government service.
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> In Civil Service Commission (CSC) Resolution No. 000831 Mory Q. Sison (Re: Consultancy Service) dated March 29, 2000, the CSC pronounced that "*generally, consultancy services are not considered service since no employer-employee relationship exists (CSC Resolution No. 95-6339).*"
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> And in CSC Resolution No. 021264 (Mayumi Juris A. Luna, Re: Consultancy; Query) dated September 27, 2002, it declared that "*by definition, a consultant is one who provides professional advice on matters within the field of his special knowledge or training. There is no*

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[12] *Re: Request of Chief Justice Andres R. Narvasa (Ret.) for Recomputation of His Creditable Government Service*, *supra* note 3.

[13] *Re: Request of Justice Abraham F. Sarmiento (Ret.) for Monthly Retirement Pension and All Upward Adjustment of Benefits*, *supra* note 4.

[14] Dated October 26, 2010, submitted pursuant to the Court's Resolution dated October 5, 2010; *rollo*, pp. 13-15.

> *employer-employee relationship in the engagement of a consultant but that of a client-professional relationship. Thus, consultancy services are not considered government service.*[15] (emphasis ours; italics supplied)

As a related matter, recall that it was not until two years after retirement that former Chief Justice Panganiban made his second request for re-computation, and it was not until four years after retirement that he brought the present request.

Justice Estela M. Perlas-Bernabe explains that former Chief Justice Panganiban acceded to the Court's exclusion of his consultancy service and simply accepted his five-year lump sum benefit immediately after retirement because he was not then eligible for lifetime annuity under the original provisions of R.A. No. 910.

This position, however, rests on pure speculation and is not in fact accurate. It is not supported by the evidence on record and it should not be for this Court to speculate about former Chief Justice Panganiban's state of mind or his reasons for not immediately pursuing his request in 2006 and 2008. **His inaction is an established factual matter which commands greater weight than any speculation as to his motive or intention.**

Aside from being speculative, the explanation is inaccurate, since former Chief Justice Panganiban gave up any claim for a higher longevity pay when he did not pursue the requests[16] and immediately accepted the Court's computation. Longevity pay is a 5% increment additionally given for every five years of service rendered in the Judiciary.[17] He would have been entitled to this pay had he established his claim either in 2006 or 2008.

d. **Court Action on the Present Request.** On December 14, 2010, the Court issued a Resolution in this case.[18] The Court – after noting former Chief Justice Panganiban's reference to the re-computation of the retirement benefits of former Chief Justice Narvasa – held:

> It bears noting, however, that CJ Narvasa's appointment to the Agrava Board was sanctioned by Presidential Decree No. 1886 issued by President Marcos.
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> **To determine the true nature of the services rendered by CJ Panganiban, the Court deems it prudent to require the submission of**

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15 Id. at 14.

16 See: Tentative Computation of Chief Justice Artemio V. Panganiban's Retirement gratuity and Terminal Benefits, id. at 5.

17 Batas Pambansa Blg. 129 or the Judiciary Reorganization Act of 1980.

18 *Rollo*, pp. 18-20.

> **additional documentary evidence, e.g., payroll slip or appointment paper indicating that he was, or appeared as consultant for BNE or to Secretary Roces in the latter's official capacity.** This is not without precedent. In A.M. No. 10654-Ret. (*In Re: Judge Antonio S. Alano*), the Court required retired Judge Alano to submit additional proof that he served in *Sangguniang Bayan* of Isabela, Basilan for purposes of determining his entitlement to monthly pension under RA 910 as amended.
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> WHEREFORE, the Court resolves to DIRECT Chief Justice Artemio V. Panganiban (Ret.) to submit additional documentary evidence as regards his appointment as consultant for the Board of National Education and/or as counsel for then Secretary of Education Alejandro R. Roces within fifteen (15) days from notice.[19] (emphasis ours; italics supplied)

Thus, while there was no express denial of the request of former Chief Justice Panganiban, the Court – *by the tenor of its Resolution* – actually denied the request due to lack of valid proof of government service as consultant for the Board of National Education (BNE) and/or as counsel for then Secretary of Education Alejandro R. Roces. The implied denial can be plainly discerned from the Resolution itself when it mentioned at the outset that former Chief Justice Narvasa was authorized by law to render service as special counsel; *had there been a similar legal authority for former Chief Justice Panganiban, the Court would have approved his request and would not have asked for "additional documentary evidence."* In blunter terms, the Court did not consider the affidavit of actual service by Secretary Roces as sufficient proof of government service.

e. **Refutation on the *Ponencia's* Position on the Denials.** Incidentally, I do not see any merit in Justice Perlas-Bernabe's view that this is the first time that the present request has ever been raised before the Court.

The Court, as a matter of practice, considers each and every request made, particularly on the matter of retirement, although it may not be seen to be acting directly, as in this case where it acted through Atty. Candelaria. As a matter of law and practice, applications for compulsory retirement are acted upon by the OAS and by the Fiscal Management and Budget Office (*FMBO*) of this Court.[20] The organizational structure of the Supreme Court delegates the processing of retirement claims by members of the Judiciary to

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[19] Id. at 19-20.

[20] Under Revised Administrative Circular No. 81-2010 (Guidelines on the Implementation of R.A. No. 9946); see also R.A. No. 910 and Section 3 of R.A. No. 8291 (The Government Insurance Act of 1997).

the OAS[21] and to the FMBO.[22] The OAS screens the applications to ascertain compliance with the documentary requirements; once approved, the OAS endorses the application to the FMBO. The FMBO makes a computation of the retirement benefits due the applicant and releases a check of the computed retirement benefits to the claimant.

Atty. Candelaria is an agent of the Court and, in its stead, she possesses the delegated authority to act on the application for retirement of former Chief Justice Panganiban. Unless revoked, her actions in any application for compulsory retirement are considered as the Court's action.[23] For the Court to disavow Atty. Candelaria's action at this stage is to disregard the law and established practice governing the processing of applications for compulsory retirement.

f. **Compliance with the Court's Directive.** Former Chief Justice Panganiban complied with the Court's directive through two Sworn Certifications (both dated January 19, 2011) executed by Secretary Roces and by retired Justice Bernardo P. Pardo. These Sworn Certifications referred to **the same consultancy service that the Court did not favorably consider**, and attested to the following:

(1) Former Chief Justice Panganiban rendered **actual services** as consultant of the BNE and as legal counsel to Secretary Roces in his official capacity as Secretary of Education from January 1962 to December 1965;

(2) He was officially appointed by Secretary Roces and was officially paid by the government a **monthly compensation** for services rendered to the DepEd;

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[21] "[I]ts functions consist of the following: Personnel Management; Human Resource Training and Development; Property Management; Records Management; Management of Leave Matters; Management of Employees' Welfare and Benefits; Discipline of Personnel; Maintenance and improvement of buildings and premises as well as general services of the Court Security services to justices and personnel within the Supreme Court premises." http://sc.judiciary.gov.ph/contacts/SC-OAS.htm as of February 8, 2013.

[22] The FMBO is tasked with all financial transactions of the Supreme Court including that of the OCA, all the Halls of Justice, the PhilJA, and the Presidential Electoral Tribunal. It prepares and processes vouchers to cover payment of salaries, allowances, office supplies, equipment, and other sundry expenses, utilities, janitorial and security services and maintenance and other operating expenses and issues the corresponding checks thereof. It prepares and submits to the DBM and Congress the proposed budget of the Judiciary including pertinent schedules for each year. Salary and policy loans with the GSIS and Pag-ibig are coursed through this Office. It prepares and submits consolidated financial statements and reports to COA, DBM, Treasury and Congress. It also takes charge of all financial transactions of the SC Health and Welfare Plan which include collections, deposits, disbursements as well as preparation of financial reports and bank reconciliations. <http://sc.judiciary.gov.ph/contacts/FMBO.htm> visited on February 11, 2013.

[23] Application for Compulsory Retirement of retired Chief Justice Panganiban, letter of Atty. Eden T. Candelaria, dated November 14, 2006; *rollo*, pp. 7-8.

(3) He worked with the Office of the Solicitor General (*OSG*) on legal matters affecting the BNE and the DepEd, and collaborated on these matters with Justice Pardo (who was then the Solicitor General); and

(4) He handled matters assigned by the BNE and by the DepEd, such as "the development of educational policies, the selection and distribution of textbooks and other educational materials, the setting of school calendars, the procurement of equipment and supplies, management of state schools, etc."[24]

Former Chief Justice Panganiban explained that the **lapse of almost 50 years** precludes him from presenting other documentary proofs like time records of actual attendance or receipts of vouchers showing compensation for his services.[25]

Significantly, he did not endeavor to make any other submissions, such as his **payroll slips** or **appointment papers** (as specifically requested), certified copies of these documents from official sources (such as those from the National Archives), or other pieces of evidence, such tax declarations or certifications as to earnings or tax withheld, showing that he had indeed been in the government's regular payroll at the time he claimed, or that he was not then in the practice of law.

Thus, **his case depended solely on the bare and unqualified statements of Justice Pardo and Secretary Roces** (who passed away on May 23, 2011). These two affiants both attested to the **same period** and the **same consultancy service**.

THE DISSENT

A bare reading of the submissions, considered in light of the undisputed facts on record, leads me to conclude that **former Chief Justice Panganiban's request is not meritorious.**

R.A. No. 910, as amended, requires 15 years of government service

R.A. No. 910, as amended by R.A. No. 9946, only reduced the minimum requirement of government and/or judicial service for eligibility to

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[24] Sworn Certification dated January 19, 2011 of Secretary Roces; id. at 32.

[25] Id. at 27-30.

lifetime pension from twenty (20) years to fifteen (15) years. The amendment only widened the extension of benefits to retirees by covering even the retirees who had rendered at least 15 years of government and/or judicial service, but retired prior to R.A. No. 9946; **it did not change the legal nature of the service that falls under the term *"government service,"* nor did it change the legal meaning and characterization of *"consultancy."***

Thus, to comply with the legal requirement, former Chief Justice Panganiban had to show that the consultancy service he rendered, prior to his judicial years, could *all along* be classified as government service.

Former Chief Justice Panganiban's work with the BNE and with Secretary Roces is not government service

(a) *The concept of government service*

The core issue this case presents is ***whether the consultancy former Chief Justice Panganiban undertook for the BNE and for Secretary Roces can be classified and credited as government service***. The resolution of this issue must be based on the law, the applicable rules and jurisprudence, and, most importantly, on the peculiar facts of the case *as supported by the submitted evidence*.

Former Chief Justice Panganiban, as the requesting party, carries the burden of proving that his claim is meritorious. To my mind, he failed in this endeavor. The *ponencia*, in fact, is not based on facts supportive of former Chief Justice Panganiban's claim as it is grounded on speculations and inferences, and it has not properly appreciated the documentary evidence submitted by former Chief Justice Panganiban. Alternatively (*i.e.*, failing to establish strict legal merits), the *ponencia* falls back on an appeal to liberality, but in so doing, it cited and applied Court rulings in cases with completely different factual and legal circumstances. A liberal approach cannot also be made if the supporting pieces of evidence, *such as the Sworn Certifications submitted and records within the Court's control*, do not warrant the application of a liberal approach.

What constitutes government service may be plainly derived from the provisions of Act No. 2657 or the *Administrative Code*, as amended. The old Administrative Code, as amended, defines the terms "employee" or "officer" in this wise:

> "Employee," when generally used in reference to **persons in the public service,** includes **any person in the service of the Government** or any branch thereof of whatever grade or class.
>
> "Officer," as distinguished from "clerk" or "employee," refers to those ***officials*** **whose duties**, not being of a clerical or manual nature, may be considered to **involve the exercise of discretion in the performance of the functions of government**, whether such duties are precisely defined by law or not.
>
> "Officer," when used with reference to a person **having authority to do a particular act or perform a particular function in the exercise of governmental power**, shall include **any Government *employee, agent, or body* having authority to do the act or exercise the function in question**.[26] (emphases and italics ours)

These provisions were substantially reproduced in the Administrative Code of 1987.[27]

Similarly relevant, too, is the governing law on service with the government at the time of former Chief Justice Panganiban's claimed consultancy – the **Civil Service Act of 1959 (R.A. No. 2260)** which was approved on June 19, 1959. Section 1 of this law classifies positions in the civil service into: (a) competitive service, (b) non-competitive service, and (c) exempt service; Section 3 provides that the "exempt" service is not within the scope of the law; and Section 6 defines exempt service to include (aside from elective officers and the members of the military) "persons *employed* on a contract basis[,]" as well as temporary, emergency or casual laborers.

A noteworthy feature of this law, for purposes particularly of the present dispute, is that it refers only to those who are covered by an employer-employee relationship with the government. Thus, even those whose relationship with the government is on a "contract basis" (and, thus, are within the exempt service not covered by the Civil Service Act) must be "employed" and must gain entry to government service through the electoral or the appointive process. The Revised Civil Service Rules accompanying

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[26] See Act No. 2711 or the Act Amending the Administrative Code.

[27] Section 2(14) and (15), which defined the terms "Officer" and "Employee," thus:

(14) ***"Officer"*** as distinguished from ***"clerk"*** or ***"employee"***, refers to a person whose duties, not being of a clerical or manual nature, involves the exercise of discretion in the performance of the functions of the government. When used with reference to a person having authority to do a particular act or perform a particular function in the exercise of governmental power, ***"officer"*** includes any government employee, agent or body having authority to do the act or exercise that function.

(15) ***"Employee,"*** when used with reference to a person in the public service, includes any person in the service of the government or any of its agencies, divisions, subdivisions or instrumentalities.

the Act, in its Rule VI, requires that **appointments** be made in the **prescribed from, duly signed by the appointing officer, and submitted to the Civil Service Commission (*CSC*),** even if only for proper notation and record with respect to those in the non-competitive or unclassified service.

In sum, those who may render service with the government, without occupying any public office or without having been elected or appointed a public officer evidenced by a written appointment recorded in the CSC, do so outside of the concept of government service. The *ponencia* interestingly broadens this concept of "government service." It literally interprets the term to include any service performed for the government; it thus claims that the "law x x x did not require a specific job description or job specification" and "the absence of a specific position in a governmental structure is not a hindrance."[28]

This broad construction, if adopted, would cover services performed by a person for the government *in any capacity*¸ whether as a public officer or employee. For purposes of the retirement law, this broad construction would dilute the policy behind public retirement laws, *i.e.*, to reward government employees because they gave the best years of their lives to the service of their country.[29]

For clarity, rendering "government service" within the meaning of the law requires that (1) <u>the person occupies, by appointment or by election, a public office that was created by law, not simply by contract</u>; and (2) <u>the office requires him to render service in the performance of a governmental function</u>. This signification should particularly apply in construing retirement laws in order not to defeat the intent and purpose of the recognition of retirement and the grant of retirement benefits. Rep. Act No. 910 (as amended), in particular, is founded on this intent and purpose. It provides for retirement based either on **age or disability**, or on **years of service**. The intent to reward past service is made patent by the requirement for years of service, both in government and the Judiciary. This is the intent that the Supreme Court itself should be very careful about because it is an intent that applies to the Court itself.

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[28] *Ponencia*, p. 4.

[29] "Retirement benefits given to government employees in effect reward them for giving the best years of their lives to the service of their country. This is especially true with those in government service occupying positions of leadership or positions requiring management skills because the years they devote to government service could be spent more profitably in lucrative appointments in the private sector. In exchange for their selfless dedication to government service, they enjoy security of tenure and are ensured of a reasonable amount to support after they leave the government service. The basis for the provision of retirement benefits is, therefore, service to the government." De Leon, The Law on Public Officers and Election Law, pp. 214-215 (2003 edition), citing *GSIS v. CSC*, G.R. Nos. 98395 and 102449, June 19, 1995, 245 SCRA 179, 188.

(b) *No "public office" element exists*

"Public office" is the right, authority and duty, **created and conferred by law**, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by the individual for the benefit of the public.[30] When the term is used with reference to a person having to do a particular act or to perform a particular function in the exercise of governmental power, it includes any government employee, agent or body to do the act or exercise that function.[31]

Either as Chief Justice or even in his earlier role as Associate Justice of the Supreme Court, former Chief Justice Panganiban was indisputably a public officer, occupying a public office, and undertaking sovereign functions of the government. No less than the Constitution speaks of the positions of Chief Justice and of Associate Justices of the Supreme Court and the judicial power vested in that Court which the Justices exercise.[32] The function of this Court in the constitutional scheme is to adjudicate disputes, to supervise the courts, and to regulate law practice.[33] For the positions he held in this Court, former Chief Justice Panganiban was granted the retirement benefits that R.A. No. 910 grants and defines for the members of the Judiciary.

In stark contrast with the post for which he had been granted retirement benefits, the role of a "consultant" (that the Sworn Certifications cite as evidence of his claimed government service), former Chief Justice Panganiban points to **no specific position in the government** under which he served as consultant. He likewise **failed to cite any law** pursuant to which he was appointed as consultant. He **did not produce any appointment paper** or any copy of an **oath of office** that he took when he allegedly assumed the offices that the Sworn Certifications pointed to.

To be sure, these Sworn Certifications did in fact attest to the "actual service" rendered for the BNE and to Secretary Roces, but their reference to public offices went only that far, as discussed at length below. They only pointed to alleged tasks that former Chief Justice Panganiban undertook, but without more, these tasks – however significant or important they might have been – cannot amount to the performance of public functions as understood under the law. This is the **legal reality that the rule of law has to recognize in former Chief Justice Panganiban's present claim:**

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30 *Fernandez v. Sto. Tomas*, 312 Phil. 235, 247 (1995).
31 Administrative Code of 1987, Section 2.
32 CONSTITUTION, Article VIII, Sections 1 and 4.
33 CONSTITUTION, Article VIII, Sections 1, 5(5), and 6.

outside of his judicial posts, he never occupied a public office that can be recognized as basis for the additional retirement benefits that he now seeks.

(c) *Service within the governmental structure*

The requirement of a public office in considering "government service" also signifies service within the governmental structure and the exclusion of service outside of this structure, although beneficial work for the government might have been rendered in this role and capacity. This exclusion specifically refers to **consultancy** rendered pursuant to a contract of service, involving work and delivery to the government of results produced in the consultant's own time and for his own account in the exercise of his profession. This exclusion also encompasses **services outsourced by the government** to private individuals for their special qualifications and expertise; these services do not constitute government service and do not characterize the private individuals as public officers. These aspects of the case are dwelt with at length at the proper places below. It is sufficient for now to simply state that **the mere claim of having rendered services (and even proof of actual rendition of service) will be for naught unless made within an employment relationship existing under the structure established by law within the government.**

(d) *The Status of consultancy services*

As a contract of service, consultancy has been excluded as "government service" for retirement purposes because it does not satisfy the basic requirement that there be a public office as understood under the law. **In a consultancy, no tie links the consultant to a public office that has been previously created by law; the elements of public office, and the fact of appointment and of the required oath are likewise missing.**

The CSC has fleshed out the requirements by pointedly excluding "consultancy services" for lack of the required employer-employee relationship. CSC Memorandum Circular No. 38, series of 1993, *expressly* provides that **consultancy services "where no employer-employee relationship exists" are not considered government service**.

The CSC, in the first place, has long clarified and defined what "consultancy" means. Its definition of the term "consultant" in Resolution No. 95-6939 (*Pagaduan v. Malonzo*) dated November 2, 1995 is an example of its consistent and established ruling. It held a "consultant" to be –

> one who provides professional advice on matters within the field of his special knowledge or training. There is no employer-employee relationship in the engagement of a consultant but that of client-professional relationship. Thus, consultancy services and a consultant is not a government employee. Consequently, a contract of consultancy is not submitted to the Commission for approval.[34]

Interestingly, this definition is practically the same as that given in Webster's Third New International Dictionary which gives the commonly understood definition of a "consultant" as "one who gives professional advice or services regarding matters in the field of his official knowledge or training."

R.A. No. 9184 (*Government Procurement Reform Act*) further reinforces this understanding by defining the term *consulting services* as "services for Infrastructure Projects and other types of projects or activities of the Government requiring adequate **external technical and professional [expertise] that are beyond the capability and/or capacity of the government to undertake** such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other **technical services or special studies**."[35]

Thus, a **"legal consultant"** is one who has "adequate external" professional expertise in the law that no one in the agency could provide or render, and whose services therefore must be procured. A **procured service** is not government service, as it is service hired after the conduct of the procurement process; it is not part of the internal and regular services of the procuring governmental entity.

Under Memorandum Circular No. 17, series of 2002, a consultancy contract or job order **need not be recorded by the CSC** because the "services to be rendered thereunder are not considered as government service."

(e) *No proof of employment relationship likewise existed*

To determine the existence of an employer-employee relationship, the Court has consistently adhered to the **four-fold test** and has asked: "(1) whether the alleged employer has the power of selection and engagement of an employee; (2) whether he has control of the employee with respect to the

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[34] Cited in CSC Resolution No. 99094 (*Remedios L. Petilla*) dated May 5, 1999.

[35] Section 5(f), R.A. No. 9184.

means and methods by which work is to be accomplished; (3) whether he has the power to dismiss; and (4) whether the employee was paid wages. Of the four, the **control test is the most important element**,"[36] and its absence renders any further discussion a surplusage.

Recent jurisprudence adds another test, applied in conjunction with the control test, in determining the existence of employment relations.[37] The two-tiered test involves an inquiry into: "(1) the putative employer's power to control the employee with respect to the means and methods by which the work is to be accomplished [***control test***]; and (2) the underlying economic realities of the activity or relationship [***broader economic reality test***]."[38]

Employment relationship under the ***control test*** is determined by asking whether "the person for whom the services are performed reserves [a] the right to control not only the end [to be] achieved but also the manner and means [to be used in reaching such] end."[39] The ***broader economic reality test*** calls for the determination of the nature of the relationship based on the circumstances of the whole economic activity, namely: "(1) the extent to which the services performed are an integral part of the employer's business; (2) the extent of the worker's investment in equipment and facilities; (3) the nature and degree of control exercised by the employer; (4) the worker's opportunity for profit and loss; (5) the amount of initiative, skill, judgment or foresight required for the success of the claimed independent enterprise; (6) the permanency and duration of the relationship between the worker and the employer; and (7) the degree of dependency of the worker on the employer for his continued employment in that line of business. The proper standard of economic dependence is **whether the worker is dependent on the alleged employer for his continued employment in that line of business**."[40]

The two-tiered test gives a complete picture of the relationship between the parties.[41] Aside from the employer's power to control the employee, an inquiry into the economic realities of the relationship helps provide a comprehensive analysis of the true classification of the individual, whether as employee, independent contractor, corporate officer or some other capacity.[42]

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[36] *Lopez v. Metropolitan Waterworks and Sewerage System*, 501 Phil. 115, 129-130 (2005), citing *Tan v. Lagrama*, 436 Phil. 191, 201 (2002); emphasis ours.

[37] *Francisco v. National Labor Relations Commission*, G.R. No. 170087, August 31, 2006, 500 SCRA 690, 697-698.

[38] Id. at 697-698.

[39] Id. at 698.

[40] Id. at 698-699.

[41] Id. at 698.

[42] Id. at 697.

An examination of former Chief Justice Panganiban's submitted evidence – consisting of two Sworn Certifications (both dated January 19, 2011) executed by Secretary Roces (now deceased) and Justice Pardo – does not show the employment relationship that "government service" requires as a basic element.

The Sworn Certifications ***do not expressly claim*** that former Chief Justice Panganiban **was in an employment relationship** with the BNE and with the DepEd. What they expressly state is that former Chief Justice Panganiban ***rendered "actual services,"*** as a consultant, to the BNE and as legal counsel to Secretary Roces in his official capacity as Secretary of Education; that he *worked with the OSG* (where Justice Pardo was the Solicitor General) *on legal matters* with respect to the BNE and the DepEd; that he *handled assignments from the BNE and the DepEd on various matters*; and that he was officially *paid by the government a monthly compensation*.

The statement alone that former **Chief Justice Panganiban was a "consultant"** already raises **alarm bells** for questions that the Sworn Certifications do not (and apparently cannot) answer. Aside from questions arising from the Civil Service rules and rulings, the Court can judicially notice that the position of "consultant" is not included in the organizational chart of government agencies as the services a consultant renders are usually demanded by exigencies of the service or by the lack of qualified persons to perform the required tasks in the organization.

It is perhaps for this reason that the Sworn Certifications simply named former Chief Justice Panganiban as a "consultant" without referring to or attaching an organizational chart indicating the position a consultant occupies at the BNE or the DepEd. The omission, however, should be **significant as it can be read as an implied admission of how former Chief Justice Panganiban actually stood at the BNE or the DepEd – a consultant who did not occupy any fixed position that would entitle him to recognition as a public officer**.

Another striking feature of the Sworn Certifications – arising from their characterization of former Chief Justice Panganiban as a consultant – is that the assignment to and the handling by former Chief Justice Panganiban of legal matters are logically consistent with a consultancy engagement that the Sworn Certifications stated. How and in what manner former Chief Justice Panganiban performed the assigned consultancy are matters not established in the records; in fact, **no inference of "control" – both with respect to the means and to the end to be achieved – can be read from the submitted Sworn Certifications.** Their allegations are also insufficient

to support the inference that the consultancy service "was not merely advisory" or that the work performed was "not usual for a consultancy," as Justice Perlas-Bernabe observed in an earlier version of her *ponencia*.[43]

Even granting that former Chief Justice Panganiban was paid a monthly compensation, **the Sworn Certifications attest only to the matter of payment**. The fact of payment *per se*, however, is meaningless in an employer-employee relationship issue where the evidence expressly states that actual services were rendered as "consultant." In fact, if indeed payment had been paid for consultancy work, then what had been paid should have been consultancy fees made on a monthly basis, in a manner similar to retainer fees. That indeed the payments were made in the concept of retainer fees is an easy inference to make if we consider that, at that time (January 1962 to December 1965), former Chief Justice Panganiban was in active law practice, initially as an Associate in the Salonga Law Office and later as the Senior Partner of PABLAW.

In other words, former Chief Justice Panganiban did not receive **wages** in the way that one in an employment relationship would receive his pay. Indeed, **it is hard to contemplate that former Chief Justice Panganiban, at that time the Senior Partner in a major law firm, would be engaged as an employee in the government, doing what the Sworn Certifications state he was doing.**

Neither do the submitted Sworn Certifications satisfy the **broader economic reality test** to establish that an employer-employee relationship existed.

First, while the consultancy services performed by former Chief Justice Panganiban may be important, the records do not show that they were vital to the operations of the BNE and of the DepEd. **Notably, the *plantilla* of both the BNE and the DepEd under E.O. No. 94, series of 1947, did not include any item for legal counsel or consultant.** Under existing laws at that time (Act No. 2657 and Act No. 2711[44] or the Revised

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43 Page 8 of the Reply to the Dissenting Opinion of Justice Arturo D. Brion.

44 Section 83 of Act No. 2711 states:

> SECTION 83. Bureaus and offices under the Department of Justice. – x x x.
>
> The Secretary of Justice shall be the attorney-general and legal adviser of the Government and ex officio legal adviser of all government-owned and controlled business enterprises. As such, he may assign to the law officers of the said business enterprises such other duties as he may see fit, in addition to their regular duties. When thereunto requested in writing, the Secretary of Justice shall give advice, in the form of written opinions, to any of the following functionaries, upon any question of law relative to the powers and duties of themselves or subordinates, or relative to the interpretation of

Administrative Code), legal services were then rendered by the Attorney-General.[45] Thus, without any further explanation from former Chief Justice Panganiban, no support exists for the claim that the BNE and the DepEd could not properly function without his consultancy services.

Even if we consider the legal services rendered by former Chief Justice Panganiban as performance of a governmental function, the capacity in which the services were rendered precludes them from being characterized as creditable government service for purposes of retirement. **Without a public position** to which he had been appointed, the services rendered by former Chief Justice Panganiban by way of consultancy would only amount to services specific to the BNE or for the Secretary, for their sole benefits, and – at most – paid from a budget for outside consultants that the budget of these government offices might have allowed.

Under these circumstances and without any position in the BNE or the DepEd structural hierarchy, former Chief Justice Panganiban simply remained a **private lawyer on call for specific questions** or requirements of the BNE and of Secretary Roces. That he might have been required at that time to do textbook distribution and other menial tasks is beside the point. This statement in the Sworn Certifications only stressed the need to produce an official description of the "position" of "legal consultant" that the CSC prescribed even at that time.

Incidentally, part of the necessary consequence that characterization of being a "public officer" or "employee" undertaking government service would have been the requirement to take an **oath of office** pursuant to the Constitution.[46] Former Chief Justice Panganiban would have likewise been required to file a statement of assets, liabilities and net worth.[47] No such proof was ever shown, not even after he had been prompted by the Court *en banc* to make additional submissions.

Second, former Chief Justice Panganiban remained in active private law practice at the same time that he rendered consultancy services for the BNE and to Secretary Roces. This was the statement he made in his Bio Data and Personal Data Sheet filed with the Court long before the present

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> any law or laws affecting their offices or functions, to wit: the (Governor-General) President of the Philippines, (the President of the Philippine Senate), the Speaker of the (House of Representatives) National Assembly, the respective Heads of the Executive Departments, the chiefs of the organized bureaus and offices, the trustee of any government institution, and any provincial fiscal.

[45] Presently, each department of the Executive Branch shall have its own Legal Services, Section 17, Chapter 3, Book IV, The Administrative Code of 1987.

[46] 1935 CONSTITUTION, General Provisions, Article XIV.

[47] R.A. No. 3019 (enacted on August 17, 1960).

controversy. The uncontroverted fact that former Chief Justice Panganiban was engaged in private law practice for the same period that he rendered service for the BNE and to Secretary Roces outrightly rejects any inference that an employment relationship existed between him and the government. The *ponencia* itself recognizes that **legal counseling work, even if rendered to a government agency, is *part of legal practice***.[48] The incompatibility of simultaneously holding public and private employment should lead to no other conclusion than that there was only a consultancy arrangement which was part of former Chief Justice Panganiban's legal practice.

In this regard, the *ponencia* cites the case of former Chief Justice Narvasa because it saw him to be in active law practice while he was the general counsel of the Agrava Board. This is an erroneous view as the Philippine Center for Investigative Journalism article[49] it cited in fact stated that former Chief Justice Narvasa took a leave of absence from his law practice during his term with the Agrava Board from October 29, 1983 to October 24, 1984.

The Court also credited former Chief Justice Narvasa for his five-year (1974-1979) involvement as Member of the Court Studies Committee, while he was at the same time engaged in private law practice. The Court, in so acting, apparently gave special consideration and recognition to former Chief Justice Narvasa's participation in the Court Studies Committee created under the specific mandate of Administrative Order No. 164 issued by then Chief Justice Querube C. Makalintal on September 2, 1974.[50]

Significantly, no proof has ever been presented of any similar activity undertaken by former Chief Justice Panganiban. For that matter, no specific function that former Chief Justice Panganiban discharged as consultant of the BNE and as counsel to Secretary Roces was ever made.

Third, former Chief Justice Panganiban continued with his private law practice even after the termination of his consultancy services. This continuity indicates that he has been in private law practice all the time and simply rendered consultancy services on the side. In other words, his

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[48] *Ponencia*, p. 8.

[49] Ibid., referring to The Dean's December, Philippine Center for Investigative Journalism, <pcij.org/lmag/PublicEye/dean.html> last visited on February 12, 2013.

[50] "Accordingly, the Committee was mandated under Administrative Order No. 164, which was issued by then Chief Justice Makalintal on September 2, 1974, to: "(1) to study and analyze the administrative aspects of the operation of the Courts of First Instance and City and Municipal Courts in the Greater Manila Areas and in other areas x x x; and (2) to identify the problems in said courts and suggest practical solutions with a view to improving the administration of justice." (*Re: Request of Chief Justice Andres R. Narvasa [Ret.] for Recomputation of His Creditable Government Service*, *supra* note 3.)

consultancy service was separate from and was not dependent on any employment relationship with the government.

Fourth, there was no degree of permanency in the consultancy work former Chief Justice Panganiban rendered as it expired after four years. On the other hand, his private law practice, as his Bio Data and Personal Data Sheet indicate, went way beyond, all the way to 1995 when he was appointed to the High Court. In other words, former Chief Justice Panganiban's relationship with the BNE and with Secretary Roces and his department was a tenuous one and did not have the character of permanency or stability that an employment relationship usually carries.

Fifth, former Chief Justice Panganiban's consultancy was based largely on his own invested capital and labor. As the Sworn Certifications state *and imply*, the BNE and Secretary Roces relied on him, as a consultant, for the advice he gave on specific legal and policy matters, not for the hours he was available at the BNE or the DepEd to handle specific tasks. Where and when he held office, the Sworn Certifications do not specify, although his Bio Data and Personal Data Sheet would suggest that he had an office of his own as Senior Partner of PABLAW.

In these lights, the Sworn Certifications do not clearly indicate that an employer-employee relationship, requiring the elements of control and dependency, existed between former Chief Justice Panganiban, on the one hand, and the BNE and Secretary Roces, on the other hand. On the contrary, **these sworn statements – read jointly with former Chief Justice Panganiban's Bio Data and Personal Data Sheet – point to the existence of a consultancy extended to former Chief Justice Panganiban as a lawyer on active private law practice.**

(f) *Former Chief Justice Narvasa's and Justice Sarmiento's cases*

In addition to the lack of employment relations, the Court has previously ruled that the compensation received for "creditable government service" must be paid for the **performance of public duties**.[51]

The cases of former Chief Justice Narvasa and Justice Sarmiento fully fell within the descriptions that characterized their work as "government service." On the other hand, Chief Justice Panganiban's case never did.

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[51] *GSIS v. Civil Service Commission*, 315 Phil. 159, 165 (1995). See Section 9 of Presidential Decree No. 1886.

The services rendered by Chief Justice Narvasa and by Justice Sarmiento (as general counsel of the Agrava Board for Chief Justice Narvasa; and as special legal counsel and member, and thereafter chairperson, of the Board of Regents of the University of the Philippines for Justice Sarmiento) were undoubtedly ***work in the performance of public functions in positions that are part of the governmental structure***; they occupied and discharged functions of a public office As pointed out by Atty. Candelaria in her comment to the second letter-request:

> On the other hand, CJ Narvasa was appointed by then President Ferdinand E. Marcos as Special Legal Counsel to the Agrava Fact-Finding Board [created pursuant to Presidential Decree No. 1886], which had in its organizational set up a position of Special Counsel. Hence, the service of CJ Narvasa in the said Board is considered government service.[52]

The government service characterization of the services rendered by Justice Sarmiento – as special legal counsel, as a member of the Board of Regents and, later on, as chairperson of the Board of Regents of the University of the Philippines[53] – cannot likewise be disputed. These are positions falling under the organizational structure of the University of the Philippines, the country's primary state university. Justice Sarmiento rendered services in positions under this state university structure so that these services constituted public service.

Unlike the Justices he cited in comparison, former Chief Justice Panganiban's work did not involve the performance of duties pursuant to a public office, *i.e.,* ***for work in a specific position under the governmental structure in the performance of public functions***. As I adverted to above, that he did consultancy work is what the affiants – Justice Pardo and Secretary Roces – attested to. Under what specific positions, under what specific role or capacity, and under what terms and structures are, *at best*, unclear as neither affiants gave definitive answers. As already mentioned in passing and as more fully discussed elsewhere, former Chief Justice Panganiban – by his own claim on file with the Court – **was at that time operating *in the private sector* and was then *in active law practice*.** These undisputed facts cannot but significantly affect the characterization of the work former Chief Justice Panganiban rendered.

Other than the fact that former Chief Justice Panganiban actually rendered work for the BNE and for Secretary Roces, the Sworn

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[52] *Rollo*, p. 14.

[53] Section 2(12) of the Administrative Code of 1987 provides:

(12) Chartered institution refers to any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives. This term includes the state universities and colleges and the monetary authority of the State.

Certifications of Secretary Roces and Justice Pardo merely enumerated the work he did, *i.e.*, services as consultant for the BNE and as legal counsel to Secretary Roces; collaboration with the OSG on BNE and DepEd matters; and the development and implementation of education policies, etc. – which were largely within the field of his special knowledge and training as a lawyer, his specific calling and activity under his Bio Data on record with this Court. **This Bio Data shows that at the relevant time (1963-1995), he was engaged in the private practice of law as the Senior Partner of a major law firm that carried his name – PABLAW**.

Of course, the submitted Sworn Certifications also stated that former Chief Justice Panganiban undertook assigned matters, such as "the selection and distribution of textbooks and other educational materials, the setting of school calendars, the procurement of equipment and supplies, management of state schools, etc." These allegedly assigned tasks, however, and as previously discussed, are beside the point. The statement in the Sworn Certifications only stressed the need to produce an official description of the "position" of "legal consultant" that the CSC prescribed even at that time. The listing is no more than an enumeration of the tasks of the DepEd and of the BNE and, as I already *implied* above, are hardly believable to be tasks handled by the Senior Partner of a major law firm like the PABLAW.

A significant aspect of the Sworn Certifications relates not to what they expressly state, but to **what they do not say** – specifically, they do not materially describe the true nature of the work former Chief Justice Panganiban rendered in terms of the specific role and capacity he assumed. The Sworn Certifications do not categorically state whether the work he rendered was as service under a specific position under the governmental structure in the performance of the listed functions, or merely as a consultant rendering legal advice to the government in the exercise of his legal profession. To be exact, these Sworn Certifications merely elaborated on the specific functions performed by former Chief Justice Panganiban as indicated in the Sworn Certification of Secretary Roces, **which the Court had considered when it denied the first request of former Chief Justice Panganiban.**

Under these circumstances, **not even a stretched reading of the Sworn Certifications** and the proffered **excuse for the absence of records** can lead to the conclusion that former Chief Justice Panganiban had rendered "creditable government service" that the Court should now recognize. The kind of reading of the facts that former Chief Justice Panganiban urges the Court to do is simply **beyond the stretching point of believability** and **cannot and should not be made by this Court**.

The Court, in fact, should simply gloss over former Chief Justice Panganiban's ready excuse of lapse of time as this is not truly a believable reason. It is unbelievable that records dating back only from the 1960s would no longer be available from the DepEd or the National Archives from where certified photocopies can be secured. To cite a case in point, **Justice Florenz Regalado** started government service in the military on November 15, 1943. As in the case of former Chief Justice Panganiban, he was only paid a five-year lump sum upon retirement because his previous military and civil services were not supported by documents. He likewise applied for a re-computation and was granted an increased entitlement by the Court after he secured certified copies of documents dating back to the war years.

(g) ***Chief Justice Panganiban's characterization of his consultancy work as private practice of law***

What the Sworn Certifications lack in terms of details when they described former Chief Justice Panganiban's service as "consultancy," is filled in by his Bio Data and Personal Data Sheet on file with the Court and which we take **judicial notice** of as indisputable information within our reach and immediate access.

In these data sheets, ***filed with the Court before any controversy arose***, the presence of consultancy rather than government service is very clearly indicated. **This Bio Data notably mentions his consultancy with Secretary Roces from 1963 to 1965, under the heading "As a Practicing Lawyer." It also clearly states that, at that time, he was in the practice of law as the Senior Partner in PABLAW, from 1963 to 1995.**[54]

These undisputed facts, made by Chief Justice Panganiban **when he entered judicial service**, cannot but overwhelm the facts he adduced when he made claims for retirement benefits **as he was leaving this same service while asking for increased retirement benefits**.

In the absence of substantial proof creating a reasonable inference that the work rendered by Chief Justice Panganiban fell within the term "government service," there is no reason, legal or factual, to grant former Chief Justice Panganiban's request. In any event, former Chief Justice Panganiban's consultancy service, even if somehow considered service with the government (contrary to his own declaration of record with the Court), is still work excluded by law from the term "creditable government service."

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[54] The Bio Data states that he was an Associate, *Salonga Ordoñez and Associates Law Office* (1961-1963), and Senior Partner at PABLAW from 1963-1995. He was a Legal Consultant to the Secretary of Education from 1963-1965, which is only for a term of three years, not four years as claimed.

The Court's exercise of liberality is governed by jurisprudential standards

(a) *The exercise of liberality and its limits*

The discretionary power of the Court to exercise a liberal approach in the application of retirement laws is not unlimited. The discretionary power is **wielded only under circumstances where the retiree has adduced *proof of entitlement that can be justified in a generous and expansive interpretation***. The bottom line is that proof must be adduced; liberality must be exercised in the process of appreciating the proof adduced and in the interpretation of the law. **The Court's exercise of liberality is on a case-to-case basis premised on the circumstances of each case**.

The conclusions in the cases when the Court exercised liberality in retirement issues were arrived at only **after a consideration of the factual circumstances peculiar to each case**. The Court's rulings in *Plana*,[55] *Britanico*[56] and *Escolin*[57] were made in light of the presence of circumstances that were unique and personal to Justices Efren I. Plana, Ramon B. Britanico, and Venicio T. Escolin. These Justices found themselves involuntarily separated from their judicial offices under the political circumstances of their time. The Court additionally appreciated their cases individually in light of circumstances personal to each Justice.

The Court in extending liberality used Justice Plana's accumulated leaves to cover the deficiency in his retirement age. At the time of his separation from the service, **Justice Plana** also had a total of 33 years, five months and 11 days of government service. In **Justice Escolin's case**, he had accumulated leaves, which left him merely two months short of the retirement age; he likewise had exemplary judicial service in the 17 years he was with the Judiciary. **Justice Britanico**, on the other hand, had 36.23 years of government service; he likewise retired under the second category of Section 1 of R.A. No. 910 where no age requirement is required.

Similarly, the Court considered a personal circumstance in applying a liberal approach to retirement laws in the case of Justice Ruperto G.

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55 Resolution in A.M. No. 5460-Ret, March 24, 1988 (Re: Application for Gratuity Benefits of Associate Justice Efren I. Plana).

56 *Re: Application for Retirement of Associate Justice Britanico of the IAC*, 255 Phil. 346 (1989).

57 Resolution in A.M. No. 5498-Ret, March 7, 1989 (*Re: Application for Optional Retirement of Former Associate Justice Venicio T. Escolin*).

Martin.[58] Justice Martin suffered a cerebral stroke during his incumbency as Supreme Court Associate Justice and was compelled to retire two years and 17 days short of the retirement age.[59] The Court ruled:

> The ten-year lump sum payment provided in Section 3 of RA 910 is intended to assist the stricken retiree in meeting his hospital and doctors' bills and expenses for his support. The law is not intended to deprive him of his lifetime pension if he is also entitled to retire under Section 1 and is fortunate to be still alive after ten years. The retirement law aims to assist the retiree in his old age, not to punish him for having survived.[60]

The above circumstances are not present in Chief Justice Panganiban's case. Politically, his circumstances are far from those of Justices Plana, Escolin and Britanico who exited the Judiciary due to political changes in the national scene. It is a matter of record that former Chief Justice Panganiban left the Judiciary after retirement based on the compulsory retirement age.

Given all these, there is no point in comparing the cases of these other Justices to that of former Chief Justice Panganiban. Rather than reliance on comparisons from the point of view of liberality, his requested grant of life annuity should be assessed strictly on its merits.

(b) *Liberality and the Narvasa and Sarmiento cases*

Neither are the circumstances of former Chief Justice Narvasa[61] and Justice Sarmiento[62] comparable with those of former Chief Justice Panganiban. Chief Justice Narvasa and Justice Sarmiento undoubtedly performed public functions in positions that were or are part of the governmental structure. Thus, both the nature of their work and the positions they occupied indisputably gave their services a characterization falling within the concept of "creditable government service." This characterization is not true for former Chief Justice Panganiban. At the risk of repetition, his four-year stint as consultant for the BNE and as legal counsel to Secretary Roces was not in the performance of a public function that attaches to a position under the governmental structure and thus was not "government service" or at least "creditable government service." Additionally and more importantly, no such government service was ever established under the evidence that he submitted.

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58 *Re: Ruperto G. Martin*, A.M. No. 747-RET, July 13, 1990, 187 SCRA 477.

59 Id. at 479.

60 Id. at 482.

61 *Re: Request of Chief Justice Andres R. Narvasa (Ret.) for Recomputation of His Creditable Government Service, supra* note 3.

62 *Re: Request of Justice Abraham F. Sarmiento (Ret.) for Monthly Retirement Pension and All Upward Adjustment of Benefits, supra* note 4.

For a complete picture of how the Court has exercised liberality, the Court – on the basis of the exact same considerations – in several instances deemed it proper to refuse to exercise liberality in light of the attendant circumstances of the case.

A recent case in point is that of *Re: Application for Retirement of Judge Moslemen T. Macarambon under Republic Act No. 910, as amended by Republic Act No. 9946.*[63] The Court did not allow the respondent judge to retire ***under R.A. No. 910*** although he undisputedly possessed a total of 18 years, one month and 16 days of judicial service and a total of 35 years of government service.

> The rule is that retirement laws are construed liberally in favor of the retiring employee. However, when in the interest of liberal construction the Court allows seeming exceptions to fixed rules for certain retired Judges or Justices, **there are ample reasons behind each grant of an exception**. The crediting of accumulated leaves to make up for lack of required age or length of service is not done indiscriminately. It is always on a case to case basis.
>
> In some instances, the lacking element-such as the time to reach an age limit or comply with length of service is de minimis. It could be that the amount of accumulated leave credits is tremendous in comparison to the lacking period of time.
>
> More important, **there must be present an essential factor** before an application under the Plana or Britanico rulings may be granted. The Court allows a making up or compensating for lack of required age or service only if satisfied that the career of the retiree was marked by competence, integrity, and dedication to the public service; it was only a bowing to policy considerations and an acceptance of the realities of political will which brought him or her to premature retirement.[64] (emphases and underscore mine)

The above standards were also applied by the Court in denying the claims of the respondent judges in *Re: Gregorio G. Pineda.*[65] In refusing to exercise liberality, the Court remarked, among others, that "[t]here are other instances when a Judge must content himself with the retirement benefits under less generous legislation."[66]

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63 A.M. No. 14061-Ret, June 19, 2012.

64 Ibid.

65 Adm. Matter Nos. 2076-RET, 5621-RET, 5698-RET, 5717-RET, 5794-RET and 6789-RET, July 13, 1990, 187 SCRA 469.

66 Id. at 475-476.

The Court even stressed in another case that the doctrine of liberal construction cannot be applied where the law invoked is clear, unequivocal and leaves no room for interpretation or construction.[67]

Adhering to the clear provisions of R.A. No. 910 is the Court's ruling in the case of *In Re: Claim of CAR Judge Noel*.[68] The Court did not authorize the respondent judge's claim to monthly pension and annuity under R.A. No. 910 considering that his length of government service falls short of the minimum requirement.

Even for humanitarian considerations, the Court has reined in its exercise of liberality and denied the plea of the widow and the eight children of a judge who died during his incumbency in office.[69] Strictly applying the clear letter of the law, the Court held:

> It is clear from the aforequoted Section 3 in relation to Section 1, that to be entitled to the lump sum payment of the gratuity equivalent to ten years' salary and allowances, a member of the Judiciary should have retired by reason of permanent disability contracted during his incumbency in office and prior to the date of retirement and should have rendered, at the least, twenty (20) years service in the Judiciary or in any other branch of the Government, or both.[70]

Given the varying results of the Court's decisions over the years on the exercise of liberality in retirement issues, any generalization based on the results alone can only be fraught with risk. Comparisons can only be made if the same or similar matters are being made; to resort to idiom, apples can only be compared with apples, not with oranges. A minute and careful analysis though can still yield significant and useful commonalities although these should be used with caution. Subject to this *caveat*, the general discussion below is made.

A rough survey of jurisprudence shows that the Court has generally used three considerations to justify the exercise of liberality. The **first** relates to the peculiar circumstances of the respondent judge's/justice's position (highlighted in the *Plana*, the *Britanico*, the *Escolin* and the *Martin* cases). Apparently, because the Justices involved in the three cases came from the Court itself, the Court could easily appreciate their respective situations. Appreciation by the Court of peculiar circumstances might not have been as easy to make in the cases where lower court magistrates were

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67 *Gov't Service and Insurance System v. Civil Service Commission*, G.R. Nos. 98395 and 102449, October 28, 1994, 237 SCRA 809, 818.

68 194 Phil. 9 (1981).

69 *Re: Retirement Benefits of the Late City Judge Galang, Jr.*, 194 Phil. 14 (1981).

70 Id. at 19.

involved. A naughty observer may even note, given the different treatment between High Court Justices and lower court judges that the Court is always partial to its own, to the prejudice of lower court judges and employees. The **second** relates to the judge's/justice's performance, record or length of stay in the public service (as applied in *Macarambon* and in *Pineda*). The **third**, and the most important consideration, is to look at the provisions of the retirement law itself. If the language of the retirement law is clear and unequivocal, the Court found no room for interpretation and generally opted for the law's strict application (as applied in the cases of former Chief Justice Narvasa, Justice Sarmiento, Judge Alfredo L. Noel and Judge Alejandro Galang, Jr.).

c. *Liberality and former Chief Justice Panganiban's request*

With these considerations in mind, I find no basis – both legal and factual – to exercise liberality in the present case. Although former Chief Justice Panganiban has demonstrated exemplary competence in the performance of his judicial duties, competence alone does not justify the exercise of liberality since ***competence, even to the exemplary degree, is only to be expected among Justices of this Court and should not be considered as an exceptional consideration that should merit the exercise of liberality.***

No basis also exists under jurisprudence, since we do not have any evidence before us *in the present case* showing the circumstances that the Court recognized in its past rulings. The weight of former Chief Justice Panganiban's own adduced documentary evidence negates the exercise of liberality. Former Chief Justice Panganiban, in fact, did not submit the evidence the Court already expressed as material in its determination.

If equitable considerations must be made in this case, it should be to apply the rule that *"**he who comes to court must come with clean hands**."* Several incidents, taken collectively, strongly suggest this consideration in order to avoid unfairness.

First, the consideration of the Bio Data and Personal Data Sheet on file with this Court. These documents are clear and unambiguous in what they state: former Chief Justice Panganiban, ***by his own claim as he entered judicial service***, was a Senior Partner in a major law firm and only rendered consultancy services as a private practitioner to the BNE and to Secretary Roces. To claim at this very late stage, in order ***to secure additional retirement benefits***, that the consultancy services should now be credited as government service meanders from the straight path of fairness.

Second, a first attempt was made to secure a re-computation and this was followed by a second attempt, with both attempts resulting in denial. That a third attempt would be made – two years after the second denial, without any real supervening fact or new evidence – also suggests lack of consideration for fairness. Notably, the Court even bent over backwards, broadly gave a hint of its thinking on the case, and gave former Chief Justice Panganiban every opportunity to adduce new evidence. No new or compelling evidence was adduced.

Lastly, the claim that the lapse of time precludes the introduction of any new evidence stretches the limits of believability and of prevailing law. **Lapse of time is itself a component of the inaction that the law does not condone.**

To go back to the general rule, equitable considerations are not necessary where, as in this case, an existing rule holds that consultancy service cannot be creditable government service. Where the law or jurisprudence is clear, we should likewise be clear and decisive in their application lest we be accused of favoritism in the exercise of liberality.

Thus, the invocation of liberal application of retirement laws is not a universal remedy that applies to all cases. Where it has to be applied, strict adherence to the jurisprudential standards – particularly the rule of fairness – must be followed lest we create dangerous situations that lead us to slippery adjudicatory paths. At the very least, we should take care to avoid any perception of accommodating former colleagues, or indirectly ourselves who, inevitably, will be separated from our judicial offices in the future.

d. *A final caveat*

A grant by this Court of former Chief Justice Panganiban's request through an unjustified liberal approach carries far-reaching implications that may go beyond the grant's immediate financial cost to the government.

Impact on Retired Magistrates. The ruling may open the door to similar submissions from many ***retired magistrates*** whose requests for liberality were not entertained by this Court. Our ruling may similarly affect those ***retiring in the future*** who may see in a favorable ruling in this case. These fertile possibilities may not always be consistent with the best interest of truth and fairness.

Impact on the Supreme Court itself. A *pro hac vice* or *"for former Chief Justice Panganiban only"* ruling may particularly be objectionable to other magistrates whose past applications for liberality have been strictly viewed by the Court. Whether right or wrong, such kind of ruling opens the Court itself to charges of selfishly ruling for its own interests. It may well be asked: ***why is this Court always liberal in cases involving themselves or former colleagues, but is very strict when considering the plight of lower court judges?***

Impact on Retirement in General. A ruling that certifications alone, without more, are sufficient to establish government service leaves the door open to a possible deluge of similar claims from those who might have in the past entered into consultancy services with the government. In the Judiciary alone, those of us who were in private law practice before entering judicial service might have, at one time or another, rendered consultancy service for the government. To be sure, there are many more out there among the professionals as this kind of service is a phenomenon that is not specific to lawyers and the Judiciary. **Where does the line lie now and what happens to the rule of law when stretching the interpretation of law to its limits becomes the rule?** Should the Government Service Insurance System, the Social Security System, and the concerned agencies now entertain applications for crediting, without the benefit of an appointment to public office and based solely on certifications that the applicant indeed delivered service? **Should inaction now be excused by a claim of lapse of time?**

ARTURO D. BRION
Associate Justice