

## EN BANC

[ A.M. No. 98-6-185-RTC, October 30, 1998 ]

**RE: INHIBITION OF JUDGE EDDIE R. ROJAS, RTC -BRANCH 39,  
POLOMOLOK, SOUTH COTABATO IN CRIM. CASE NO. 09-5668**

### D E C I S I O N

**MENDOZA, J.:**

This refers to the order of inhibition, dated April 13, 1998, which respondent Judge Eddie R. Rojas of the Regional Trial Court, Branch 39, Polomolok, South Cotabato issued in Criminal Case No. 09-5668, entitled *People of the Philippines v. Rosalina Tauro, et al.*, a copy of which was furnished this Court on May 8, 1998. It appears that the case was initially tried in the RTC, with Judge Rojas as public prosecutor. While the case was pending, respondent was appointed judge of the trial court on November 12, 1996. As the original counsel for the accused did not interpose any objection, Judge Rojas tried the case. On April 13, 1998, however, Judge Rojas decided to inhibit himself from the case. In inhibiting himself, respondent judge explained:<sup>[1]</sup>

When this case is (sic) called for the turn of the defense to present their evidence with their new counsel Atty. Yolanda Ogena of the PAO, who manifested that she is not ready and she is requesting for (the) postponement of this case, but the Presiding Judge (Rojas) after closed (sic) reflection of the records, although the previous counsel for the accused, Atty. Rosalie Cariño, was confronted by the Presiding Judge whether (s)he will interpose objection to the continuous sitting of this Judge in this case considering that years back when this case was initially tried, the Presiding Judge was the prosecutor in this case, to avoid legal implications and/or any doubt, the Presiding Judge has to voluntarily inhibit himself in this case.

Taking note of the aforesaid order of inhibition, this Court on July 7, 1998 required Judge Rojas to show cause why no disciplinary action should be taken against him for sitting in a case in which he had previously acted as counsel for one of the parties.

In his letter dated July 28, 1998,<sup>[2]</sup> Judge Rojas explains:

The above-mentioned criminal case was inherited by the undersigned upon assumption to office as Presiding Judge of this sala last November 12, 1996. On February 18, 1997, he issued an Order addressed to the Stenographic Reporter concerned of Branch 22, Regional Trial Court, General Santos City (where this case originated) directing said employee to transmit a copy of the transcript of the stenographic notes (TSN) to this sala (Annex A).

Despite the lapse of four (4) months from the said Order, the TSN was not forwarded to this Court (Annex B).

In her letter-explanation to the undersigned, Stenographic Reporter Asuncion A. Denaga, informed the former that her failure to transmit said TSN was due to the fact that the same were not sent back to her by this Court's personnel for transcription (Annex C).

It was only after a close scrutiny of the transcribed TSN when herein undersigned discovered and remembered that he handled the aforecited criminal case as public prosecutor years back. Thus, the aforementioned Order emanating from this Court dated April 13, 1998 declaring the undersigned's inhibition from this case (Annex D).

To clarify matters, there was never a full-blown trial conducted by the undersigned in this case since the time he assumed as Presiding Judge of this sala up to the present, as the scheduled hearings of this case were always postponed (the same not being attributable to this Court) (see Annexes E, F, G, and H).

Hence, for all intents and purposes, from the time he discovered his previous participation in the above-cited criminal case, up to the present, the undersigned never heard nor tried nor conducted any full-blown trial in the same.

Thus, Judge Rojas tries to justify his failure to inhibit himself from the beginning by the flimsy excuse that it was only after a close scrutiny of the TSN that he discovered and remembered that he had handled the criminal case as public prosecutor years ago and tries to minimize the seriousness of his breach of judicial ethics by claiming that anyway he did not conduct a "full-blown trial."

In his order of April 13, 1998, Judge Rojas stated that he had not inhibited himself because the previous counsel of the accused, Atty. Rosalie Cariño, did not object to his sitting in the case as the judge. Certainly, he would not have asked Atty. Cariño for any objection if he had not known that he could not sit in the case as judge because he had previously acted as public prosecutor therein. Indeed, the Court is at a loss how Judge Rojas could have missed noticing that the case was one in which he had appeared as public prosecutor considering that the records indicate the appearances of counsels.

Judge Rojas contends that, in any case, he never conducted any full-blown trial in the case, and, therefore, there was no need for his immediate inhibition from the case. Rule 137, §1 of the Rules of Court expressly states, however, that "no judge or judicial officer shall sit in any case in which he ...has been counsel [for a party] without the written consent of all parties in interest, signed by them and entered upon the record." According to *Black's Law Dictionary*,<sup>[3]</sup> to "sit" in a case means "to hold court; to do any act of a judicial nature. To hold a session, as of a court, grand jury, legislative body, etc. To be formally organized and proceeding with the transaction of business." The prohibition is thus not limited to cases in which a judge hears the evidence of the parties but includes as well cases where he acts by resolving motions, issuing orders and the like as Judge Rojas has done in the criminal case. The purpose of the rule is to prevent not only a conflict of interest but