



Republic of the Philippines
Supreme Court
Manila

EN BANC

**ORTIGAS PLAZA
DEVELOPMENT CORPORATION,**
represented by **JANICE MONTERO,**
Complainant,

A.C. NO. 11385

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
MENDOZA,
REYES,
BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
MARTIRES,
TIJAM, JJ.

- versus -

ATTY. EUGENIO S. TUMULAK,
Respondent.

Promulgated:

March 14, 2017

x-----*[Signature]*-----x

DECISION

PER CURIAM:

Under the Lawyer's Oath and the *Code of Professional Responsibility*, a lawyer is sworn to respect the law and legal processes, and any violation thereof merits condign disciplinary action against the lawyer.

The present complaint asks for the disbarment of Atty. Eugenio S. Tumulak for his participation in the forcible intrusion into the complainant's property.

Antecedents

Complainant Ortigas Plaza Development Corporation owned the parcel of land located in Ortigas Avenue Extension, Pasig City and covered by Transfer Certificate of Title No. PT-126797 of the Registry of Deeds of Rizal (property).

The complainant alleges that at around 11:00 a.m. of November 29, 2012, Atty. Tumulak, accompanied by uniformed guards of the Nationwide Security Agency, Inc., unlawfully entered and took control of the entrance and exit of the property. It appears that prior to the incident, Atty. Tumulak had furnished several documents to the complainant, including the deed of assignment executed by one Henry F. Rodriguez as the administrator of the Estate of the late Don Hermogenes R. Rodriguez designating Atty. Tumulak as an assignee.¹ The documents furnished by Atty. Tumulak were all related to the intestate proceedings of the Estate of the late Don Hermogenes Rodriguez docketed as S.P. No. IR-1110 of the Regional Trial Court, Branch 34, in Iriga City (RTC), which involved the claim of the heirs of the late Don Hermogenes Rodriguez to several parcels of land situated all over the country, including the Provinces of Rizal, Quezon, and Bulacan, and Quezon City, Caloocan City, Pasay City, Antipolo City, Muntinlupa City, Parañaque City, Marikina City, Baguio City, Angeles City, San Fernando City and Tagaytay City.²

The complainant charges Atty. Tumulak with deceit, dishonesty and fraud for claiming to have coordinated with the proper government agencies prior to the illegal and forcible intrusion.³ The complainant manifests that as a lawyer, Atty. Tumulak ought to know that the claim of his principal in the property was barred by *res judicata* due to the valid issuance of a Torrens title under its name. Accordingly, his conduct constituted conduct unbecoming of a lawyer deserving of sanction.⁴

In his answer to the complaint,⁵ Atty. Tumulak denies having been present when the security guards of Nationwide Security Agency entered the complainant's property. He insists that the allegations against him were pure hearsay because Ms. Montero, the representative of the complainant, had no personal knowledge of the incident; that the documents he had furnished to the complainant included records of the intestate proceedings in the RTC involving the Estate of the late Don Hermogenes Rodriguez and Antonio Rodriguez; that he had no hand in procuring the documents; that he did not himself enter the property; and that the entry into the property was effected by the sheriff pursuant to a writ of execution.

¹ *Rollo*, pp. 15-16.

² *Id.* at 2-4.

³ *Id.* at 4.

⁴ *Id.* at 5-6.

⁵ *Id.* at 131-137.

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Report and Recommendation of the Integrated Bar of the Philippines (IBP)

After due hearing, IBP Commissioner of Bar Discipline Ricardo M. Espina submitted his Report and Recommendation,⁶ wherein he found Atty. Tumulak to have violated Rules 1.01 and 1.02, Canon 1 of the *Code of Professional Responsibility*. Commissioner Espina recommended the suspension of Atty. Tumulak from the practice of law for two years.

On October 28, 2015, the IBP Board of Governors issued Resolution No. XXII-2015-57 adopting the findings and recommendation of Commissioner Espina,⁷ viz.:

RESOLUTION NO. XXII-2015-57
CIBD Case No. 13-3707
Ortigas Plaza Dev't Corp. vs.
Atty. Eugenio S. Tumulak

RESOLVED to ADOPT the findings of facts and recommended penalty of 2 years suspension of Atty. Eugenio S. Tumulak by the Investigating Commissioner.

Issue

Did Atty. Tumulak violate Rules 1.01 and 1.02, Canon 1 of the *Code of Professional Responsibility* when he facilitated the implementation of the writ of execution and the entry into the complainant's property?

Ruling of the Court

Atty. Tumulak deserves to be severely sanctioned for violating the Lawyer's Oath and the *Code of Professional Responsibility*.

Pertinent portions of Commissioner Espina's Report and Recommendation, which adequately illustrated Atty. Tumulak's transgressions, are worth quoting verbatim, viz.:

We enumerate respondent lawyer's violation of the following rules/principles when he led the forcible intrusion into OPDC office in Pasig City:

⁶ Id. at 215-219.

⁷ Id. at 213-214.

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- a) **Atty. Tumulak knew, or ought to know, that property claims based on Spanish title can no longer be cited as legitimate basis for ownership as of 16 February 1976 by virtue of Presidential Decree No. 892;**
- b) Respondent lawyer, as a long-time practitioner (admitted to the Bar in 1971), is **presumed to know that the Supreme Court has promulgated a case specifically addressing the fake titles arising from spurious “Deed of Assignment” of the supposed Estate of Don Hermogenes Rodriguez. This is the 2005 case of *Evangelista, et al. vs. Santiago* [G.R. No. 157447; April 29, 2005] where the same *modus* as the one adopted by respondent lawyer, was used by an “assignee” in claiming properties located in Paraque, Las Pinas, Muntinlupa, Cavite, Batangas, Pasay, Taguig, Makati, Pasig, Mandaluyong, Quezon City, Caloocan, Bulacan, and Rizal, allegedly as part of the Estate of Don Hermogenes Rodriguez;**
- c) x x x x;
- d) While respondent lawyer claims that the “deed of assignment” in his favor has a consideration, unfortunately we did not see any agreed consideration in the document. If there is no monetary consideration, it will be treated as a donation with the corresponding payable taxes. Respondent lawyer’s documents don’t show that taxes have been paid for the document to be legally binding;
- e) Torrens title cannot be attacked collaterally but can only be questioned in a principal action x x x. If respondent lawyer thinks that OPDC’s title on the Pasig property is questionable, he could have filed an action to annul OPDC’s title and not bring in the cavalry, so to speak, in the form of uniformed security guards, to take over the property; and
- f) We find respondent’s actions highly questionable and contrary to legal protocol; (i) the court documents were issued by the RTC-Iriga City, Br. 94; (ii) it “affects” a property located in Pasig City; (iii) respondent lawyer became the “assignee” of a Pasig City property; (iv) no taxes were paid for the “assignment”; (v) assistance of the Sheriff of Pasig was not enlisted by respondent, instead, he enlists the help of the Sheriff of Manila; (vi) all that the Sheriff of Manila did was to deliver the RTC-Iriga, Br. 34 court documents to complainant but with a twist; the Sheriff and respondent lawyer were escorted by a phalanx of security guards; (vii) the uniformed guards, obviously upon instruction, took over and/or controlled the gates of OPDC offices with attendant force and intimidation. Respondent lawyer’s claimed innocence cannot prevail over these illegalities of which he, or his agents, had a hand.

With the above highly questionable acts totally irreconcilable with a seasoned practitioner like respondent lawyer, we find Atty. Eugenio S.

Eugenio S. [Signature]

Tumulak liable for violation of Canon 1, Code of Professional Responsibility, specifically Rule 1.01 and 1.02 thereof. (Bold underscoring supplied for emphasis)

Commissioner Espina correctly observed that the Court in the 2005 ruling in *Evangelista v. Santiago*⁸ had already enjoined the successors and heirs of the late Don Hermogenes Rodriguez from presenting the Spanish title as proof of their ownership in land registration proceedings, as follow:

In their Complaint, petitioners claimed title to the Subject Property by virtue of their actual and continuous possession of the same since time immemorial, by themselves and through their predecessors-in-interest. Yet, the Deeds of Assignment executed by Ismael Favila in their favor, attached to and an integral part of their Complaint, revealed that petitioners predecessors-in-interest based their right to the Subject Property on the Spanish title awarded to Don Hermogenes Rodriguez.

There existed a contradiction when petitioners based their claim of title to the Subject Property on their possession thereof since time immemorial, and at the same time, on the Spanish title granted to Don Hermogenes Rodriguez. Possession since time immemorial carried the presumption that the land had *never been part of the public domain or that it had been private property even before the Spanish conquest*. If the Subject Property was already private property before the Spanish conquest, then it would have been beyond the power of the Queen of Spain to award or grant to anyone.

The title to and possession of the Subject Property by petitioners predecessors-in-interest could be traced only as far back as the Spanish title of Don Hermogenes Rodriguez. Petitioners, having acquired portions of the Subject Property by assignment, could acquire no better title to the said portions than their predecessors-in-interest, and hence, their title can only be based on the same Spanish title.

Respondent maintained that P.D. No. 892 prevents petitioners from invoking the Spanish title as basis of their ownership of the Subject Property. P.D. No. 892 strengthens the Torrens system by discontinuing the system of registration under the Spanish Mortgage Law, and by categorically declaring all lands recorded under the latter system, not yet covered by Torrens title, unregistered lands. It further provides that within six months from its effectivity, all holders of Spanish titles or grants should apply for registration of their land under what is now P.D. No. 1529, otherwise known as the Land Registration Decree. Thereafter, Spanish titles can no longer be used as evidence of land ownership in any registration proceedings under the Torrens system. Indubitably, P.D. No. 892 divests the Spanish titles of any legal force and effect in establishing ownership over real property.

P.D. No. 892 became effective on 16 February 1976. The successors of Don Hermogenes Rodriguez had only until 14 August 1976 to apply for a Torrens title in their name covering the Subject Property. In the absence of an allegation in petitioners' Complaint that petitioners predecessors-in-interest complied with P.D. No. 892, then it could be

⁸ G.R. No. 157447, April 29, 2005, 457 SCRA 744.

J. H. Rodriguez

assumed that they failed to do so. Since they failed to comply with P.D. No. 892, then the successors of Don Hermogenes Rodriguez were already enjoined from presenting the Spanish title as proof of their ownership of the Subject Property in registration proceedings.

Registration proceedings under the Torrens system do not create or vest title, but only confirm and record title already created and vested. By virtue of P.D. No. 892, the courts, in registration proceedings under the Torrens system, are precluded from accepting, confirming and recording a Spanish title. Reason therefore dictates that courts, likewise, are prevented from accepting and indirectly confirming such Spanish title in some other form of action brought before them (*i.e.*, removal of cloud on or quieting of title), only short of ordering its recording or registration. To rule otherwise would open the doors to the circumvention of P.D. No. 892, and give rise to the existence of land titles, recognized and affirmed by the courts, but would never be recorded under the Torrens system of registration. This would definitely undermine the Torrens system and cause confusion and instability in property ownership that P.D. No. 892 intended to eliminate.⁹

Moreover, in *Santiago v. Subic Bay Metropolitan Authority*,¹⁰ the Court denied the petition of the successors of the late Don Hermogenes Rodriguez by applying the principle of *stare decisis*, ruling therein that the applicable laws, the issues, and the testimonial and documentary evidence were identical to those in the situation in *Evangelista v. Santiago*, thusly:

The present petition is substantially infirm as this Court had already expressed in the case of *Nemencio C. Evangelista, et al. v. Carmelino M. Santiago*, that the Spanish title of Don Hermogenes Rodriguez, the *Titulo de Propiedad de Torrenos* of 1891, has been divested of any evidentiary value to establish ownership over real property.

Victoria M. Rodriguez, Armando G. Mateo and petitioner Pedro R. Santiago anchor their right to recover possession of the subject real property on claim of ownership by Victoria M. Rodriguez being the sole heir of the named grantee, Hermogenes Rodriguez, in the Spanish title *Titulo de Propiedad de Torrenos*.

x x x x

Prescinding from the foregoing, the instant petition must be denied by virtue of the principle of *stare decisis*. Not only are the legal rights and relations of herein parties substantially the same as those passed upon in the aforementioned 2005 *Evangelista* Case, but the facts, the applicable laws, the issues, and the testimonial and documentary evidence are identical such that a ruling in one case, under the principle of *stare decisis*, is a bar to any attempt to relitigate the same issue.¹¹

⁹ Supra, at 766-767.

¹⁰ G.R. No. 156888, November 20, 2006, 507 SCRA 283.

¹¹ Supra 292-295.

JJ Rodriguez-Rome

Finally, the 2011 ruling in *Pascual v. Robles*¹² affirmed the decision of the Court of Appeals (CA) setting aside the amended decision rendered in S.P. No. IR-1110 by the RTC. This ruling should have alerted Atty. Tumalak from taking the actions giving rise to the complaint against him inasmuch as he has admitted to have derived his rights from the deed of assignment executed in his favor by Henry Rodriguez as the administrator of the Estate of the late Don Hermogenes Rodriguez pursuant to said amended decision. Moreover, Atty. Tumalak is presumed as a lawyer to know the developments in S.P. No. IR-1110 not only by virtue of his becoming an assignee of the estate but also because of his being a lawyer with the constant responsibility of keeping abreast of legal developments.¹³

Atty. Tumalak cannot shield himself from personal responsibility behind the deed of assignment. The deed was doubtful on its face, as borne out by the text, to wit:

DEED OF ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS

This Deed of Assignment is made and executed by and between

The **INTESTATE ESTATE OF THE LATE HERMOGENES R. RODRIGUEZ AND ANTONIO R. RODRIGUEZ**, represented by **HENRY F. RODRIGUEZ**, of legal age, widower, Filipino, x xx Judicial Heir and Court-Appointed Administrator by virtue of **AMENDED DECISION** dated August 13, 1999 of Fifth Judicial Region, RTC Branch 34, Iriga City in SPECS. PROCS. No. IR-1110 which settled the issue of Heirship, Administratorship and Settled [sic] of the Estate of Hermogenes and Antonio Rodriguez y Reyes Estate, hereinafter referred to as the ASSIGNOR;

-and-

EUGENIO S. TUMULAK, of legal age, widower x x x hereinafter referred to as the ASSIGNEE:

WITNESSETH:

WHEREAS, the **ASSIGNOR** is the Court-Appointed Administrator and one of the Judicial heirs of the Intestate Estate of the late **HERMOGENES and ANTONIO RODRIGUEZ y REYES** Estate by virtue of **AMENDED DECISION** dated August 13, 1999 of Fifth Judicial Region, RTC Branch 34, Iriga City in SPECS. PROCS. No. IR-1110 which settled the issue of Heirship, Administratorship and Settlement of the Estate of Hermogenes and Antonio Rodriguez y Reyes Estate, thereafter, petitions for certiorari filed with the **SUPREME COURT** assailing the aforesaid Amended Decision were **DENIED** and declared **FINAL & EXECUTORY** in G.R. Nos. 140271, 140915, 168648, 142477 and 182645, affirming the same Amended Decision;

¹² G.R. No. 182645, June 22, 2011, 652 SCRA 573.

¹³ Canon 5, *Code of Professional Responsibility*.

Handwritten signature: Eugenio S. Tumalak

Whereas, the ASSIGNEE has secured the property and actual occupant/s over the same property they are presently occupying and initiating steps for recovery of the same parcel and has shown exemplary loyalty and faithfulness to the ASSIGNOR and also consistently protected the rights and interest of the Estate against intruder, impostor, usurpers and false claimant with spurious title/s over the same property;

NOW THEREFORE, for and in consideration of the foregoing, the ASSIGNOR has agreed to execute this DEED OF ASSIGNMENT and the ASSIGNEE, has accepted and both parties have mutually agreed to the following terms and conditions herein stipulated;

A parcel of land situated in Ortigas Avenue corner Raymundo Avenue, Barangay Rosario, Pasig City, Metro Manila, Island of Luzon, with containing an area of THIRTY-FIVE THOUSAND EIGHTH [sic] HUNDRED AND NINE[TY] ONE SQUARE METERS (35,891) more or less technical description described below, to

x x x x

1. That the ASSIGNEE shall shoulder all the expenses in the performance of the task as indicated x x x above such as payment for the real taxes, titling, researching, liaising with government agencies, paying lawyers involved in the litigation, and other incidental expenses relevant in the consummation of the said transaction;
2. That the ASSIGNEE shall secure and facilities [sic] all documents from Land Registration Authority, DENR-LMB, DENR-LMS, Register of Deeds and such other government agencies concerned for the completion of titling process subject to the existing laws, rules and regulation in accordance to Land Registration Act;
3. That the ASSIGNEE shall perform the task of relocation and verification[,] land survey, possessing, fencing, guarding, surveying and or reviving plans, paying taxes, titling, selling, leasing, developing, segregating and mortgaging;
4. That the ASSIGNEE shall be the AD-LITEM representative of the ASSIGNOR, before of [sic] any Court[,] Administrative and Quasi-Judicial body and to bring suit, defend, in connection with the actions brought for or against the ASSIGNOR of whatever nature and kind; and
5. That the ASSIGNEE shall report regularly to the ASSIGNOR per the above tasks and accomplishment.

IN WITNESS WHEREOF, the parties have hereunto set their respective signatures on the date 22 March 2010 and place QUEZON CITY above written.¹⁴ (Bold underscoring supplied for emphasis)

¹⁴ Rollo, pp. 15-16.

M. Pulgarano

Atty. Tumulak cannot deny his personal participation in the unlawful and forcible intrusion into the property just because the complainant did not establish his physical presence thereat at the time. In fact, such physical participation was not even necessary in order to properly implicate him in personal responsibility for the intrusion after he admitted having furnished to the complainant the deed of assignment and other documents as the source of his authority. Specifically, his duties under the deed of assignment included “*shoulder[ing] all the expenses in the performance of [securing the property x x x and initiating steps for recovery of the same parcel] x x x such as x x x or payment for the real taxes, titling, researching, liaising with government agencies, paying lawyers involved in the litigation, and other incidental expenses relevant in the consummation of the said transaction;*” and “*possessing, fencing, [and] guarding*” the property.

It is notable in this connection that Atty. Tumulak had been discharging his role as the assignee since the time of the execution of the deed of assignment on March 22, 2010. Considering that he had been in charge of doing all the actions necessary to enforce the interest of his principal since March 22, 2010, and that the forcible intrusion complained about occurred on November 29, 2012, or more than two years from the execution of the deed of assignment, he is reasonably and ineluctably presumed to have coordinated all the actions leading to the intrusion.

Finally, even assuming that the amended decision was valid and enforceable, Atty. Tumulak could not legitimately resort to forcible intrusion to advance the interest of the assignor. The more appropriate action for him would be to cause the annulment of the complainant’s title instead of forcibly entering the property with the aid of armed security personnel.

All told, Atty. Tumulak was guilty of misconduct for circumventing existing laws and disregarding settled rulings in order to commit injustice against the complainant. His conduct betrayed his Lawyer’s Oath “*to support [the] Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein.*” He breached Canon 1, Rules 1.01 and 1.02 of the *Code of Professional Responsibility*, to wit:

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES.

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Rule 1.02 - A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

79 Prologon - Done

To the best of his ability, every lawyer is expected to respect and abide by the law, and to avoid any act or omission that is contrary thereto. The lawyer's personal deference to the law not only speaks of his or her commendable character but also inspires in the public a becoming respect and obedience to the law.¹⁵

The sworn obligation of every lawyer under the Lawyer's Oath and the *Code of Professional Responsibility* to respect the law and the legal processes is a continuing condition for retaining membership in the Legal Profession. The lawyer must act and comport himself or herself in such a manner that would promote public confidence in the integrity of the Legal Profession.¹⁶ Members of the Bar are reminded, therefore, that their first duty is to comply with the rules of procedure, rather than to seek exceptions as loopholes.¹⁷ A lawyer who assists a client in a dishonest scheme or who connives in violating the law commits an act that warrants disciplinary action against him or her.¹⁸

The suspension from the practice of law or disbarment of a lawyer is justified if he or she proves unworthy of the trust and confidence imposed by the Lawyer's Oath, or is otherwise found to be wanting in that honesty and integrity that must characterize the members of the Bar in the performance of their professional duties.¹⁹ Although the Court imposed a six-month suspension from the practice of law on erring lawyers found violating Canon 1, Rules 1.01 and 1.02,²⁰ we adopt the recommendation of the IBP to suspend Atty. Tumulak from the practice of law for a period of two years. Such penalty was appropriate and condign in relation to the misconduct he committed as well as to the prejudice he caused the complainant.

ACCORDINGLY, the Court **FINDS** and **DECLARES** respondent **ATTY. EUGENIO S. TUMULAK** guilty of violating the Lawyer's Oath and Canon 1, and Rules 1.01 and 1.02 of the *Code of Professional Responsibility*; and **SUSPENDS** him from the practice of law for a period of **TWO (2) YEARS EFFECTIVE IMMEDIATELY**, with the **STERN WARNING** that any similar infraction in the future will be dealt with more severely.

This decision is **IMMEDIATELY EXECUTORY**.

Let copies of this decision be furnished to the Office of the Bar Confidant to be appended to the respondent's personal record as an attorney;

¹⁵ See *Jimenez v. Francisco*, A.C. No. 10548, December 10, 2014, 744 SCRA 215, 229.

¹⁶ *Chu v. Guico, Jr.*, A.C. No. 10573, January 13, 2015, 745 SCRA 257, 265.

¹⁷ *Suico Industrial Corp. v. Lagura-Yap*, G.R. No 177711, September 5, 2012, 680 SCRA 145, 162 citing *Lapid v. Laurea*, G.R. No. 139607, October 28, 2002, 391 SCRA 277, 285.

¹⁸ *Guarin v. Limpin*, A.C. No. 10576, January 14, 2015, 745 SCRA 459, 464.

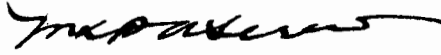
¹⁹ *Ramiscal v. Orro*, A.C. No. 10945, February 23, 2016, 784 SCRA 421, 428.

²⁰ See *Guarin v. Limpin*, A.C. No. 10576, January 14, 2015, 745 SCRA 459 and *Tejada v. Palaña*, A.C. No. 7434, August 23, 2007, 530 SCRA 771.

Eugenio S. Tumulak

to the Integrated Bar of the Philippines; and to all courts in the Philippines for their information and guidance.

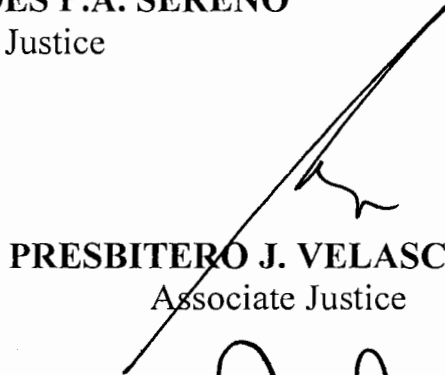
SO ORDERED.



MARIA LOURDES P.A. SERENO
Chief Justice



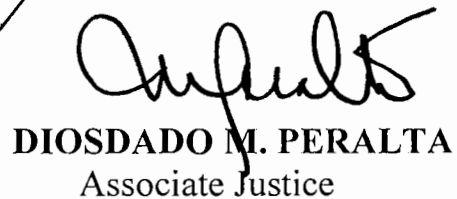
ANTONIO T. CARPIO
Associate Justice



PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



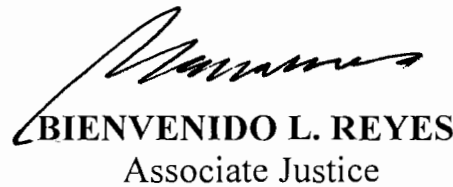
LUCAS P. BERSAMIN
Associate Justice



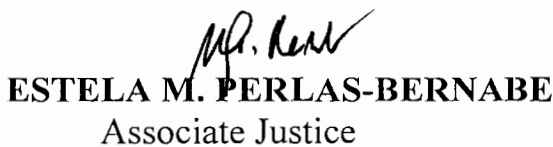
MARIANO C. DEL CASTILLO
Associate Justice



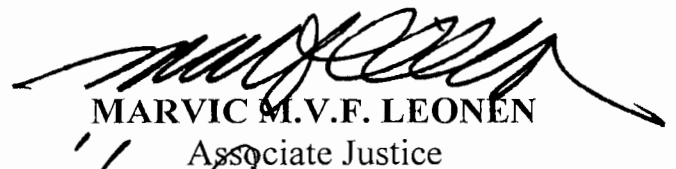
JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



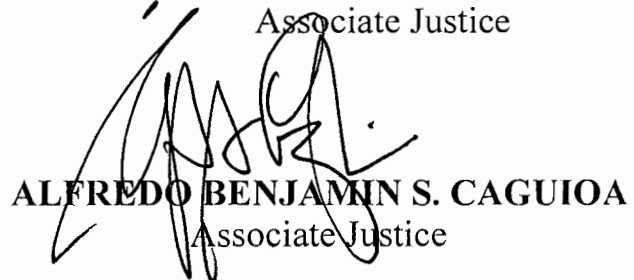
ESTELA M. PERLAS-BERNABE
Associate Justice



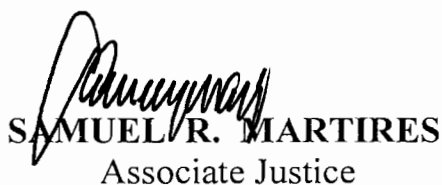
MARVIC M.V.F. LEONEN
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



SAMUEL R. MARTIRES
Associate Justice



NOEL C. YNAM
Associate Justice