

# ASUCI JUDICIAL BOARD

**“All Judicial authority of ASUCI shall be vested in the Judicial Board. The Judicial Board’s authority shall extend to all judicial cases arising under the [ASUCI] Constitution; the various by-laws of ASUCI; all official actions of the Executive Officers, Legislative Council Members, and ASUCI Commissioners; and any matters delegated to the Judicial Board by the Legislative Council”**

## ***SIDDIQUI v. SHALABI***

Argued 20th of February 2013 – Decided 27th of February 2013

**Justices Forouzan and Barclay deliver the majority decision of the ASUCI Judicial Board, in which Justice Chopra and Vice Chair Hosseini joined. Chair Bastos concurs in part and dissents in part. Let it be understood that the following decision is final.**

Petitioner Mr. Siddiqui contended that the ASUCI Constitution was violated by respondent Ms. Shalabi in two places: Article IV. ASUCI LEGISLATIVE COUNCIL, Section D, Subsection 6 and Article III. DISTRIBUTION OF POWERS, Section B. Petitioner presented evidence that respondent was on payroll for Legislative Council and the Office of the Executive Vice President for the time period of 31 October 2012 to 14 November 2012. Petitioner argued that Respondent violated Article IV. ASUCI LEGISLATIVE COUNCIL, Section D, Subsection 6:

*“A Legislative Council member shall not hold another ASUCI elective office during his/her term on the Legislative Council.”*

Mr. Siddiqui argued that this section was violated by respondent due to her occupying two paid positions as both a Legislative Council member and a Commissioner of the Office of the Executive Vice President. Respondent argued that because the position of Commissioner in the Office of the Executive Vice President is an appointed and not elective position, Ms. Shalabi did not violate this section of the ASUCI Constitution. Judicial Board finds that Ms. Shalabi did not violate this section of the ASUCI Constitution<sup>1</sup> because of the inherent differences between an elective position versus an appointed position<sup>2</sup>. Furthermore, respondent argued that the payroll information for Ms. Shalabi was not officially submitted and thus Ms. Shalabi should not be

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<sup>1</sup> Judicial Board Chair Bastos has a different line of reasoning as to why respondent did not violate this section of the ASUCI Constitution and thus concurs.

<sup>2</sup> It is Judicial Boards opinion that the position of Commissioner is appointed by the Executives and thus cannot be considered elective.

considered a paid Commissioner in the Office of the Executive Vice President. Judicial Board found this argument lacking because the evidence presented by the petitioner – the ASUCI Payroll stubs – contradicts the respondent’s argument that Ms. Shalabi should not be considered a paid commissioner. Therefore Judicial Board finds that Ms. Shalabi was indeed a paid Commissioner, but that Ms. Shalabi did not violate this section of the ASUCI Constitution.

Mr. Siddiqui then argued that the Respondent violated Article III. DISTRIBUTION OF POWERS, Section B:

*“No person or group of persons in any one of these branches shall exercise power belonging to another branch, except as herein after expressly directed or permitted.”*

Mr. Siddiqui argued that this section of the ASUCI Constitution was violated by the respondent due to her occupying two paid positions as both a Legislative Council member and a Commissioner of the Office of the Executive Vice President. Mr. Siddiqui contended that Ms. Shalabi should have been officially removed from the payroll of the Office of the Executive Vice President prior to the beginning of her term as a Legislative Council member. Respondent claimed that because the registration codes for the Social Justice class which Ms. Shalabi was supposed to teach were received too late, the class was never advertised for and thus Ms. Shalabi was unable to exercise the power of the Commissioner position<sup>3</sup>. Respondent argued furthermore that because the Executive Officers did not have their Commissioners officially approved by Legislative Council, as per ASUCI Legislative Council By-Laws Section III, Subsection B, Item 9:

*“Voting Council members shall confirm or reject by a simple majority present appointments to ASUCI Commissioner status as nominated by the respective Executive Officer.”*

Respondent claimed that due to this section of the By-Laws Ms. Shalabi was never officially a Commissioner. Respondent then contended that Ms. Shalabi informally resigned to Executive Vice President Andrea Gaspar via email. Finally, respondent contended that it was a lack of due diligence on Ms. Gaspar’s part that resulted in the confusion regarding Ms. Shalabi’s continued presence on the Office of the Executive Vice President’s roster of paid Commissioners.

Article III. DISTRIBUTION OF POWERS, Section B:

*“No person or group of persons in any one of these branches shall exercise power belonging to another branch, except as herein after expressly directed or permitted.”*

Article III. of the ASUCI Constitution details the distribution of powers between the three branches of government. This separation of powers is absolutely vital to the continued functioning of ASUCI. A person that violates this separation of powers should be sanctioned in order to uphold the integrity of the ASUCI Constitution. Further, the respondent’s argument that

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<sup>3</sup> The evidence for this claim was never submitted

Ms. Shalabi was unaware of her occupation of two positions does not hold merit. It is Judicial Board's opinion that ignorance of the law is not an adequate defense.

According to Legislative Council By-Laws, Article II. AUTHORITY, Section C:

*"It is the responsibility of the Executive Vice President to ensure that these by-laws and various policies and procedures are upheld and enforced."*

And according to Legislative Council By-Laws, Article III. MEMBERSHIP PROVISIONS, Section E. Vacancies and Appointments, Subsection 5:

*"Appointments shall be determined in the following manner:*

- a) The Rules Committee shall review all eligible applications.*
- b) The Rules Committee shall interview all eligible applicants. Selected candidates shall be presented to the Legislative Council for approval."*

The Judicial Board finds that both Executive Vice President Andrea Gaspar and Rules Committee Chair Reza Zomorrodian could have prevented Ms. Shalabi from occupying two positions simultaneously by requiring her official resignation from the Commissioner position in the Office of the Executive Vice President prior to her appointment onto Legislative Council. It is the duty of Executive Vice President Andrea Gaspar to ensure that the By-Laws are followed and it is the duty of Rules Committee Chair Reza Zomorrodian to review all eligible applicants and make sure that the applicants are indeed eligible. Ms. Shalabi's position as Commissioner in the Office of the Executive Vice President should have been addressed during her interview with the Rules Committee, but it was not. It is therefore the Judicial Board's opinion that both Executive Vice President Andrea Gaspar and Rules Committee Chair Reza Zomorrodian be held partly responsible for the infraction committed against the ASUCI Constitution, Article III. DISTRIBUTION OF POWERS, Section B, due to their negligence. It is the duty of the judicial branch to safeguard the separation of powers in order to allow government to function to the ideals proffered by the ASUCI Constitution. To protect the ASUCI Constitution and ensure accountability, Judicial Board must sanction all responsible parties.

Judicial Board has developed criteria to use in determining a fitting redress for the aforementioned violations.

### **Sanctions<sup>4</sup>:**

Petitioner seeks the remedy: *"that any action taken in the new position, the position as a representative of the School of Social Sciences on Legislative Council, be forfeited... This of*

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<sup>4</sup> Written by Justice Chopra

*course would nullify any Legislations and/or Bills purposed by Ms. Sabreen Shalabi including the debated R48-15 Divestment from Companies that Profit from Apartheid.”*

Judicial Board voted four (4) to one (1) that this remedy is both pragmatically unfeasible and outside the scope of the powers of Judicial Board as outlined in the Constitution and By-laws.

The remedy that Judicial Board orders will address both

- A). The respondent and
- B). The Office of the Executive Vice President and the Legislative Council

**The remedy that the Judicial Board orders is as follows<sup>5</sup>:**

- A. The Judicial Board seeks to discipline Ms. Shalabi and also set a precedent in any future cases regarding individuals exercising the power of multiple branches in ASUCI. The Judicial Board rules that the appropriate sanctions for holding two positions is a ban against the offending party from holding any elected or appointed position in ASUCI between five (5) and ten (10) weeks of instruction<sup>6</sup>. Ms. Shalabi is henceforth barred from holding any elective or appointed position in ASUCI for a period of five (5) weeks from the date this ruling is issued Wednesday the 27<sup>th</sup> of February 2013 until Wednesday the 17<sup>th</sup> of April 2013. The respondent is not barred from seeking office during this time; however, the respondent's term may not start until after the last day of the ban. If it is found that Ms. Shalabi or any offender is in violation of this ban Judicial Board will injunction all legislation until the situation is rectified.
- B. Judicial Board holds both the Office of the Executive Vice President and the ASUCI Legislative Council accountable for the actions of Ms. Shalabi due to their negligence. Both the Office of the Executive Vice President and Legislative Council will perform an internal audit to be submitted in written form to Judicial Board within one (1) week of the issuance of the decision. By the 6<sup>th</sup> of March 2013 both offices will present Judicial Board with verification that each member holds only one (1) elective or appointed position in ASUCI. The audit of the Office of the Executive Vice President will be carried out by Executive Vice President Andrea Gaspar and the audit of Legislative Council will be carried out by Rules Committee Chair Reza Zomorrodian. If either of these internal audits are not complete by the specified date Judicial Board will injunction all legislation until the audits are complete.

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<sup>5</sup> Also known as the Double-Dipping violation remedy

<sup>6</sup> Includes neither finals nor breaks.

**Chair Bastos dissent in part<sup>7</sup>:**

Mr. Siddiqui's reasoning behind his request to have legislation R48-15 struck down is valid because Ms. Shalabi was found to violate the separation of powers clause. The procedural integrity of legislative council and ASUCI must not be overlooked and following procedure is essential to maintaining this integrity. By overlooking procedure, the execution of legislative duties and processes are compromised. Procedurally, within the time span in which Ms. Shalabi was both a commissioner and legislative council representative, her position in the legislative branch is illegal, therefore her votes and any authored legislations are as well. Should constituents or a representative on legislative council feel the need to reintroduce a bill or resolution that reintroduces the content introduced by Ms. Shalabi, he or she may do so.

**IT IS SO ORDERED**

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Seena Forouzan, Justice

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Nicole Bastos, Chair

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Rahul Chopra, Justice

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Kayvon Hosseini, Vice-Chair

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Christopher Barclay, Justice

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<sup>7</sup> Chair Bastos does not disagree with the aforementioned criteria

