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### PROSECUTORIAL POWERS OF THE OMBUDSMAN

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The general impression seems to be that the Office of the Ombudsman has jurisdiction over all cases for violation of the Anti-Graft and Corrupt Practices Act committed by the Sandiganbayan (e.g. accused has a Salary Grade 27 or higher) or by the regular courts. Hence, I have come across instances where the respondent is a government employee (with a Salary Grade lower than 27) who is accused of violation of the Anti-Graft and Corrupt Practices Act (RA 3019) before the RTC but which as a matter of standard operating procedure any resolution affecting the case issued by the City Prosecutor concerned has nevertheless to be referred by said City Prosecutor to the Ombudsman for its approval.

The Supreme Court in the case of *George Uy v. Sandiganbayan, Ombudsman and Roger C. Berbano Sr.* (312 SCRA 77, Aug. 9, 1999) clarified that the Ombudsman exercises prosecutorial powers only in cases cognizable by the Sandiganbayan.

In the cited case, George Uy filed a petition for certiorari and prohibition with the Supreme Court to set aside the resolution of the Sandiganbayan which denied his motion to quash the six informations charging him with violation of Section 3(e), RA 3019, as amended. He argued, among others, that Sandiganbayan has no jurisdiction over the person of the petitioner accused because his rank of Lieutenant Commander of the Philippine Navy is a rank lower than "naval captains and all officers of higher rank" as prescribed under sub par. (d) of Section 4 of the Sandiganbayan Law (RA 8249). Hence, exclusive jurisdiction over petitioner was vested in the regular courts.

In upholding the petition, the Supreme Court ruled:

We rule that the Sandiganbayan has no jurisdiction over petitioner, at the time of the filing of the informations, and as now prescribed by law.

Republic Act No. 8249, the latest amendment to PD1606 creating the Sandiganbayan (otherwise known as the "Sandiganbayan Law"), provides the prevailing scope of the Sandiganbayan's jurisdiction. The pertinent portions of the Section 4 of the Sandiganbayan Law read:

"Sec. 4. Jurisdiction – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

"a. *Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are*

officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

“(d) Philippine army and air force colonel, *naval captains, and all officers of higher rank;*

It can be deduced from said provisions of law that both the nature of the offense and the position occupied by the accused are conditions *sine qua non* before the Sandiganbayan can validly take cognizance of the case.

The Supreme Court ruled that since petitioner's position did not fall within the “rank” requirement stated in Section 4, exclusive jurisdiction over petitioner is vested in the regular courts.

The Supreme Court then went further to clarify that it is the prosecutor, not the ombudsman, who has the authority to file the corresponding information/s against petitioner in the regional trial court. The ombudsman exercises prosecutorial powers only in cases cognizable by the Sandiganbayan.

On Motion for Clarification by the Ombudsman, the Supreme Court categorically declared:

The Officers of the Ombudsman and Special Prosecutor seem to suggest that they still retain the power to re-file the information and prosecute the petitioner before the regional trial court despite our finding that it is the regional trial court which has jurisdiction over the case.

**The clear import of such pronouncement is to recognize the authority of the State and regular provincial and city prosecutor under the Department of Justice to have control over prosecution of cases falling within the jurisdiction of the regular courts.** The investigation and prosecutorial powers of the ombudsman relate to cases rightfully falling within the jurisdiction of the Sandiganbayan under Section 15 (1) of RA 6770, (“An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for other purposes”) which vests upon the ombudsman “primary jurisdiction over cases cognizable by the Sandiganbayan...”