



RUEDA-ACOSTA, PERSIDA V.

Re: Appropriate Eligibility for
Key Positions in PAO
(Legal Opinion)

X- -----X

January 7, 2011

Atty. PERSIDA V. RUEDA-ACOSTA

Chief Public Attorney
Public Attorney's Office
DOJ Agencies Building, NIA Road
Corner East Avenue, 1104 Quezon City

Dear Chief Public Attorney Rueda-Acosta:

This refers to you and a number of top PAO officials' letter requesting legal opinion from the Commission "... regarding the issue on whether there is a need for a Career Executive Service Eligibility (3rd level eligibility) qualifications for the PAO officials, namely: Chief Public Attorney, Deputy Chief Public Attorneys and Regional Public Attorneys."

It appears that the Chief State Counsel of the Department of Justice, rendered for the Justice Secretary, an opinion dated January 3, 2011 which, in essence, states that incumbents to the positions of Chief Public Attorney, Deputy Chief Public Attorney and Regional Public Attorney should possess a CES eligibility for purposes of permanent appointment. On January 4, 2011, you and some top PAO officials wrote the Justice Secretary praying for the revocation of said opinion of the Chief State Counsel. Then, together, you filed this request with the Commission.

On the basis of your letter-request and as an independent Constitutional Commission mandated by the Constitution and the Civil Service Law to enforce merit and fitness and security of tenure in the service and as the central personnel agency of the government, the Commission shall respond to your request. After all, it possesses the following power and function as provided for in **Section 12 (5), Book V of the Administrative Code of 1987¹**, to wit:

"SEC. 12. Powers and Functions. - The Commission shall have the following powers and functions:

In a Race to Serve:

¹ Executive Order No. 292, *Responsive, Accessible, Courteous and Effective Public Service*

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"(5) Render opinion and rulings on all personnel and other Civil Service matters which shall be binding on all heads of departments, offices and agencies and which may be brought to the Supreme Court on certiorari;" (Underscoring Supplied)

Thus, this being a civil service matter and well within its competence and jurisdiction, the Commission shall make the necessary pronouncement based on the Constitution and the Civil Service Law and jurisprudence. Pointedly, pursuant to the above-quoted provision of the Administrative Code, this opinion shall be binding on all heads of departments, offices and agencies and which may be brought to the Supreme Court on *certiorari*.

Coming now to the issue on the civil service eligibility appropriate for the positions of Chief Public Attorney, Deputy Chief Public Attorney and Regional Public Attorney, **Section 5 of Republic Act No. 9406²** expressly provides, as follows:

"SEC. 5 X X X

"The Chief Public Attorney shall have the same qualifications for appointment, rank, salaries, allowances and retirement privileges as those of the Chief State Prosecutor of the National Prosecution Service. The Deputy Chief Public Attorneys shall have the same qualifications for appointment, rank, salaries, allowances and retirement privileges as those of the Assistant Chief State Prosecutor of the National Prosecution Service.

X X X

"The Regional Public Attorney and the Assistant Regional Public Attorney shall have the same qualifications for appointment, rank, salaries, allowances and retirement privileges as those of a Regional State Prosecutor and the Assistant Regional State Prosecutor of the National Prosecution Service respectively." (Underscoring Supplied)

The law is explicit that the positions Chief Public Attorney, Deputy Chief Public Attorney and Regional Public Attorney in PAO shall have the same qualifications for appointment, among other things, as those of the Chief State Prosecutor, Assistant Chief State Prosecutor and Regional State Prosecutor, respectively. These, of course include, the eligibility requirement for these positions. Thus, cross-referencing it with the **Prosecution Service Act of 2010³** yields the following results:

"Section 14. Qualification, Rank and Appointment of the Prosecutor General. – The Prosecutor General shall have the same qualifications for appointment, rank, category, prerogatives, salary

² An Act Reorganizing and Strengthening the Public Attorney's Office [PAO], Amending for the Purpose Pertinent Provisions of Executive Order No. 292, Otherwise Known as the 'Administrative Code of 1987' as Amended, Granting Special Allowance to PAO Officials and Lawyers, and Providing Funds Therefor

³ Republic Act No. 10071

grade and salaries, allowances, emoluments, and other privileges, shall be subject to same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of the Presiding Justice of the Court of Appeals and shall be appointed by the President.

"Section 15. Ranks of Prosecutors. - *The Prosecutors in the National Prosecution Service shall have the following ranks:*

"RANK	POSITION/TITLE
<u>Prosecutor V</u>	(1) <u>Senior Deputy State Prosecutors:</u>
	(2) <u>Regional Prosecutors:</u> x x x

"Section 16. Qualifications, Ranks and Appointments of Prosecutors and Other Prosecution Officers. - *Prosecutor with the rank of Prosecutor V shall have the same qualification for appointment, rank, category, prerogatives, salary grade, and salaries, allowances and emoluments, and other privileges, shall be subject to same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of an associate justice of the Court of Appeals.*
(Underscoring Ours)

The Prosecution Service Act of 2010 explicitly provides that the Prosecutor General (the retitled position of Chief State Prosecutor) has the same qualifications for appointment, among other things, as those of the Presiding Justice of the Court of Appeals (CA). Further, the Senior Deputy State Prosecutor and the Regional Prosecutor have the same qualifications as those of an associate justice of the CA. Anent hereto, reference has to be made on **Section 7, Article VIII (Judicial Department) of the 1987 Constitution** which specifically provides for the qualifications of justices, to wit:

"SEC. 7. (1) No person shall be appointed member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A member of the Supreme Court must at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

(2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.

"(3) A member of the Judiciary must be a person of proven competence, integrity, probity and independence." (Underscoring Supplied)

No less than the Constitution provides that justices and judges in the judiciary are required, among other things, practice of law as requirement for appointment thereto. Pointedly, the Presiding Justice and the Associate Justice of the Court of Appeals (CA) have the same qualifications as those

provided for in the Constitution for Justices of the Supreme Court⁴ which includes, among other requirements, practice of law. This means that the Constitution and the Civil Service Law prescribe RA 1080 (BAR) as the appropriate civil service eligibility therefor. Accordingly, any imposition of a third level eligibility (e.g., CESE, CSEE) is not proper, if not, illegal under the circumstances. In fact, even in the 1997 Qualification Standards Manual of the Commission, all of these positions require RA 1080 BAR eligibility for purposes of appointment.

It may be stated that in the similar case of **Elpidio J. Vega vs Joy C. Legaspi, et. al.**⁵, the Court made the following pronouncements, to wit:

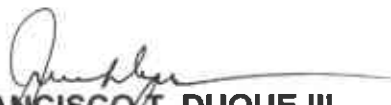
"The rank, qualifications for appointment, emoluments and privileges of the DGCC are kindred to those of an Associate Justice of the Court of Appeals. As such, the DGCC must be an officer learned in law, of recognized competence, with experience in the practice of law for at least ten years and at least thirty-five (35) years of age.

"Under the qualification standards of the Civil Service Commission, the position of the DGCC is accorded a Level 2 classification with a salary grade 29. It requires a bachelor of laws degree and significantly, only an R.A. No. 1080 eligibility." (Underscoring Supplied)

Thus, it is the Commission's opinion that for purposes of permanent appointment to the positions of Chief Public Attorney, Deputy Chief Public Attorney and Regional Public Attorney, no third level eligibility is required but only RA 1080 (BAR) civil service eligibility.

We hope we have assisted you on the matter.

Very truly yours,


FRANCISCO T. DUQUE III
Chairman


CESAR D. BUENAFLOR
Commissioner


MARY ANN Z. FERNANDEZ-MENDOZA
Commissioner
ocom-c/acosta

⁴ Section 7, Chapter 1 of Batas Pambansa Blg 129 or The Judiciary Reorganization Act of 1980

⁵ CA GR. SP No. 68664 dated September 13, 2002