

LEGAL & JUDICIAL ETHICS**FERDINAND “BONGBONG” R. MARCOS, JR. v.
MARIA LEONOR “LENI DAANG MATUWID” G. ROBREDO
PET Case No. 005, 17 November 2020, RESOLUTION (Per Curiam)****DOCTRINE OF THE CASE**

None of Marcos' and the Solicitor General's arguments cited a clear ground to warrant Justice Leonen's inhibition under the Rules. There were no prior proceedings where he may have participated. He had no professional engagement with, pecuniary interest relative to, or relation within the sixth degree of consanguinity or affinity to any of the parties or their counsels.

Marcos urges Justice Leonen to voluntarily inhibit. However, a movant seeking the inhibition of a magistrate is duty-bound to present clear and convincing evidence of bias to justify such request. Marcos failed to do so.

FACTS

Marcos Ferdinand “Bongbong” R. Marcos, Jr. (Marcos) filed a “Strong Manifestation with Extremely Urgent Omnibus Motion for the: I. Inhibition of Associate Justice Mario Victor F. Leonen (Justice Leonen); II. Re-raffle of this Election Protest; III. Resolution of all the Pending Incidents in the Above Entitled Case.” He alleged that since October 2019, the protest has “remained in limbo.”

To bolster his point, Marcos underscores Justice Leonen’s dissenting opinion in *Ocampo v. Enriquez*, or the Marcos burial case, which supposedly shows Justice Leonen’s bias and partiality against Marcos’ family. Additionally, Marcos surmises that this protest is the “perfect venue for Justice Leonen to exact vengeance.” He narrates that when Justice Leonen was the country's Chief Peace Negotiator, Marcos, who was then the head of the Senate Committee on Local Governments, blocked the creation of the Bangsamoro Juridical Entity, which Justice Leonen envisioned and worked for.

Marcos also draws attention to a news article written by a certain Jomar Canlas (Canlas), which stated that Justice Leonen circulated his 25-page Reflections back in July 10, 2017, recommending the dismissal of this protest, thereby showing his prejudgment.

Marcos claims the delay in the resolution of this election protest, which hardly moved from the time Justice Leonen took over as ponente and was marked by "one deferment after another through a series of resets and 'call-against'" clearly showed Justice Leonen's bias and partiality.

Moreover, Marcos avers that the referral of certain matters to the Office of the Solicitor General (OSG) and the Commission on Elections (COMELEC) only a year after the protest was raffled to Justice Leonen, showed the latter's ignorance of the law as referral to these offices should have been done the moment the protest was raffled to him. As such, this only served to further delay its resolution.

Marcos underscores that delaying the resolution of this election protest is against public policy because it "disregards the sanctity of votes and the popular choice of the people." He cites Republic Act (R.A.) No. 1793 which requires for an election protest to be decided within twenty (20) months after it is filed, as the standard for the expeditious resolution of election protests.

Claiming to act as the People's Tribune, the Office of the Solicitor General, led by General Jose C. Calida (Solicitor General) similarly moves for Justice Leonen's inhibition for the best interest of the State and the People. He avers that the expeditious resolution of the protest will finally reveal the real winner in the vice-presidential elections.

ISSUE

Should Justice Leonen inhibit from the election protest?

RULING

NO. Rule 8, Section 1 of the Internal Rules of the Supreme Court is clear:

RULE 8

Inhibition and Substitution of Members of the Court

SECTION 1. Grounds for Inhibition. - A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:

- (a) The Member of the Court was the ponente of the decision or participated in the proceedings in the appellate or trial court;

(b) The Member of the Court was counsel, partner or member of a law firm that is or was the counsel in the case subject to Section 3(c) of this rule;

(c) The Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;

(d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;

(e) The Member of the Court was executor, administrator, guardian or trustee in the case; and

(f) the Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.

A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.

None of Marcos and the Solicitor General's arguments cited a clear ground to warrant Justice Leonen's inhibition under the Rules. There were no prior proceedings where he may have participated. He had no professional engagement with, pecuniary interest relative to, or relation within the sixth degree of consanguinity or affinity to any of the parties or their counsels.

Marcos urges Justice Leonen to voluntarily inhibit. However, a movant seeking the inhibition of a magistrate is duty-bound to present clear and convincing evidence of bias to justify such request. Marcos failed to do so.

Alleging delay in this case, Marcos cited R.A. No. 1793, Section 3, which provides that the Presidential Electoral Tribunal shall decide the contest within twenty months after it is filed.

The provision which Marcos cited is no longer good law. Administrative Matter No. 10-4-29-SC, otherwise known as The 2010 Rules of the Presidential Electoral Tribunal governs this Tribunal's proceedings. Rule 67 thereof provides that "in rendering its decision, the Tribunal shall follow the procedure prescribed for the Supreme Court in Sections 13 and 14, Article VIII of the Constitution." There is no rule requiring that an election protest should be decided within twenty (20) months or twelve (12) months. The allegation of undue delay is severely unfounded.

Marcos' claims that Justice Leonen lobbied for the dismissal of his protest is belied by this Tribunal's October 15, 2019 Resolution which released the results of the revision and appreciation of ballots from Marcos's pilot provinces. The final tally showed an increase of Robredo's lead over Marcos.

Despite the results of the revision and appreciation process, Justice Leonen did not vote for the immediate dismissal of this protest. Instead, he joined the majority in directing the parties to file their respective memoranda on the results and on Marcos' Third Cause of Action to protect the parties' right to due process. Clearly, Justice Leonen's votes in the present case do not support Marcos's narrative of a partial and vengeful magistrate who had already prejudged Marcos and his entire family.

Marcos and the Solicitor General's ground to inhibit Justice Leonen for dissenting in *Ocampo v. Enriquez* fails to persuade.

First, Marcos is not President Marcos. They are two different people. All the quoted portions of Justice Leonen's opinion which are allegedly biased against President Marcos are irrelevant here.

Second, when Justice Leonen analyzed the arguments, weighed the evidence, and arrived at a conclusion in that case, he was not exhibiting bias. Rather, he was exercising his judicial function. To put in elementary terms, he was simply doing his job. In the same manner, when the other Justices voted for the majority, they were not exhibiting bias but merely exercising their judicial functions.

Justice Leonen's description of President Marcos' regime and its effect on the nation was based on law, history, and jurisprudence. The Supreme Court has

repeatedly described the Marcos regime as authoritarian referred to "the Marcoses and their cronies"; acknowledged the illegal wealth the Marcoses stashed away which the government has been attempting to recover, and noted the suffering the Marcos regime had wrought on the Filipino people. Moreover, the assessment in Justice Leonen's dissenting opinion is supported not only by jurisprudence, but by Republic Act No. 10368, or the Human Rights Victims Reparation and Recognition Act of 2013.

To move for the inhibition of a justice because of a perceived notion of bias or partiality against a party based on past decisions would not hold water. Ironically, it was Marcos himself who gave evidence of Justice Leonen's impartiality when he cited a case where Justice Leonen voted for members of the Marcos family.

Drafts yet to be voted on are confidential because they merely form part of the internal deliberations of the Supreme Court, and may later change. They may be adopted by the Member-in-Charge, ripen to a concurring or dissenting opinion, or withdrawn altogether. Until the members of the Court vote on a matter, a position in a draft is temporary. Therefore, drafts for the Court's deliberations should not be taken against any Justice who, again, is simply doing his or her job.

Certain information "contained in the records of cases before the Supreme Court are considered confidential and exempt from disclosure." Court deliberations are generally considered to be privileged communication, making it one of the exceptions to the constitutional right to information. Unauthorized disclosure, sharing, publication, or use of confidential documents or any of its contents is classified as a grave offense.

The Tribunal could have proceeded to the issuance of show cause orders against the Solicitor General and Canlas for procuring, aiding and encouraging the leakage of sensitive and confidential materials. However, in order that this Tribunal may be in a better position to focus on the merits of the issues raised by the parties in this already contentious case, the Tribunal for now sees fit to remind the parties that the deliberative process privilege enjoys absolute confidentiality and exhorts them to accord it respect.