

CONSTANTE PIMENTEL, PETITIONER, VS. THE HONORABLE JUDGE ANGELINO C. SALANGA, RESPONDENT.

G.R. No. 27934. September 18, 1967

Ponente: SANCHEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-27934/>

SANCHEZ, J.:

Challenged here in an original petition for certiorari and/or prohibition is the right of respondent judge of the Court of First instance of Ilocos Sur (Branch IV) to sit in judgment in cases where petitioner, a practicing attorney, appears as counsel. Petitioner's petition recites the facts that follow:

Petitioner is counsel of record in cases pending before respondent judge, viz:

- (1) Civil Case 21-C, entitled "Pablo Festejo, et al., petitioners, vs. Marciano Cabildo, et al., respondents", a special civil action for mandamus to compel payment of salaries of elective and appointive municipal officials; petitioner is counsel for principal respondent, Acting Mayor Brigido Vilog;
- (2) Criminal Cases 4898 and C-5, entitled "People of the Philippines, plaintiff, vs. Constanse Anies, accused", for frustrated murder; petitioner is the private prosecutor therein;
- (3) Criminal Case C-93, entitled "People of the Philip-pines, plaintiff, vs. Romeo Pimentel, accused", for frustrated homicide; petitioner is defense counsel therein;
- (4) Election Case 2470, entitled "Avelino Balbin, protestant, vs. Clemente Abaya, protestee," an election protest involving the office of mayor of Candon, Ilocos Sur; petitioner is counsel for protestant therein.

Petitioner's misgivings stem from the fact that he is complainant in an administrative case he himself lodged in this Court on May 12, 1967, against respondent judge upon averments of "serious misconduct, inefficiency in office, partiality, ignorance of the law and incompetence." [1] Petitioner seeks in the complaint therein to have respondent judge immediately suspended from office and, after due notice and hearing, removed therefrom. The judge's return traversed the factual averments. Whereupon, this Court, on July 13, 1967, referred the administrative case to Mr. Justice Eulogio Serrano of the Court of Appeals "for investigation, report and recommendation." That case is still pending.

On July 31, 1967, petitioner moved in the court below to have respondent judge disqualify himself from sitting in Civil Case 21-C, Criminal Cases 4898 and C-5, and Election Case 2470 aforesaid. He there prayed that the records of those cases be transferred to another sala, either at Narvacan or Vigan, both of Ilocos Sur.

On August 1, 1967, respondent judge rejected the foregoing motion. He stood his ground with the statement that the administrative complaint against him is no cause for disqualification under the Rules of Court; that Civil Case 21-6 and Electoral Case 2470 "are now on the final stages of termination" and transfer thereof to another sala "would only delay their final disposition, make the parties suffer [from] further efforts and expenses", and "would be violative" of Administrative Order 371 of the Department of Justice defining the court's territorial jurisdiction;

and that he is "sworn to administer justice in accordance with the law and the merits of the cases to be heard and decided by him." Civil Case 21-C was then calendared for August 10 and 11, 1967.

A move to reconsider the foregoing resolution failed of its purpose. Civil Case 21-C was rescheduled for hearing from August 10 and 11, 1967 to August 22 and 23, 1967.

Hence, the present petition.

Petitioner makes his case along the following lines: Immediate resolution of the problem of disqualification "is a matter of profound importance, particularly on his career and potential as a practitioner of law; his cases "may fall by the accident of raffle into the sala of respondent Judge" and he cannot "resign from an accepted case every time it falls" therein; his clients will have "the natural hesitation to retain as counsel one who is sort of unacceptable to the presiding judge." Petitioner winds up with a prayer that respondent judge be stopped from further sitting in or otherwise trying or deciding the cases heretofore mentioned. He asks for the issuance forthwith of a writ of preliminary injunction ex parte.

We now resolve the petition.

Is a judge disqualified from acting in litigations in which counsel of record for one of the parties is his adversary in an administrative case said counsel lodged against him?

The answer is to be sought within the terms of Section 1, Rule 137, Rules of Court,[2] which reads in full:

"SECTION 1. Disqualification of judges. - 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, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above."

Petitioner says that, arguably, his case comes within the coverage of the second paragraph of the rule just quoted. The theory advocated is that the present (1964) rules for the first time provide a broad policy-oriented ground for disqualification of judges. It is submission that a judge may now be barred from the bench in specific cases for reasons other than those enumerated in the law. He stressed that respondent judge, in the factual environment presented, did not make use of his sound discretion when he refused to disqualify himself from acting in the cases referred to.

Before the second paragraph of Section 1, Rule 137 of the new Rules, came into being, law and early jurisprudence gave no room for a judge, on objection of a party, to disqualify himself, absent any of the specific grounds for disqualification set forth in the law. The following from *People vs. Moreno* [1949], 83 Phil. 286, 294, is expressive of the rule: "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 the 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." [3] Then came *Del Castillo vs. Javelona*, G.R. No. L-16742, September 29, 1962, from which sprang the added second paragraph of Section 1, Rule 137, afore-quoted. In *Del Castillo*, the judge inhibited himself from the case because the lawyer of the party defendant was his first cousin. [4] The judge felt that if defendant should win, his blood relationship with defendant's lawyer might cast some suspicion on his integrity; but, if defendant be

the defeated party, it might bring unpleasant consequences. Plaintiff protested the judge's posture. In upholding the judge, we declared:

"x x x Obviously, Rule 126 [of the old Rules] enumerates the grounds for disqualification of a judge upon being challenged and under which he should disqualify himself. The rule, however, has never been interpreted to prohibit a judge from voluntarily inhibiting himself, in the absence of any challenge by either party, due to his close blood relationship with counsel for one of said parties. Considering the spirit of the Rule, it would seem that cases of voluntary inhibition, based on good, sound and/or ethical grounds, is a matter of discretion on the part of the judge and the official who is empowered to act upon the request for such inhibition.

x x x

x x x In other words, while Rule 126 provides for disqualification, it does not include nor preclude cases and circumstances for voluntary inhibition which depends upon the discretion of the officers concerned."[5]

The Del Castillo opinion made the pointed observation that the cases cited by plaintiff are instances where the judge was challenged – not cases of voluntary inhibition. Indeed, as early as 1931, clear intimation there was that voluntary inhibition upon sound grounds may be recognized, when this Court said in one case[6]: "x x x It is true that if Judge Garduno had abstained from trying the case at bar, there would have been less susceptibility to suspicion. But, as a matter of law, the grounds for the motion of recusal do not constitute a legal cause for the disqualification of a judge."

Thus, the genesis of the provision (paragraph 2, Section 1, Rule 137), not to say the letter thereof, clearly illumines the course of construction we should take. The exercise of sound discretion - mentioned in the rule - has reference exclusively to a situation where a judge disqualifies himself, not when he goes forward with the case.[7] For, the permissive authority given a judge in the second paragraph Section 1, Rule 137, is only in the matter of disqualification, not otherwise. Better stated yet, when a judge does not inhibit himself, and he is not legally disqualified by the first paragraph of Section 1, Rule 137, the rule remains as it has been - he has to continue with the case.

So it is, that the state of the law, with respect to the situation before us, is unaffected by the amendment (paragraph 2 of Section 1, Rule 137) introduced in the 1964 Rules. And it is this: A judge cannot be disqualified by a litigant or his lawyer for grounds other than those specified in the first paragraph of Section 1, Rule 137.

This is not to say that all avenues of relief are closed to a party properly aggrieved. If a litigant is denied a fair and impartial trial, induced by the judge's bias or prejudice, we will not hesitate to order a new trial, if necessary, in the interest of justice. Such was the view taken by this Court in *Dais vs. Torres*, 57 Phil, 897, 902-904. In that case, we found that the filing of charges by a party against a judge generated "resentment" on the judge's part that led to his "bias or prejudice, which is reflected in the decision." We there discoursed on the principle of impartiality, disinterestedness, and fairness on the part of the judge" which "is as old as the history 'of courts." We followed this with the pronouncement that, upon the circumstances obtaining, we did not feel assured that the trial judge's findings were not influenced by bias or prejudice. Accordingly, we set aside the judgment and directed a new trial.[8]

Efforts to attain fair, just and impartial trial and decision, have a natural and alluring appeal. But, we are not licensed to indulge in unjustified assumptions, or make a speculative approach to this ideal. It will behoove this Court to tar and feather a judge as biased or prejudiced, simply because counsel for a party litigant happens to complain against him. As applied here, respondent judge has not as yet crossed the line that divides partiality and impartiality. He has not thus far stepped to one side of the fulcrum. No act or conduct of his would show arbitrariness or prejudice. Therefore, we are not to assume what responder judge, not otherwise legally

disqualified, will do in a case before him.[9] We have had occasion to rule in a criminal case that a charge made before trial that a party "will not be given a fair, impartial and just hearing" is "premature." [10] Prejudice is not to be presumed. Especially if weighed against a judge's legal obligation under his oath to administer justice "without respect to person and do equal right to the poor and the rich.[11] To disqualify or not to disqualify himself then, as far as respondent judge is concerned, is a matter of conscience.

All the foregoing notwithstanding, this should be a good occasion as any to draw attention of all judges to appropriate guidelines in a situation where their capacity to try and decide a case fairly and judiciously comes to the fore by way of challenge from any one of the parties. A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He is a man, subject to the frailties of other men. He should, therefore, exercise great care and caution before making up his mind to act in or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decision to sit or not to sit may depend to a great extent the all-important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substance to the second paragraph of Section 1, Rule 137. He serves the cause of the law who forestalls miscarriage of justice.

In the end we are persuaded to say that since respondent judge is not legally under obligation to disqualify himself, we may not, on certiorari or prohibition, prevent him from sitting, trying and rendering judgment in the cases herein mentioned.[12]

Upon the premises, the petition herein for certiorari and pro-hibition is denied.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Castro, Angeles and Fernando, JJ., concur.

[1] Administrative Case 117, entitled "Constante P. Pimentel, as President of the "Ilocos Sur Lawyers Association, complainant, vs. Angelino C. Salanga, presiding judge of the Court of First Instance of Ilocos Sur, Branch IV, Candon, Ilocos Sur, respondent."

[2] Formerly Section 1, Rule 126, 1940 Rules of Court. The second paragraph of Section 1, Rule 137, is a new provision.

[3] See also: Joaquin vs. Barretto, 25 Phil. 281, 287; Perfecto vs. Contreras, 28 Phil. 538, 543.

[4] This type of relationship was not yet a legal disqualification under the 1940 Rules; now, the 1964 rules expressly prohibit judges from trying cases where he is related "to counsel within the fourth degree of consanguinity or affinity.

[5] Emphasis supplied.

[6] Benusa vs. Torres, 55 Phil. 737, 740; emphasis supplied.

[7] We recently applied paragraph 2, Section 1, Rule 137, and confirmed the voluntary inhibition by a judge upon his sound discretion in *People vs. Gomez*, G.R. No. L-22345, May 29, 1967.

[8] See also: *Government vs. Heirs of Abella*, 49 Phil. 374, 377.

[9] See: *Perfecto vs. Contreras*, supra, at p. 543; *U.S. vs. Baluyot*, 40 Phil. 385, 403; *Benusa vs. Torres*, supra, at p. 741; *People vs. Moreno*, supra, at p. 294; *Talisay-Silay Milling Co., Inc. vs. Teodoro*, 91 Phil. 101, 106.

[10] *Arteche vs. De la Rosa*, 58 Phil. 589, 594.

[11] Section 3, Judiciary Act of 1948, as amended.

[12] See: *Nacionalista Party vs. De Vera*, 85 Phil. 126, 129.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.