

Module 3: The Commission on Elections

Composition and Structure

Quasi-Legislative Power

Quasi-Judicial Power

Administrative Power

Investigatory and Coercive Powers

Sub-Delegation of Powers

Jurisdiction of En Banc
and Divisions

Application of Rule
on Exhaustion of Remedies

Mandate Delineation with SC, PET,
SET, HRET, Courts and DOJ



ATENEO DE MANILA UNIVERSITY
SCHOOL OF LAW

Fr Joaquin G Bernas SJ
Institute for Continuing Legal Education

Election Law for the 2022 Elections

MODULES

✓ **Elections and Candidates**
September 30, 2021 | 3pm, Thursday

✓ **Electorate**
October 28, 2021 | 3pm, Thursday

Commission on Elections
November 25, 2021 | 3pm, Thursday

Campaign
December 16, 2021 | 3pm, Thursday

Electoral Procedure
January 27, 2022 | 3pm, Thursday

Election Contests and Offenses
February 24, 2022 | 3pm, Thursday

Atty. Alberto C. Agra
Ateneo Election Law Professor
Ateneo Political Law Bar Reviewer





Review of Modules 1 and 2



Electoral Process & Cases

Candidates

Possible Cases

- Postponement of Elections
- Failure of Elections

Aspirants/ Filers/ Poll Bets/
“Would-Be Candidates”

Full-Fledged Candidates

- Election Protests
- Annulment of Proclamation
- Quo Warranto

Filing of
CoC
10.01-08
(11.15 –
05.09)


Pre-
Campaign
Period

Start of
Campaign
02.08-Nat'l
03.25-Local

Election
Day
05.09

Canvass/
Proclaim
05.10-16
(~P/VP)

SOCE
06.08

Assume
Office
06.30
(12nn)

CoC Cancellation/ Disqualification/ Declare Nuisance Cases

Substitution of Aspirants/ Candidates

Pre-Proc.

3 Substitution Scenarios

- **A** filed Certificate of Candidacy (CoC) and Certificate of Nomination and Acceptance (CONA) from Political Party (PP) Z for **Position X** (10.01-08)
- **B** filed CoC with CONA from PP-Z for **Position Y** (10.01-08)
- **C** did not file any CoC and is not a member of PP-Z

Scenario 1 (*single switch*): A substitutes for B

- A withdraws CoC for Position X (10.09 to 11.15)
- B withdraws CoC for Position Y (10.09 to 11.15)
- A files CoC for Position Y (10.09 to 11.15)
- CONAs of A and B must be from PP-Z
- [B does not substitute for anyone]

Scenario 2 (*double switch*): A for B and B for A

- A withdraws CoC for Position X (10.09 to 11.15)
- B withdraws CoC for Position Y (10.09 to 11.15)
- A files CoC for Position Y (10.09 to 11.15)
- B files CoC for Position X (10.09 to 11.15)
- CONAs of A and B must be from PP-Z

Scenario 1 (*simple switch*): C substitutes for B

- B withdraws CoC for Position Y (10.09 to 11.15)
- C joins and must obtain CONA from PP-Z
- C files CoC for Position Y (10.09 to 11.15)

Note: COMELEC, in its current resolutions, no longer prohibits “switching.”





Comparing & Contrasting Cases vs. Candidates

Grounds – Requirements – Period – Effects

Aspects	Commission of an Election Offense	Deliberate Material Misrepresentation	Nuisance Candidate
<i>Pleading Caption</i>	Petition to Disqualify a Candidate	Petition to Deny Due Course or Cancel a Certificate of Candidacy (CoC)	Petition to Declare a Candidate a Nuisance Candidate
<i>Allegations/ Particulars/ Grounds</i>	<p>A. Candidate who engages in:</p> <ol style="list-style-type: none"> 1. Vote-Buying 2. Terrorism 3. Unlawful Expenditures 4. Unlawful Campaign 5. Coercion of Subordinates 6. Threats, Intimidation and Coercion 7. Unlawful release of public funds <p>B. Permanent Residency elsewhere</p>	<ol style="list-style-type: none"> 1. Misrepresentation 2. Material (<i>i.e., must be related to qualifications, commission of a crime of moral turpitude, and violation of term rule; not material if name, profession, affiliation</i>) 3. Deliberate intent to defraud voters 4. Candidate not actually qualified 	<p>CoC filed to:</p> <ul style="list-style-type: none"> o put the election process in mockery or disrepute o cause confusion among the voters by the similarity of the names of the registered candidates <p>No bona fide intention to run for the office as clearly demonstrated in other acts or circumstances (<i>e.g., lack of capability, track record, health, exposure, age, funds, education and affiliations</i>)</p>



Comparing & Contrasting Cases vs. Candidates

Grounds – Requirements – Period – Effects

Aspects	Commission of an Election Offense	Deliberate Material Misrepresentation	Nuisance Candidate
<i>Where file</i>	COMELEC Division then COMELEC En Banc then Supreme Court		
<i>Who files</i>	Any Registered Voter or Any Registered Political Party	Any Registered Voter or Any Registered Political Party	<ul style="list-style-type: none"> o Any registered candidate for the same position o If ground is similarity in names, by the Real Party-in-Interest (<i>i.e.</i>, candidate with similar name with nuisance candidate)
<i>When file</i>	Not later than the date of proclamation	<ul style="list-style-type: none"> o Within 5 days from last day for CoC filing of CoC (10.08 to 10.13); but o Not later than 25 days from time of filing of subject CoC (10.01-08 to 10.26-11.02) 	<ul style="list-style-type: none"> o Within 5 days from the last day for the filing of CoC (10.08 to 10.13)
<i>Substitution</i>	Allowed	Not allowed	Not allowed
<i>If proclaimed Respondent unseated while in office</i>	Succession (P/VP/ LGUs) or Special Elections (Congress)	If lack qualifications, 2 nd placer becomes the 1 st placer	2 nd placer becomes the 1 st placer or proclaimed nuisance stays in office



Who replaces the proclaimed Candidate if unseated/ removed by final judgment after Proclamation?

Case Filed vs. Candidate	Replacement	Justification
Petition to Deny Due Course or Cancel CoC <i>(Ground: Deliberate Material Misrepresentation/ Not Qualified/ Not Eligible)</i>	For all positions: 2 nd Placer for the same position is/ becomes the 1 st Placer	<ul style="list-style-type: none"> ○ Removed candidate was never a legitimate candidate ○ CoC void from the beginning ○ Removed because of the CoC ○ Votes of unseated candidate considered stray/ not counted
Petition to Disqualify <i>(Ground: Election Offense)</i>	<ul style="list-style-type: none"> ○ President/ VP and LGU Officials: Next-in-line assumes ○ Senator/ District Representative: Winner in Special Elections assumes 	<ul style="list-style-type: none"> ○ Succession by operation of law ○ Removed candidate was a legitimate candidate ○ Removed not because of the CoC but due to wrong/ offense committed after filing of CoC ○ CoC was valid



Q: Is substitution allowed *after* November 15?

A: *It depends on the cause/ scenario.*

5 Causes/ Scenarios	Allowed?	Reasons/ Remarks
(1) Candidate Not Qualified/ Not Eligible and his/ her CoC Denied Due Course or Cancelled <i>(Due to Deliberate Material Misrepresentation in CoC)</i>	Not Allowed	<ul style="list-style-type: none"> ○ CoC void from the beginning ○ Candidate was never a legitimate candidate ○ Effect of cancellation retroacts to time of CoC-filing
(2) Candidate Disqualified <i>(Due to Commission of an Election Offense)</i>	Allowed	<ul style="list-style-type: none"> ○ CoC was valid ○ Candidate was a legitimate candidate ○ Substitution allowed up to Election Day (May 9, 2022) ○ Substitute Candidate must have same surname, and must belong to and nominated by the same political party as the Original Candidate
(3) Candidate declared a Nuisance	Not Allowed	<ul style="list-style-type: none"> ○ CoC void from the beginning ○ Candidate was never a legitimate candidate ○ Effect of declaration retroacts to time of CoC-filing
(4) Candidate Dies	Allowed	<ul style="list-style-type: none"> ○ CoC was valid ○ Candidate was a legitimate candidate ○ Substitution allowed up to Election Day (May 9, 2022) ○ Substitute Candidate must have same surname, and must belong to and nominated by the same political party as the Original Candidate
(5) Candidate Withdraws	Not Allowed	<ul style="list-style-type: none"> ○ While Candidate can withdraw, s/he cannot be substituted since deadline for substitution by reason of withdrawal was November 15 ○ Withdrawal will not affect liabilities, if any

Voters' 3Rs:

Roles, Rights & Responsibilities



(1) Petitioner against Voters/ Voting Records

- Opposition
- Inclusion
- Exclusion
- Annulment of Book of Voters

(2) Petitioner/ Witness against Candidates

- Cancel CoC (Material Misrepresentation)
- Disqualify Candidate (Election Offense)
- Or Witness

(3) Rights/ Duties on Election Day

- Voter
- Pollwatcher/ Challenger

(4) Role during Campaign

- Campaigner
- Social Media Influencer
- Candidate Supporter
- Contributor
- Staff
- Volunteer
- Campaign Organizer

(5) Petitioner in Post-Proclamation Cases

- Quo Warranto
- Election Offense
- Or Witness

22 Election Offenses of Voters



A. Curtailing/ Mocking/ Negating Suffrage

1. Vote-Buying
2. Vote-Selling
3. Result-Waging
4. Inducing others to Withhold Vote
5. Coercing, Intimidating, Threatening and Terrorizing
6. Undue Influencing
7. Scheming to Know Votes of a Voter
8. Detaining Another from Voting
9. Sanctioning Employees
10. Jamming Media Broadcast
11. Unlawful Carrying of Firearms
12. Organizing Reaction Forces
13. Causing Confusion among Voters

B. Tampering with Official D

14. Making Untruthful Statements in Registration Application
15. Using Registration Records of Another Voter
16. Tampering Voters' List
17. Defacing Certified List of Candidates
18. Using Ballot of Another
19. Destroying Election Paraphernalia

C. Election Day Offenses

20. Campaigning on Election Day
21. Drinking Liquor on Election Day
22. Unlawful Electioneering at Polling Place



COMELEC: Nature, Composition and Structure

COMELEC

Is [a/ an] ...

Administrative Agency

Public Office

Constitutionally-Created

Autonomous

Is Not a/ an ...

National Gov't Agency

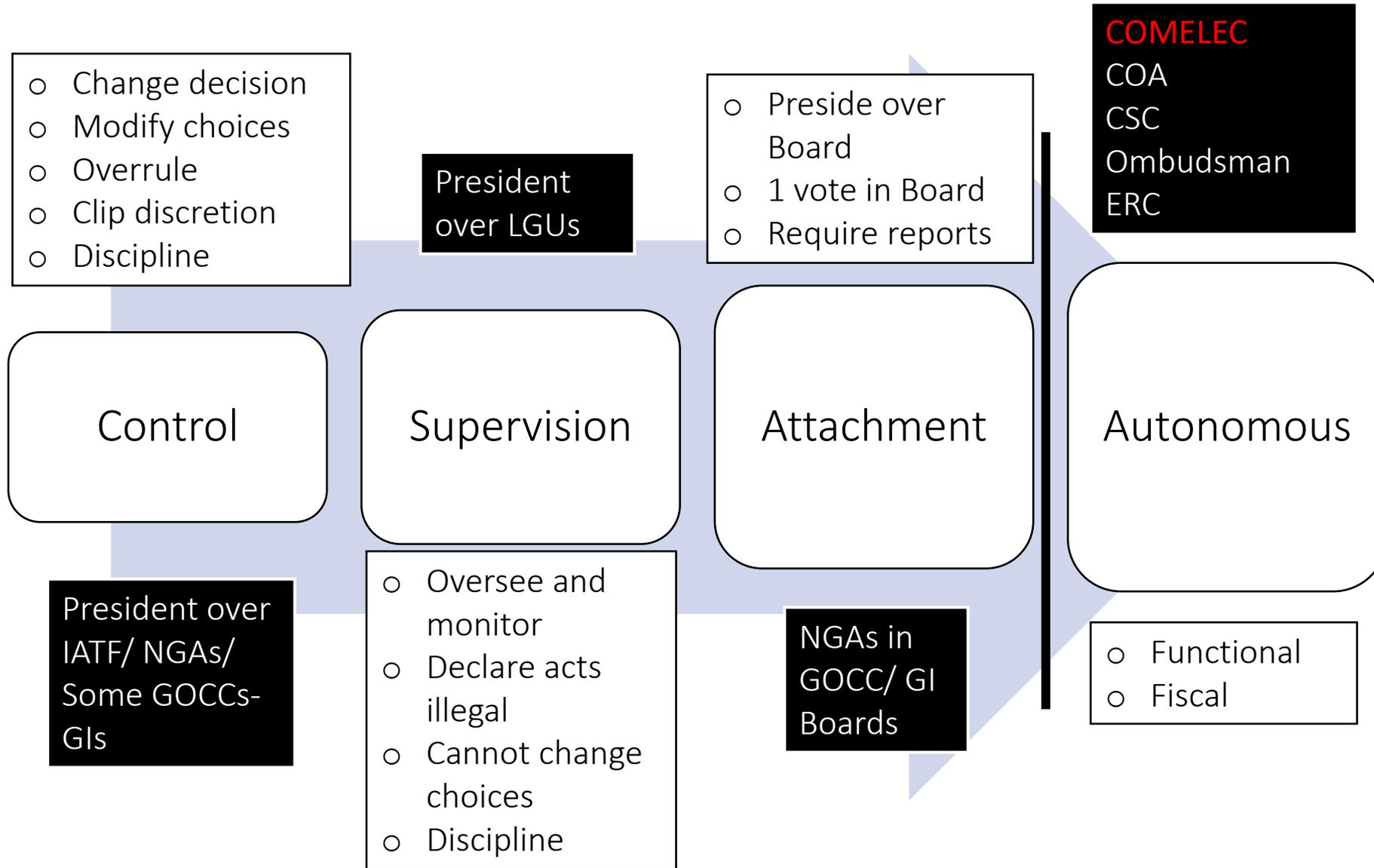
GOCC

Under Executive Control

Exempt from Judicial Review



Spectrum of “Interference”



Structure



1
Chairperson

6
Commissioners

Collegial Body

- Quasi-Legislation
- Quasi-Judicial (Division or En Banc)

Chairperson

- Primus Inter Pares
- Head of Agency (Administrative)
- Transfer of Officials

Qualifications

- Natural-Born Citizens
- 35 years old
- Holder of College Degree
 - Chair and Majority must be Lawyers
(*Practice of Law for \geq 10 years; even if not active in litigation*)



Disqualifications/ Inhibitions

- Not a *candidate* in previous elections
- Hold any other *office or employment*
- Engage in the practice of any *profession*
- Engage in active management or control of any *business* which in any way be affected by the functions of his/ her office
- Financially interest, directly or indirectly, in any *contract* with, or in any franchise or privilege granted by the Government
- Not appointed or designated in any capacity to any *public office or position* during tenure
- No double *compensation*

Subjects	Discussion
Appointment	<ul style="list-style-type: none"> ○ By the President ○ Subject to confirmation by Commission on Appointments ○ Without reappointment ○ Not in acting or temporary capacity
Term of Office	<ul style="list-style-type: none"> ○ 7 years ○ Fixed date February ○ Full/ fresh or unexpired portion when permanent vacancy
Removal	<ul style="list-style-type: none"> ○ Only by impeachment (also Quo Warranto)
Salary	<ul style="list-style-type: none"> ○ Fixed by law ○ Not reduced during term





Constitutional Powers

Constitutional Mandate: **CHOPFE**

Clean-Honest-Orderly-Peaceful Free Elections

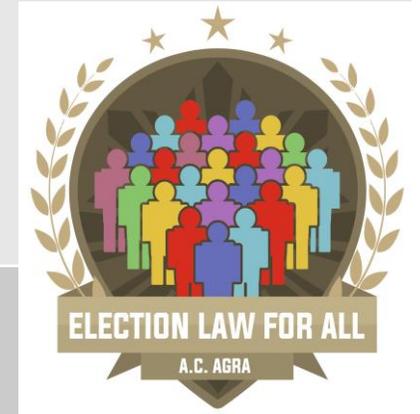
Wide discretion in adopting means to carry out CHOPFE



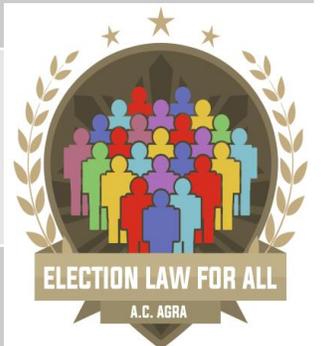
Section 2, C, Article X

- Enforce all election laws
 - Resolve controversies (original over regional, provincial and City; appellate over municipal and barangay)
 - *Cannot decide on right to vote*
 - Determine polling places
 - Appointment of election officials
 - Deputize law enforcement agencies
 - Register political parties
 - File petitions for inclusion/exclusion
 - Investigate/ prosecute election offenses
1. Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.
 2. Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction. Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.
 3. Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.
 4. Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.
 5. Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration. Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.
 6. File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.
 7. Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.
 8. Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision.
 9. Submit to the President and the Congress a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.

Subjects	Discussion
Sources of Powers	Constitutional and Statutory
Basic Powers	<ol style="list-style-type: none"> 1. Investigative (power to investigate implied from power to enforce election laws) 2. Quasi-Legislative 3. Quasi-Judicial 4. Administrative
Scheduling of Elections	<p><i>Other than 2nd Monday of May:</i></p> <ol style="list-style-type: none"> 1. When the law specifically sets date 2. When the law delegates the setting of the date of the elections to the COMELEC <p><i>Due to Postponement and Failure of Elections:</i> Fixing length and start date of election period outside the 120-day default period does not amount to undue delegation</p>



Subjects	Discussion
BoCs/ BEIs/ Election Officers	<ul style="list-style-type: none"> ○ Control and supervision ○ Election Officers are COMELEC's agents ○ Reshuffle every 4 years
Fiscal Autonomy	<ul style="list-style-type: none"> ○ Automatic release of budget ○ Can augment items in its appropriations from its savings
Coercive	<ol style="list-style-type: none"> 1. Subpoena ad testificandum and duces tecum 2. Contempt <ul style="list-style-type: none"> ○ judicial proceedings ○ Not in administrative proceedings (except for indirect contempt for non-appearance)
Enforcement	<ul style="list-style-type: none"> ○ Decisions/ Resolutions ○ Secure assistance from enforcement agencies
Prosecutorial	<ul style="list-style-type: none"> ○ Election Offenses





Other Public Offices on Elections

Branch	Public Offices	Jurisdiction
Courts	Supreme Court Court of Appeals Regional Trial Courts Municipal Trial Courts	<ul style="list-style-type: none"> ○ Judicial Review over SET, HRET, COMELEC, and RTC on Inclusion/ Exclusion if pure question of law ○ Judicial Review on mixed questions of fact and law on Inclusion/ Exclusion ○ Appeal on Inclusion/ Exclusion ○ Original Jurisdiction over Inclusion/ Exclusion
Tribunals 	Presidential Electoral Tribunal Senate Electoral Tribunal House of Representatives Electoral Tribunal	<ul style="list-style-type: none"> ○ Election Contests against President and VP ○ Election Contests against Senators (<i>exclusive / cannot declare void or unconstitutional contracts</i>) ○ Election Contests against Representatives (<i>assumes jurisdiction when proclaimed and taken oath / can annul results in precincts / members from Judicial and Legislative branches indispensable for quorum</i>)
Legislative	Congress	<ul style="list-style-type: none"> ○ Enact Election Laws (<i>not inconsistent with the Constitution</i>)
Executive	President Department of Justice Department of Budget and Management	<ul style="list-style-type: none"> ○ Concurrence on deputization of law enforcement agencies ○ Investigation of Election Offenses ○ Preparation and release of annual budget

Summary

Cases	P/VP	Senator	D. Reps	PL Reps	Provincial	City	Municipal
CoC/ DQ	COMELEC Division						
Proclaim	Congress	COM EB	BoCs	COM EB	P BoCs	C BoCs	M BoCs
Annul Proc	[Congress]	[COM EB]	[COM Div]	[COM EB]	COMELEC Division		
Elec Protest	PET	SET	HRET		COMELEC Division		RTC
Quo Warr							
Postpone	COMELEC En Banc						
Failure	COMELEC En Banc						





Quasi-Legislative Power



15 Rules on Rule-Making

1. Executive/ Administrative in nature
2. Rules have force and effect of law
3. Agency cannot enact/ repeal laws
4. Agency must issue the rules (*if wording of law is mandatory*)
5. Subordinate legislation
6. Presumed valid
7. Issued by authority of law
8. Subject within jurisdiction/ authority
9. Notice and hearing not required (*unless law requires and material change*)
10. Pass reasonableness test
11. Operative upon publication (*unless internal and interpretative*)
12. Prospective in application
13. Subject to repeal and amendment (*unless vested or contractual rights involved*)
14. Subject to judicial review (*unless business judgment*)
15. COMELEC not straightjacketed by its own rules



Types of Rules

Type	Description	Grant	Publish
Supplementary	Supplies the details, implements and supplements the law, and governs the public	Express or Implied	Yes
Procedural	Outlines the procedures and remedies	E or I	Yes
Penal	Provides for the conditions and penalties for the violation of rules whereby the law permits the imposition of penalties for violation of rules	Must be Expressly Granted	Yes
Contingent	Determines the existence of a fact which is specified and defined in the law, and effectuates said statutory provision	Must be Expressly Granted	Yes
Interpretative	States the official position or opinion of the AA	E or I	No Need
Internal	Governs the administration and operations of a particular AA or other AAs	E or I	No Need

Is the COMELEC En Banc
authorized to issue all the 6
types of rules?

Types of Rules – 2022 Elections

Type	Examples
Supplementary	10695: Calendar of Activities for the 2022 National Elections
Procedural	No. 9523: Amendment to the COMELEC Rules of Procedure No. 10717: Procedure on Filing of Certificates of Candidacy No. 10731: Canvassing Procedures
Penal	No. 10730: Penalizing violation of Rules on Fair Election Act
Contingent	No. 10712: Source Code Review as a result of choice of AES Technology per RA 9369
Interpretative	COMELEC Law Department Opinions
Internal	Memorandums to COMELEC Departments Memorandums to Law Enforcement Agencies





Quasi-Judicial Power



15 Rules on Quasi-Judicial Power

1. Power expressly given
2. Jurisdiction defined by Charter (*not by Agency or parties*)
3. Questions of fact and/ or law (*depends on enabling law*)
4. Non-delegable (*reception of evidence can be sub-delegated*)
5. Agency must follow its procedural rules (*COMELEC not straightjacketed*)
6. Due process – Notice and Hearing required (*but absence curable; position papers allowed if parties agree*)
7. Impartial Tribunal
8. Quantum of Proof is Substantial Evidence (*not bound by technical rules but must have some proof of authenticity*)
9. Decision needed (*need not be full-blown like in courts*)
10. Subject to Judicial Review
11. Courts accord great respect
12. Decisions not required to be published
13. Enforcement of Decision (*based on enabling law*)
14. Counsel and cross-examination dispensable
15. Subject to exhaustion of remedies and res judicata



Are all cases cognizable, at
the first instance, by a
COMELEC Division ?

Jurisdiction of COMELEC En Banc and Divisions

Divisions (Judicial)

- Disqualification
- Election Protest
- Quo Warranto
- Pre-Proclamation
- Annulment of Proclamation
- Intra- and inter-party
- Cancellation of a CoC
- Leadership
- Registration of Political Parties

En Banc (Administrative)

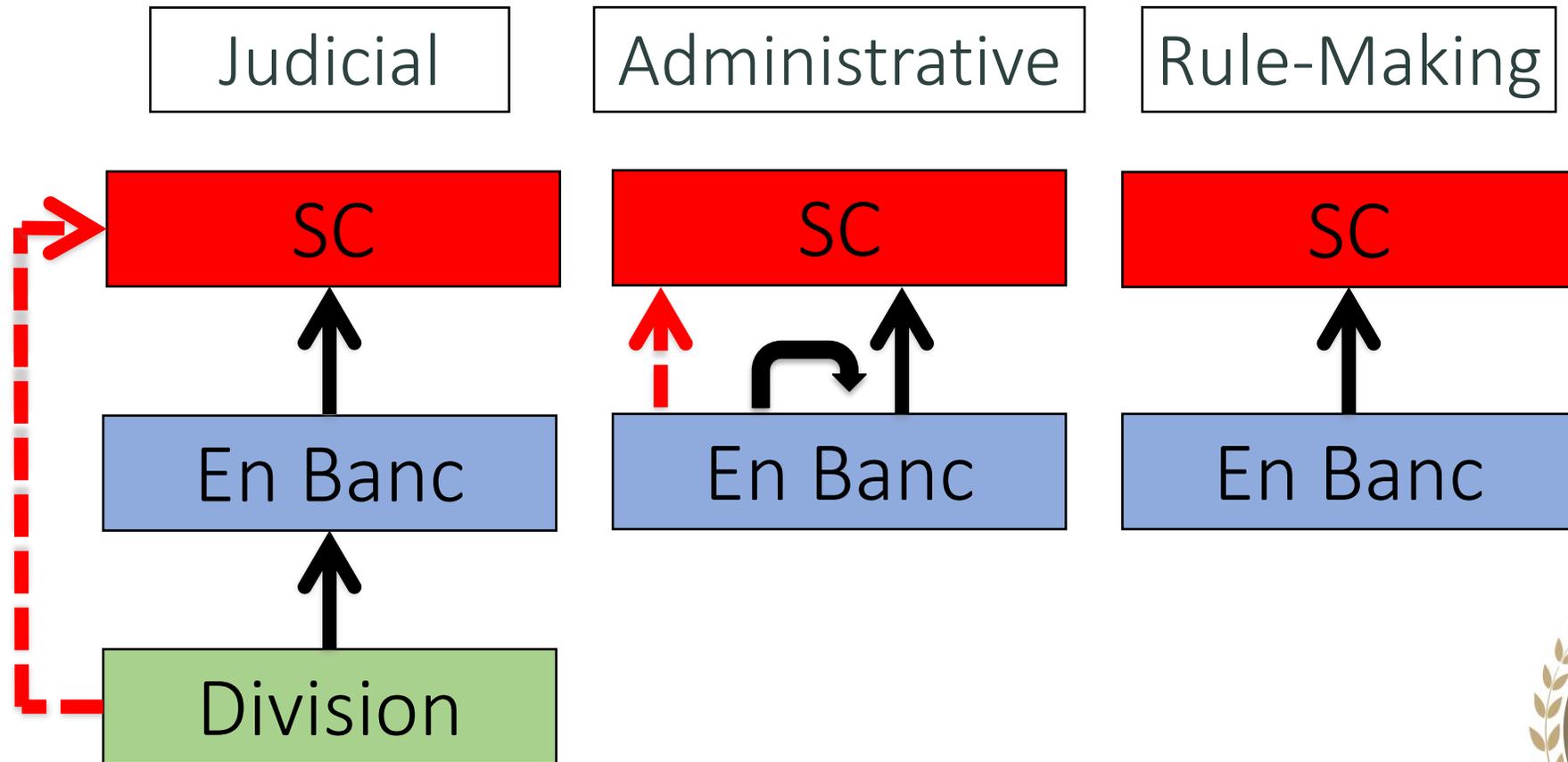
- Canvassing/ Proclamation of Senators and Party-List
- Failure of Elections
- Postponement of Elections
- Election Offense (filing of information)
- Annulment of Book of Voters
- Cancellation of CoC based on final judgment of conviction with ancillary penalty of DQ
- Use of Unprohibited Election Propaganda
- Confiscate/ remove offensive propaganda material
- Allocation of party-list seats
- Accreditation of Major Parties





Can a decision of a
COMELEC Division be directly
elevated to the SC, bypassing the
COMELEC En Banc?

Exhaustion of Administrative Remedies





Exceptions/ Non-Exhaustion

JPLCS

- Questions essentially Judicial
- Administrative Remedy is Permissive
- Pure question of Law
- Constitutionality
- Small amount that exhaustion will be costly

DRIED

- Utter disregard for Due Process
- No plain speedy Remedy
- Strong public Interest
- Estoppel
- Continued and unreasonable Delay/ Urgency



Exceptions/ Non-Exhaustion

DARNI

- Irreparable **D**amage by party
- Alter Ego Bears approval of President
- No administrative **R**eview is provided
- Insistence on exhaustion will lead to **N**ullification of claim
- Resort to admin. remedy is an Idle ceremony

CLRNT

- Civil action for damages
- Land not part of public domain
- Special **R**easons demanding immediate judicial relief
- No **D**ecision rendered
- **T**rascendental issues



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Thank you. Good luck to all.