

**MBC STATEMENT ON
THE APPOINTMENT OF THE NEXT CHIEF JUSTICE OF THE SUPREME COURT**

The President's power to appoint the members of the Supreme Court, which is mandated, under Section 4(1) of Article VIII of the Constitution, to be exercised within 90 days from the occurrence of any vacancy, ceases, under Section 15, Article VII, for the period of two months immediately before the next presidential elections and up to the end of the incumbent president's term, except for appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

It is as clear as day that the general rule is the power to appoint within 90 days from vacancy. The exception to the general rule is the cessation of said power to appoint for the period of starting with the two months prior to the presidential elections and ending upon to the expiration of the president's term. The exception to the exception is permission to exercise the power to appoint, notwithstanding the onset of that period, only to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

We reject arguments warning of the dangers of a period when there will be no Chief Justice from May 17 to June 30. Judicial power is vested in the entire court and not on the Chief Justice alone. Section 12 of the Judiciary Act, provides for the immediate devolution of the Chief Justice's duties and powers upon the Associate Justice who is first in precedence until the vacancy is filled.

We thus also call on the members of the Judicial and Bar Council (JBC) not to submit to the President, from now until the period of prohibition sets in, any list from which the President may be tempted, if not induced, to make an appointment to the vacancy in the Chief Justice's position that is not to happen until May 17, 2010. The JBC is an independent constitutional body and, as such, it must not succumb to the dictates of the President.

There will be no disruption of the process of dispensing justice if no Chief Justice sits during that short period. In fact, it was not too long ago, in 1982, when two Supreme Court justices were abroad and those who were in the Philippines all resigned in the aftermath of the bar scandal that came to light in May of that year. From May 11 to May 14, 1998, there was not a single sitting justice of the Supreme Court in the country. And the country was none the worse for it.

Finally, we consider it totally misleading to argue that a Chief Justice is needed during the election year, to guard against the possibility of a president or vice president not being elected, or to have a full court to rule on election protests. Suffice it to say that under the Constitution the Chief Justice does not stand in the line of presidential succession. Moreover, the initial proceedings of an election protest occur at the lower courts and no election protest can, in the practical world, reach the Supreme Court in the short time from May 17 to June 30.

We call on Mrs. Gloria Macapagal-Arroyo to categorically state as soon as possible that she will not, from now until the end of her term, appoint, or consent to or tolerate any attempt to pave the way for her to appoint, the successor to Chief Justice Reynato Puno upon his retirement on May 17, 2010.

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