

On Supreme Court appointments

By : RAFAEL HERNANDEZ COLON

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The Commonwealth constitution provides that the tenure of our Supreme Court Justices terminates on their 70th birthday. This means Justice Baltasar Corrada del Río will vacate his position in the Supreme Court next April. Due to the division of powers between the Popular Democratic Party (PDP), which controls the governorship that must appoint his successor, and the New Progressive Party (NPP), which controls the Senate that must confirm the appointment, a controversy has arisen as to the partisan or status—some say ideological—allegiance of the person to succeed Corrada.

The Supreme Court has seven justices. Four of the actual seven, Chief Justice Hernández Denton, Justices Fuster, Fiol, and Rodríguez were appointed by PDP governors and confirmed by PDP senates. Three justices, Corrada, Rebollo, and Rivera were appointed by NPP governors. Two of these were confirmed by NPP Senates; one—Rebollo—by a PDP Senate.

The NPP leadership insists the Corrada vacancy be filled by a statehooder. They constantly refer as precedent to the appointment by Luis Muñoz Marín of my father, Rafael Hernández Matos, who was a statehooder. This precedent isn't applicable to the current situation. When my father was appointed to the Supreme Court, the other six justices were Popular Party appointees. There had not been a justice from the statehood party for a good many years, and Gov. Muñoz, on his own initiative and not pressured by the statehood leadership, saw fit in his good judgment to appoint my father.

Muñoz appointed my father, first, because he was a prominent lawyer with 31 years of practice in his profession and, second, because he was a statehooder. Muñoz didn't name him because he was a candidate of the statehood leadership, which he was not. He recruited someone who had all the qualifications for being the good justice he turned out to be, and who also was a statehooder thus opening up the court to service from parties other than the PDP.

The Senate should bear this in mind when it exercises its power to advise and consent. Advising the governor doesn't mean gridlocking the appointment process to force him to accept an NPP candidate. It means elucidating to the governor the qualities of a good Supreme Court Justice and those who possess these qualities. Being a statehooder isn't one of these qualities. It is frosting on the cake. The task at hand is primarily selecting a good justice.

This is a rather complicated task. It must be undertaken by competent members of the legal profession because they are the most qualified to pass judgment on their peers. Ultimately, with the proper information at hand, it is the governor who must pass judgment. In doing so, he must bear in mind the important role of the Supreme Court in our system of government.

The Supreme Court doesn't only decide cases; in doing so, it also sets judicial precedents. This means it establishes legal norms or principles, which govern our lives in the same manner that the laws approved by the Legislature govern our lives.

Supreme Court opinions frequently delve into profound juridical questions. On occasion, they transcend positive law and penetrate the realm of philosophy, justice, and the values that support our Constitution and our legal order.

Through its opinions, the Supreme Court defines the scope of power of the governorship, of the Legislature, and of the Judicial branch; the extent of the protection afforded to us by our civil rights; the norms or principles relating to the family as an institution and marriage as the union between a man and a woman; the extent of freedom of the press; the protection of workers; the protection afforded by contracts; the protection of the consumers; the responsibility of those who cause damages to others; and a myriad of other matters attendant to our daily lives.

Given this task, it becomes evident that a justice must be above all a jurist, a person knowledgeable in the law and in the application of law through court trials or administrative proceedings. Partisan pressures, whether NPP or PDP, aren't the way to select a jurist for such a daunting task as being a Supreme Court justice. Former Gov. Roberto Sánchez Vilella used to say the greater the political pressure to appoint a certain person, the lesser the professional merits of that person. The faith of the people in the impartiality of justice is impaired when a person without the necessary professional qualifications is appointed to the Supreme Court. The lack of professional merits evidences the primacy of political considerations and thus the impartiality of the appointee becomes suspect.

The NPP leadership shouldn't pretend the successor of Justice Corrada be appointed on political merits. Neither should the PDP pretend the same. Let them first seek out the appropriate jurist with the necessary professional merits. Let the NPP Senate advise the governor. But let us understand that the Constitution places the power of appointment in the governor. He must pass judgment on the merits of all candidates. The Senate must also confirm on the merits, not on political considerations.

They must both pass judgment on how the appointee will uphold the Constitution he or she will be sworn to defend, and this isn't as simple a matter as it seems for Article I, Sec. I of the Commonwealth Constitution provides:

“The Commonwealth of Puerto Rico is hereby constituted. Its political power emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America.”

Some adversaries of Commonwealth proclaim the power of our government is delegated by Congress, that it doesn't come from the people of Puerto Rico. Others say there is no such thing as a compact between the people of Puerto Rico and the United States of America.

Can people holding such a belief validly take the oath to uphold and defend the Constitution of the Commonwealth?

Article I, Sec. II provides that: “The government of the Commonwealth of Puerto Rico shall be republican in form and its legislative, judicial, and executive branches as established by this Constitution shall be equally subordinate to the sovereignty of the people of Puerto Rico.”

Other adversaries of Commonwealth maintain the people of Puerto Rico aren’t sovereign, that Puerto Rico is a colony. Yet, Congress approved Article I, Sec. 2, which proclaims the sovereignty of the people of Puerto Rico under our Constitution.

Can these people take the oath of office to defend and uphold the Constitution of our Commonwealth?

The appointment of the next Supreme Court Justice isn’t a simple matter.

