

REVIEW OF THE ELECTORAL PROCESS AND LAWS IN THE AGE OF AUTOMATED ELECTIONS

By: Atty. Enrique V. dela Cruz, Jr.

You filed your CoC, now what?

Republic of the Philippines
COMMISSION ON ELECTIONS
Manila

CERTIFICATE OF CANDIDACY FOR

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COMMISSION ON ELECTIONS

INSTRUCTIONS: (Read well before filing)

1. File this in **THREE (3) LAYERS ONLY**, on any day from _____
2. Titles such as Dr., Atty _____
3. This certificate shall be administered by the _____
4. No filing fee shall be _____

Office hours (8:00 AM to 5:00 PM)
Titles are expressly prohibited. _____
The Election Officer may _____

I hereby announce my candidacy for _____
of _____, Province _____
(SK) Elections; and after having been duly qualified by the _____
City/Municipality _____
and Sangguniang Kabataan _____

1. NAME : _____
2. SEX : _____
3. AGE : _____

Filing of Certificate of Candidacy

Oct. 11-12 & Oct 15-17, 2018

8:00 a.m. - 5:00 p.m.

Q: What are the rules on withdrawal of COC?

A: The filing of a withdrawal of a Certificate of Candidacy shall not affect whatever civil, criminal or administrative liabilities a candidate may have incurred.

A person who has withdrawn his Certificate of Candidacy for a position shall not be eligible, whether as a substitute candidate or not, for any other position. (Section 14, COMELEC Res. No. 9518, Sept. 11, 2012)

Q: What is the effect of filing a certificate of candidacy on the tenure of incumbent government officials?

A:

Any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and other officers and employees in government-owned or -controlled corporations, shall be considered ipso facto resigned from the office and must vacate the same at the start of the day of the filing of COC.

Any person holding an elective office or position shall not be considered resigned upon the filing of a COC whether for the same or any other elective office or position. (*Section 10, Rule II, COMELEC Res. No. 9984, August 18, 2015*)

SUMMARY OF RULES:

Incumbent Appointive Official. - any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in GOCC's, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

(Quinto v. COMELEC, G.R. No. 189698, February 22, 2010)

SUMMARY OF RULES:

Incumbent Elected Official. -an elected official is not deemed to have resigned from his office upon the filing of his certificate of candidacy for the same or any other elected office or position.

In fine, an elected official may run for another position without forfeiting his seat. (Quinto v. COMELEC, G.R. No. 189698, February 22, 2010)

Q: When can a person be considered a candidate?

A:

“Any person who files his certificate of candidacy within the filing period shall only be considered a candidate at the start of the campaign period for which he filed his certificate of candidacy.”

Any person may thus file a certificate of candidacy on any day within the prescribed period for filing a certificate of candidacy yet that person shall be considered a candidate, for purposes of determining one’s possible violations of election laws, only during the campaign period. (*Penera v. COMELEC*, G.R. No. 181613, Nov. 25, 2009)

Section 19. Substitution of Candidates in Case of Death, Disqualification or Withdrawal of Another. – An official candidate of a duly registered PP or Coalition who dies, withdraws or is disqualified for any cause after the last day for the filing of COCs may be substituted by a candidate belonging to, and nominated by, the same PP or Coalition.

No substitute shall be allowed for any independent candidate.

The substitute of a candidate who has withdrawn may file a COC for the Office affected on or before November 29, 2018 so that the name of the substitute will be reflected on the official ballots.

No substitution due to withdrawal shall be allowed after November 29, 2018.

Q: What are the new rules for substitution?

If the death or disqualification should occur between November 30, 2018 and mid-day of election day, the substitute candidate may file his Certificate of Candidacy, provided that:

(1) the substitute and the substituted candidate have the same surnames;

(2) They belong to the same political party;

(3) Independent candidates cannot be substituted. *(Section 19, Rule II, COMELEC Res. No. 9984, August 18, 2015)*

No. 9984, August 18, 2015)

PRE-ELECTION DISPUTES

Petition to Cancel Certificate of Candidacy

A petition to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any *material representation* contained in certificate of candidacy as required by law is false.

The petition should be filed not later than 25 days from the filing of the certificate of candidacy.

It should be decided not later than 15 days before the election, after due notice and hearing.
(Section 78, Omnibus Election Code)

Q: What are the requisites for the grant of a petition to deny due course to or cancel a certificate of candidacy?

A:Material misrepresentation in the qualifications for elective office, which includes age, residency, citizenship, and any other legal qualifications necessary to run for an elective office;

Deliberate attempt to mislead, misinform or hide a fact which would otherwise render a candidate ineligible.

Note: These two requirements must concur to warrant the cancellation of the certificate of candidacy.

Material Misrepresentation

Material misrepresentation in a COC refers to the qualification for elective office, which includes false statement as to age, residency, citizenship, being a registered voter and any other legal qualifications necessary to run for an elective office.

Note: A misrepresentation which does not affect one's qualification to run or hold public office will not suffice for the cancellation of a COC.

QUESTION:

On October 25, 2012, Luis Villafuerte (LV) filed with the COMELEC a Verified Petition to deny due course to or cancel the Certificate of Candidacy (COC) of his grandson Miguel, Jr. on the ground of intentional and material misrepresentation of a false and deceptive name or nickname that would mislead the voters.

LV alleged that Miguel deliberately omitted his first name “Miguel”, which was recorded in his Birth Certificate, and instead used “MigzBaby” as nickname.

This is also the nick name of his father Miguel, Sr. who is the incumbent Governor of the province.

Should the COC of Miguel, Jr. be canceled?

ANSWER: NO.

No. Material misrepresentation under the Omnibus Election Code refers to “qualifications for elective office” (residency, age, citizenship, or any other legal qualifications necessary to run for local elective office as provided in the Local Government Code) coupled with a showing that there was an intent to deceive the electorate.

The nickname written in the COC cannot be considered a material fact, which pertains to his eligibility and thus qualification to run for public office. (***LUIS R. VILLAFUERTE v. COMELEC and MIGUEL VILLAFUERTE, G.R. No. 206698. February 25, 2014***)

Petition to Declare a Nuisance Candidate

1. The COC has been filed to put the election process in mockery or disrepute;
2. The COC has been filed to cause confusion among the voters;
3. That the filing of the COC clearly demonstrates that the candidate has no *bona fide* intention to run for office.

Note: The petition may be filed within five (5) days after the last day of filing of COCs.
(Section 69, Omnibus Election Code)

Section 2. Who May File Petition to Declare a Candidate as Nuisance Candidate. — Any registered candidate for the same position may file a verified Petition to declare a candidate as a nuisance candidate.

Section 3. Period to File the Petition. — The Petition shall be filed personally or through an authorized representative, within five (5) days from the last day for the filing of certificates of candidacy. In case of a substitute candidate, the Petition must be filed within five (5) days from the time the substitute candidate filed his certificate of candidacy.

Section 4. Motu Proprio Cases. — The Commission may, at any time before the election, *motu proprio*, declare a candidate as a nuisance candidate subject to an opportunity to be heard. **(Rule 24, COMELEC Resolution No. 9523, Sept 25, 2012)**

Q: If the name of a nuisance candidate whose certificate of candidacy had been cancelled by the Commission on Elections (COMELEC) was still included or printed in the official ballots on election day, should the votes cast for such nuisance candidate be considered stray or counted in favor of the *bona fide* candidate?

A: The votes cast for a nuisance candidate declared as such in a final judgment, particularly where such nuisance candidate has the same surname as that of the legitimate candidate, **are not stray but must counted in favor of the latter.**

The voters' constructive knowledge of such cancelled candidacy made their will more determinable, as it is then more logical to conclude that the votes cast for the nuisance could have been intended only for the legitimate candidate.

(Dela Cruz v. COMELEC, G.R. No. 192221, November 13, 2012)

What is a petition for disqualification?

It is the remedy against any candidate who does not possess all the qualifications required by the Constitution or law, or who commits any act declared by law to be grounds for disqualification.

Note: A petition for **disqualification must be filed any day after the last day for filing of certificates of candidacy BUT not later than the date of proclamation.**

The petition is heard summarily. However, the COMELEC cannot disqualify a candidate without hearing and affording him opportunity to adduce evidence to support his side and taking into account such evidence. **(Section 68, Omnibus Election Code)**

What are the grounds for a petition for disqualification?

OEC, SEC. 68. Disqualifications. — Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having:

- (a) VOTE BUYING -- given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions;**
- (b) committed acts of terrorism to enhance his candidacy;**
- (c) OVER-SPENDING --- spent in his election campaign an amount in excess of that allowed by this Code;**
- (d) solicited, received or made any prohibited contribution under Sections 89, 95, 96, 97 and 104 of the Omnibus Election Code;**

What are the grounds for a petition for disqualification?

OEC, SEC. 68. Disqualifications. —

Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as a permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

What are the grounds for a petition for disqualification?

OEC, SEC. 12. Disqualifications. — Any person who has been declared by competent authority;

- (1) insane or incompetent,**
- (2) sentenced by final judgment to a penalty of more than eighteen months imprisonment or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.**

What are the grounds for a petition for disqualification?

Section 40 of the Local Government Code (LGC) provides:

The following persons are disqualified from running for any elective local position:

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

(b) **Those removed from office as a result of an administrative case;**

(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d) Those with dual citizenship;

(e) **Fugitive from justice in criminal or nonpolitical cases here or abroad;**

(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

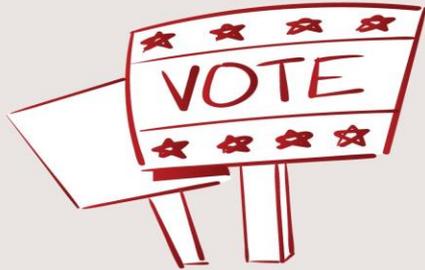
(g) The insane or feeble-minded.

Q: A candidate was previously convicted of Libel by final judgment but he applied for probation and was only sentenced to pay a fine --- is he disqualified from running for public office?

A: YES.

Libel is a crime that involves moral turpitude even if the penalty of imprisonment imposed is reduced to a fine. Thus, he is disqualified from running for any public office – unless he is given pardon or amnesty. [*Ty-Delgado v. HRET*, G.R. No. 207851 July 8, 2014]

CALENDAR OF ACTIVITIES FOR 2019 ELECTIONS



ELECTION PERIOD:
JANUARY 13 TO
JUNE 12, 2019



ELECTION DAY:
MAY 13, 2019
(MONDAY)



FILING OF CERTIFICATE OF CANDIDACY (COC):
OCTOBER 11 - 12, 2018;
OCT. 15-17, 2018, 8 A.M. TO 5 P.M.



CAMPAIGN PERIOD FOR SENATORS AND PARTY-LIST GROUPS:
FEBRUARY 12, 2019 TO MAY 11, 2019
(EXCEPT APRIL 18, MAUNDY THURSDAY;
APRIL 19, GOOD FRIDAY)

CAMPAIGN PERIOD FOR MEMBERS OF HOUSE OF REPRESENTATIVES; ELECTIVE REGIONAL, PROVINCIAL, CITY AND MUNICIPAL OFFICIALS:
MARCH 30, 2019 TO MAY 11, 2019

**ELECTION
PERIOD**

What is the campaign period?

1. Candidates for Senator & Party-List Representatives shall have **90 days** **before the election;**

2. Candidates for Members of the House of Representatives, regional, provincial, city and municipal officials shall **45 days** **before the election;**

What are the prohibited acts during the election period?

1. Transfer or movement of officers and employees in the civil service. (Sec. 261 (h), OEC).
2. Bearing, carrying or transporting firearms or other deadly weapons, unless authorized in writing by the Commission. (Sec. 261 (p) (q) (r) and (s), OEC as amended by Sec. 32, RA 7166).
3. Use of security personnel or bodyguards by candidates, unless authorized in writing by the Commission. (Sec. 261 (t), OEC as amended by Sec. 33, RA 7166)

What are the prohibited acts during the election period?

4. Organization or maintenance of reaction forces, strike forces or other similar forces. (Sec. 261 (u), OEC).
5. Suspension of elective local officials. (Sec. 261 (x), OEC).
6. Giving donations or gift in cash or in kind, etc. (Sec. 104, OEC).
7. Appointment or use of special policemen, confidential agents or the like. (Sec. 261 (m), OEC).
8. Appointment or hiring of new employees; creation or filling up of new positions; promotion or giving of salary increases, remuneration or privilege. (Sec. 261 (g), OEC).

What are the prohibited acts during the election period?

9. Construction of public works, delivery of materials for public works and issuance of treasury warrants or similar devices for a future undertaking chargeable against public funds. Sec. 261 (w), OEC).
10. Release disbursement or expenditures of public funds. (Sec. 261 (v), OEC).
11. Illegal release of prisoners. (Sec. 261 (n), OEC).
12. **Vote buying** – to give, offer or promise money or anything of value in order to induce anyone or the public to vote for or against any candidate. (OEC, Art. 261, A1)

Q: Ernesto, a candidate for vice mayor, conducted a raffle during one of their campaign sorties, wherein he awarded cash as prizes for the raffle. Did he commit any violation of any election law?

Answer:

Yes. This is indirect vote-buying. Since Ernesto is a candidate, he is bound to comply with election laws. It is an election offense to give, offer or promise money or anything of value in order to induce anyone or the public to vote for or against any candidate. (OEC, Art. 261, A1)

Q: Chiz Escudero is a regular co-host of Kris Aquino in her morning show: Kris TV at ABS-CBN. After filing his certificate of candidacy for senator, may Chiz Escudero still appear as co-host in the said show without violating any election law?

Answer:

NO. If Sen. Chiz continues to host the said show, during the campaign period, he will be guilty of an election offense. But before the campaign period, he may still do so without violating any election law. Because under the law, he only becomes a candidate at the start of the campaign period.

Read: Section 32, COMELEC Resolution No. 9615, January 15, 2013,

Election Ban on Release of Public Funds

When is the release, disbursement or expenditure of **public funds prohibited?**

FORTY-FIVE (45) days before a **regular election and**

THIRTY (30) DAYS before a **special election.**

- Save for a few exceptions provided for by law

Election Ban on Release of Public Funds



Is the **construction** of public works, **delivery** of materials, or issuance of treasury **warrants** an election offense?



YES, if it is done during the period of forty-five (45) days before a regular election and thirty (30) days before a special election.

Election Ban on Release of Public Funds

Is it lawful for a public official or employee during 45 days before a regular election to release, disburse or expend any public funds for the Department of Social Welfare and Development?

No. It is **illegal** for a public official or employee including barangay officials and those of government-owned or controlled corporations and their subsidiaries to do so.

It is illegal to do it even for any other office in **other** departments performing functions similar to the SWD.

What are the limits of campaign spending?

The aggregate amount that a candidate or party may spend for election campaign shall be as follows:

For candidates. - Ten pesos (P10.00) for President and Vice-President; and for other candidates Three Pesos (P3.00) for every voter currently registered in the constituency where he filed his certificate of candidacy: Provided, That a candidate without any political party and without support from any political party may be allowed to spend Five Pesos (P5.00) for every such voter; and

For political parties. - Five pesos (P5.00) for every voter currently registered in the constituency or constituencies where it has official candidates. (Section 13, RA 7166)

(Ejercito v. COMELEC, November 25, 2014)

QUESTION:

Salvador, who belonged to a local political party, was a mayoralty candidate in San Jose City, Nueva Ecija in 2010.

Salvador spent a total of P449,000.00 in the 2010 election, when the maximum expenditure allowed by law is P275,667.00.

Salvador now argues that under R.A. 7166, he was allowed to spend P5.00 per voter (instead of P3.00 per voter) since he received no support from his party although he was a member thereof. **Is Salvador guilty of overspending?**

ANSWER: YES.

The law is clear — **the candidate must both be without a political party and without support from any political party for the P5.00 cap to apply.**

In the absence of one, the exception does not apply.

Thus, his limit is P3.00 per registered voter.

To allow Salvador's contention is to deviate from the intention of the legislature in enacting the law, as the same would find all candidates on equal footing, whether member of a political party or not.

[SALVADOR v. COMELEC, G.R. No. 230744, September 26, 2017]

QUESTION:

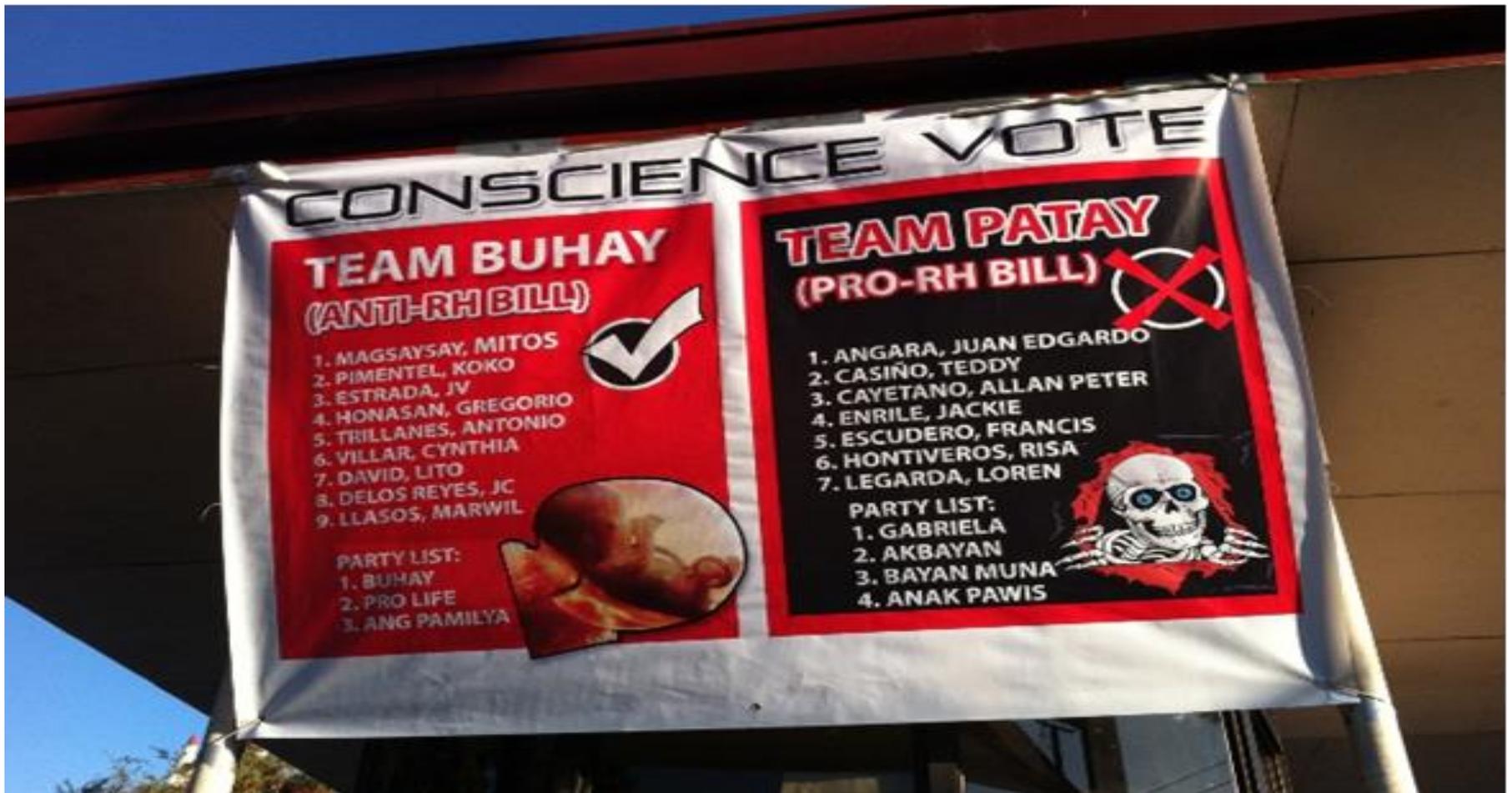
On February 21, 2013, the Diocese of Bacolod City posted two (2) tarpaulins within a private compound housing the San Sebastian Cathedral of Bacolod. Each tarpaulin was approximately six feet (6') by ten feet (10') in size. They were posted on the front walls of the cathedral within public view.

The tarpaulin contains the heading "Conscience Vote" and lists candidates as either "(Anti-RH) Team Buhay" with a check mark, or "(Pro-RH) Team Patay" with an "X" mark.

The electoral candidates were classified according to their vote on the adoption of the RH Law.

QUESTION:

Those who voted for the passing of the law were classified by petitioners as comprising "Team Patay," while those who voted against it form "Team Buhay".



QUESTION:

On February 22, 2013, the Election Officer of Bacolod City issued a Notice to Remove Campaign Materials addressed to the Bishop of the Diocese of Bacolod City. The election officer ordered the tarpaulin's removal within three (3) days from receipt for being oversized. COMELEC Resolution No. 9615 provides for the size requirement of tarpulins or campaign posters of NOT MORE than two feet (2') by three feet (3').

The Diocese of Bacolod City replied that it is not a candidate for the election, and that the tarpaulin/poster of Team Buhay and Team Patay is not an election propaganda. It argued that the poster/tarpaulin is an exercise of free speech and free expression and forms part of its private property. Thus, it cannot be regulated by the COMELEC. Decide.

ANSWER:

The Diocese of Bacolod City is not a candidate. Neither does it belong to any political party. COMELEC does not have the authority to regulate the enjoyment of the preferred right to freedom of expression exercised by a non-candidate in this case.

The law and COMELEC Rules regulating the posting of campaign materials only apply to candidates and political parties, and the Diocese of Bacolod City is neither of the two.

Regulation of speech in the context of electoral campaigns made by persons who are not candidates or who do not speak as members of a political party is unconstitutional.

***Diocese of Bacolod v. Commission on Elections*, G. R. No. 205728, January 21, 2015.**

Can you enforce a warrantless arrest on those caught in the act of violating election laws?

ANSWER: NO.

OEC, Art. 266: Arrest in connection with the election campaign. No person shall be arrested and/or detained at any time for any alleged election offense committed during and in connection with any election through any act or language tending to support or oppose any candidate, political party or coalition of political parties under or pursuant to any order of whatever name or nature and by whomsoever issued EXCEPT ONLY upon a warrant of arrest issued by a competent judge after all the requirements of the Constitution shall have been strictly complied with.

- **OMNIBUS RULES & REGULATIONS GOVERNING CAMPAIGN FINANCE & DISCLOSURE** IN CONNECTION WITH THE 09 MAY 2016 NATIONAL & LOCAL ELECTIONS AND ALL SUBSEQUENT NATIONAL & LOCAL ELECTIONS THEREAFTER
- **(COMELEC Resolution No. 9991, October 2, 2015)**
- Regardless of the results of the elections, or even if the candidates or parties concerned did not receive any contribution or make any expenditure, they should still submit their SOCEs reflecting such fact.
- (See *Pilar vs. COMELEC*, G.R. No. 115245, 11 July 1995)

- **Statement of Contribution and Expenditures (SOCE)**
- The legal basis for requiring candidates and parties to submit "***full, true and itemized***" statements of contributions and expenditures (SOCEs) in relation to their electoral campaigns is found in Section 107 of the OEC, and punishable as an election offense under Section 262 of the OEC.

- **Section 14 (RA 7166). Statement of Contributions and Expenditures: Effect of Failure to File Statement.** – Every candidate and treasurer of the political party shall, within thirty (30) days after the day of the election, file in duplicate with the offices of the Commission the full, true and itemized statement of all contributions and expenditures in connection with the election.
- **No person elected to any public office shall enter upon the duties of his office until he has filed the statement of contributions and expenditures herein required.**

- **Rule 7: SECTION 1. Written Acceptance of Election Propaganda and/or Political Advertisements. -**
- **Election propaganda materials donated or contributed by any person to a candidate or party shall not be printed, published, broadcasted, or exhibited, unless it is accompanied by the written acceptance by said candidate or party, through the party treasurer.**
- Such written acceptance of the donated election propaganda materials must be personal to the candidate or party treasurer, and cannot be delegated to their duly authorized representatives designated to receive donations or contributions.

- **Rule 7: Election Propaganda and/or Political Advertisements. -**

- Regardless of whether the political advertisement was placed by a contributor or donor, the candidate or party treasurer, or their duly authorized representatives, all advertising contracts must be signed by the candidate concerned or the duly authorized representative of the party. [RA 9006, §6.3]

- **Rule 6: Section 8. Campaign expenditures are subject to creditable withholding tax.**
- **Campaign expenditures**, whether paid for by candidates, parties, their authorized representatives or contributors, **are subject to creditable income tax to be withheld by the payor from income payments made to election contractors, suppliers and other service providers.**
- [BIR Revenue Regulation No. 2-98 as amended by BIR Revenue Regulation No. 8-2009] **(COMELEC Resolution No. 9991, October 2, 2015)**

The end.

- **MARAMING SALAMAT PO!**
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