

REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
NATIONAL CAPITAL JUDICIAL REGION
MUNTINLUPA CITY, BRANCH 206



PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

Criminal Case No. 17-167

LEILA M. DE LIMA, FRANKLIN
JESUS B. BUCAYU, WILFREDO G.
ELLI, JAYBEE NIÑO MANICAD
SEBASTIAN, RONNIE PALISOC
DAYAN, JOENEL TAN SANCHEZ,
JOSE ADRIAN TIAMSON DERA,
Accused.

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MOTION TO DISQUALIFY
PROSECUTION WITNESSES

Accused **LEILA M. DE LIMA**, through undersigned counsel, respectfully moves for the disqualification of Prosecution witnesses who were previously convicted of crimes involving moral turpitude, and respectfully avers:

1. Sec. 20, Rule 130 of the Rules of Court provides:

Section 20. Witnesses; their qualifications. — Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make their known perception to others, may be witnesses.

Religious or political belief, interest in the outcome of the case, or **conviction of a crime unless otherwise provided by law**, shall not be ground for disqualification. (18a)¹

¹ Emphasis supplied.

2. Section 10 of Republic Act No. 6981 otherwise known as the "Witness Protection, Security and Benefit Act," provides:

Section 10. State Witness. - Any person who has participated in the commission of a crime and desires to be a witness for the State, can apply and, if qualified as determined in this Act and by the Department, shall be admitted into the Program whenever the following circumstances are present:

(a) the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code or its equivalent under special laws;

(b) there is absolute necessity for his testimony;

(c) there is no other direct evidence available for the proper prosecution of the offense committed:

(d) his testimony can be substantially corroborated on its material points;

(e) he does not appear to be most guilty; and

(f) **he has not at any time been convicted of any crime involving moral turpitude.**

An accused discharged from an information or criminal complaint by the court in order that he may be a State Witness pursuant to Section 9 and 10 of Rule 119 of the Revised Rules of Court may upon his petition be admitted to the Program if he complies with the other requirements of this Act. Nothing in this Act shall prevent the discharge of an accused, so that he can be used as a State Witness under Rule 119 of the Revised Rules of Court.

3. Section 12 of same law also provides:

Section 12. Effect of Admission of a State Witness into the Program. - The certification of admission into the Program by the Department shall be given full faith and credit by the provincial or city prosecutor who is required not to include the Witness in the criminal complaint or information and if included therein, to petition the court for his discharge in order that he can utilized as a State Witness. The Court shall order the discharge and exclusion of the said accused from the information.

Admission into the Program shall entitle such State Witness to immunity from criminal prosecution for the

offense or offenses in which his testimony will be given or used and all the rights and benefits provided under Section 8 hereof.²

4. Several of the witnesses of the Prosecution in the instant case were already convicted and are serving out prison sentences for various crimes involving moral turpitude. Despite this fact, they were still admitted, albeit illegally, as State Witnesses and granted immunity under the Witness Protection Program of the government, specifically under Sections 4³, 10 and 12 thereof. This is according to the Transcript of Stenographic Notes of the House Committee on Justice’s hearing on the Bilibid drug trade and the 14 February 2017 Joint Resolution of the Department of Justice as approved by Prosecutor General Victor C. Sepulveda which recommended the filing of the Information in the instant case.
5. The convicted criminals admitted as state witnesses and granted immunity under the WPP of the DOJ are the following:

| WITNESS | CRIME | SENTENCE |
|-------------------|--|---------------------------|
| Nonilo Arile | Murder Kidnapping | <i>Reclusion Perpetua</i> |
| Jojo Baligad | Murder | <i>Reclusion Perpetua</i> |
| Herbert Colanggo | Robbery with Homicide | <i>Reclusion Perpetua</i> |
| Engelberto Durano | Frustrated Murder Murder | <i>Reclusion Perpetua</i> |
| Rodolfo Magleo | Kidnapping for Ransom | <i>Reclusion Perpetua</i> |
| Vicente Sy | Illegal sale and delivery of <i>Methamphetamine</i> <i>Hydrochloride (shabu)</i> | <i>Reclusion Perpetua</i> |

² Emphasis supplied.

³ **Section 4. Witness in Legislative Investigations.** - In case of legislative investigations in aid of legislation, a witness, with his express consent, may be admitted into the Program upon the recommendation of the legislative committee where his testimony is needed when in its judgment there is pressing necessity therefor: Provided, That such recommendation is approved by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

| | | |
|------------------|--|---------------------------|
| Hans Tan | Robbery Direct Assault with Murder | <i>Reclusion Perpetua</i> |
| Froilan Trestiza | Kidnapping | <i>Reclusion Perpetua</i> |
| Peter Co | Illegal sale and delivery of <i>Methamphetamine Hydrochloride (shabu)</i> | <i>Reclusion Perpetua</i> |
| Noel Martinez | Kidnapping for Ransom | <i>Reclusion Perpetua</i> |
| Joel Capones | Homicide | <i>Reclusion Temporal</i> |
| German Agojo | Illegal sale and delivery of <i>Methamphetamine Hydrochloride (shabu)</i> | <i>Reclusion Perpetua</i> |
| Jaime Patcho | Kidnapping for Ransom | <i>Reclusion Perpetua</i> |

6. Moral turpitude, according to Justice Brion in the case of *Teves v. COMELEC* (G.R. No. 180363; April 28, 2009), is defined in Black’s Law Dictionary, as follows:
- [An] act of baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. xxx Act or behavior that gravely violates moral sentiment or accepted moral standards of community and is a morally culpable quality held to be present in some criminal offenses as distinguished from others. xxx The quality of a crime involving grave infringement of the moral sentiment of the community as distinguished from statutory mala prohibita.
7. In *In Re Basa* (41 Phil. 275) and *Zari v. Flores* (94 SCRA 317), crimes that involve moral turpitude include Robbery, Murder (consummated or attempted), Homicide (consummated or frustrated), extortion, and violation of the Dangerous Drugs Act.
8. As a consequence of their having been taken as State Witnesses under Sec. 10 of RA 6981, the above-mentioned convicted criminals

have also been granted immunity, albeit illegally, under Section 12 of the same law. Because of this immunity, said witnesses have been excluded by the Department of Justice from the Information and Amended Information in the instant case.

9. However, Sec. 10 (f) of RA 6981 provides that those convicted of any crime involving moral turpitude are disqualified and cannot be admitted as State Witnesses in the government's Witness Protection Program.
10. The above-enumerated State Witnesses of the Prosecution have all been already convicted of crimes involving moral turpitude. They are therefore disqualified from being State Witnesses and from being granted immunity under Sections 10 and 12 of RA 6981. Their exclusion from the information is therefore illegal and without basis. Even if they testify, they cannot avail of immunity that was granted illegally and that is void *ab initio*.
11. Sec. 20, Rule 130 of the Rules of Court states that when provided by law, previous conviction for a crime is a ground for disqualification from being a witness. Sec. 10 of RA 6981 is a law which disqualifies a person previously convicted of a crime involving moral turpitude from testifying under circumstances where he would be doing so as a State Witness against others who are accused of an offense in which he himself participated.
12. The above-enumerated Prosecution witnesses already admitted in their respective affidavits participation in the offense for which herein Accused is being held for trial. So as not to be included in the information, they were granted immunity as State Witnesses under Sec. 12 of RA 6981. But as the law provides, they cannot be granted such immunity from prosecution as State Witnesses because they are disqualified as persons who have already been convicted for crimes involving moral turpitude, as specified above.
13. The Department of Justice and its WPP therefore illegally granted immunity as State Witnesses to the above-mentioned Prosecution witnesses. Clearly, the DOJ cannot grant State Witness status and immunity to persons already convicted of crimes involving moral turpitude. Sec. 10 (f) of RA 6981 disqualifies criminals previously convicted of crimes involving moral turpitude from testifying in the trial of offenses they themselves participated in. Sec. 20, Rule 130 of the Rules of Court provides that those convicted of a crime are

disqualified from being witnesses under circumstances provided by law, such as Sec. 10 (f) of RA 6981.

14. The DOJ cannot use Sec. 4 of RA 6981 in providing for an exception from the explicit disqualifications enumerated in Sec. 10 thereof, in order to justify inclusion of disqualified witnesses into the WPP. Sec. 4 of RA 6981 is merely a MODE of getting into the government's WPP and availing of its benefits. It does not preclude the application of Sec. 10 disqualifications on the witness in legislative hearings in case his circumstances fall within the contemplation of conditions laid out in Section 10.
15. For these reasons, herein Accused moves to disqualify the above-enumerated Prosecution witnesses who have already been convicted for crimes involving moral turpitude from testifying as State Witnesses in the instant case.

PRAYER


WHEREFORE, premises considered, herein Accused prays that the Prosecution witnesses **NONILO ARILE, JOJO BALIGAD, HERBERT COLANGGO, ENGELBERTO DURANO, RODOLFO MAGLEO, VICENTE SY, HANS TAN, FROILAN TRESTIZA, PETER CO, NOEL MARTINEZ, JOEL CAPONES, GERMAN AGOJO, and JAIME PATCHO** be disqualified from testifying in the instant case pursuant to Sec. 20, Rule 130 of the Rules of Court and Sec. 10 (f) of RA 6981.

Other reliefs just and equitable are likewise prayed for.

Quezon City for Muntinlupa City. 03 September 2018.

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MCLE Compliance No. V-0005526; 01/14/15
(Valid from April 15, 2016 until April 14, 2019)
Roll# 42240

REQUEST

The Hon. Clerk of Court
Regional Trial Court
Branch 206, Muntinlupa City

Greetings:

Kindly set the foregoing **MOTION** for hearing on **07 September 2018, Friday, at 8:30 A.M.**

Copies of this Motion have been personally served to the DOJ Panel of Prosecutors.


TEDDY ESTEBAN F. RIGOROSO

NOTICE

DOJ PANEL OF PROSECUTORS
Department of Justice
Padre Faura St., Manila

Sir/Madam:

Kindly take notice that the foregoing **MOTION** shall be set for hearing on **07 September 2018, Friday, at 8:30 A.M.**


TEDDY ESTEBAN F. RIGOROSO

Copy Furnished:

DOJ PANEL OF PROSECUTORS
Department of Justice
Padre Faura St., Manila