

Republic of the Philippines

Sandiganbayan

Quezon City

Second Division

People of the Philippines,
Plaintiff,

Crim. Cases Nos. 28107

Present:

Sandoval, P.J. Chairman

- versus -

MAJ. GEN. CARLOS F. GARCIA, et. al.,
Accused.

Promulgated May 6, 2011

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RESOLUTION

Sandoval, P.J.:

This pertains to the Motion To Disqualify and/or Inhibit the undersigned filed by the Office of the Solicitor General as well as the COMMENT thereto of the Prosecution, the OPPOSITION of the accused and the Consolidated reply of the OSG dated April 8, 2011.

Be it remembered that on January 5, 2011, the movant filed an Urgent Motion for Leave to Intervene which has not yet been resolved by the Court as the parties asked for time within which to present their respective pleadings which they submitted subsequently. Thus, the movant has no legal personality yet to move to inhibit or disqualify the undersigned or any justice for that matter. The same is still premature that militates against its legal standing and eventually its prerogative to ask for the inhibition of the undersigned.

To allow the movant to claim for the recusation of the undersigned, would establish a precedence that would give to any person, even if remotely connected or has no connection at all with any case, to question the propriety of a judge or magistrate to preside over the proceedings. Such would result in a confused and chaotic situation, especially in high profile cases where the Presiding Officer would have to resolve each and every Motion for his inhibition or disqualification presented by anybody who feels with or without basis that it is his duty to have a Judge or Justice recuse or inhibit from a case. And since the magistrate concerned, has

to resolve first the question or issue against his qualification before the proceedings may continue, there may no end to a case on the maneuvering of unscrupulous persons. Undersigned shudders at the consequence!


Moreover, Section 1 of Rule 137 of the Rules of Court provides:

Section 1. No Judge or Judicial Officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree computed according to the rules of the civil law, or in which he has been executor, administrator, trustee or counsel.

Atty. Rex Reynaldo C. Sandoval who joined the Office of the Special Prosecutor only on Nov. 25, 2010 which was about nine (9) months after the Plea Bargaining was submitted by the parties, is not a party to this case, nor he a counsel hereof. He has never appeared in the Second Division for any case at all, he has never filed any Motion or Pleading in any case pending in the said second Division from the time he joined the OSP up to the present.

The aforesaid said Rule is no doubt inapplicable as to him.

Furthermore, to accord affirmative relief to the prayer for inhibition would result in the undersigned being disqualified in all cases pending before the Second Division. Thus, he cannot participate in almost all cases that pend before his Division since ninety six (96%) percent of the cases in the Second Division are being handled and prosecuted by the Office of the Special Prosecutor, and even in other Divisions where he may be requested to participate on account of some vacancies existing in said Division, he would necessarily be disqualified. Thus, he would become a "do-nothing" Justice in the Sandiganbayan in the remaining term of his judicial career.

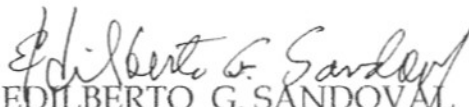
As to the matter of voluntary inhibition provided for in the last paragraph of Section 1 Rule 137, Undersigned finds delight in quoting the Ruling of the Supreme Court in the old case of People vs. Moreno 83 Phil whose relevance is still processed with an aura of authoritativeness. 

To take or not to take cognizance of a case, does not depend upon the discretion of a Judge not legally disqualified to sit in a given case. It is his duty not to sit in its trial and decision if legally disqualified; but if a Judge is not disqualified, it is a matter of official duty for him to proceed with the trial and decision of the case. He cannot shirk the responsibility without the risk of being called upon to account for his dereliction.

This teaching would also enhance the independence of Judicial Officers against those who, for some ulterior motive would endeavor to defeat the ends of Justice by securing "friendly judges" to act on their cases.

Wherefore, premises considered, the Motion to Disqualify And/or Inhibit dated March 18, 2011 filed by the Office of the Solicitor General is denied for utter lack of merit.

SO ORDERED.


EDILBERTO G. SANDOVAL
Chairman, Second Division
Sandiganbayan