



SUPREME COURT OF THE PHILIPPINES
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**Republic of the Philippines
Supreme Court
Manila**

SECOND DIVISION

**PRESIDING JUDGE SUZANNE
D. COBARRUBIAS-NABAZA,**
Metropolitan Trial Court, Br. 93,
Marikina City,

A.M. No. 2017-07-SC

Complainant,

- versus -

**ATTY. ALBERT N.
LAVANDERO,** Court Attorney
IV, Legal Office, Office of the
Court Administrator,

Respondent.

x-----x

A.C. No. 12323

**RE: Resolution Dated September
10, 2018 in A.M. No. 2017-07-SC**

Present:

**PRESIDING JUDGE SUZANNE
D. COBARRUBIAS-NABAZA,**
Metropolitan Trial Court, Br. 93,
Marikina City,

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

Complainant,

- versus -

**ATTY. ALBERT N.
LAVANDERO,** Court Attorney
IV, Legal Office, Office of the
Court Administrator,

Respondent.

x-----x

Promulgated:
MAR 14 2022

DECISION

PERLAS-BERNABE, J.:

For the Court's resolution is the letter¹ dated October 12, 2016 filed by Presiding Judge Suzanne D. Cobarrubias-Nabaza (complainant) of the Metropolitan Trial Court of Marikina City, Branch 93 (MeTC-Marikina Br. 93) accusing respondent Atty. Albert N. Lavandero (respondent), Court Attorney IV, Legal Office of the Office of the Court Administrator (OCA), of violating multiple provisions of the Code of Professional Responsibility (CPR). This letter is docketed as an administrative proceeding against respondent as an employee of the Judiciary (A.M. No. 2017-07-SC), and thereafter, as an administrative disciplinary case against him as a member of the Bar (A.C. No. 12323).

The Facts

Complainant alleged that respondent was a co-plaintiff in a BP 22 case pending before her *sala*. After promulgating a ruling favorable to respondent, a number of therein defendant's properties, including a Black *Hyundai Accent* (subject vehicle), were placed under *custodia legis* for levy, execution, and auction sale. Complainant then discovered that despite the absence of any public auction, respondent had taken the subject vehicle in and out of court premises on three (3) occasions without her prior knowledge and approval, as evinced by various CCTV footages which caught respondent performing such acts.² This prompted complainant to write a letter dated October 12, 2016 addressed to the Office of the Court Administrator (OCA), which in turn, referred the same to the Office of Administrative Services – Supreme Court (OAS-SC) for formal investigation, docketed as A.M. No. 2017-17-SC.³

In defense, respondent maintained that he had the authority to take the subject vehicle, claiming that it underwent a public auction on August 19, 2016 where he was declared as the highest bidder thereof. Respondent then insisted that any perceived irregularities relating to the auction of the subject vehicle should instead be blamed on the sheriff who was negligent in his duties.⁴

The OAS-SC's Report and Recommendation

After due proceedings, the OAS-SC issued a Memorandum⁵ dated July 20, 2018 recommending that: (a) respondent be found guilty of Conduct

¹ See *rollo* (A.C. No. 12323), pp. 613-614.

² See *id.* at 205-206.

³ See OAS Memorandum dated July 20, 2018 signed by (then-) Acting Chief Administrative Officer, OAS-SC, Atty. Ma. Carina M. Cunanan; *id.* at 205.

⁴ See *id.* at 206-208.

⁵ *Id.* at 205-213.

Prejudicial to the Best Interest of the Service for taking and removing the subject vehicle under *custodia legis* without the knowledge and approval of the court, and accordingly, be meted with the penalty of a fine amounting to ₱10,000.00, with a warning that a repetition of the same or similar acts in the future will be dealt with more severely; and (b) the matter be referred to the Office of the Bar Confidant (OBC) for appropriate action, considering that respondent's conduct appears to be a violation of the Lawyer's Oath and/or the CPR.⁶ In so recommending, the OAS-SC found that respondent and the sheriff committed various irregularities in relation to the subject vehicle, as evinced by the following circumstances: (a) the non-compliance with the proper procedure for the auction of levied properties, such as the posting of notices; (b) the numerous times that the subject vehicle was taken out and thereafter returned to court premises without the court's prior knowledge and approval; and (c) the lack of any documentary evidence that the subject vehicle was indeed included in the auction sale conducted on August 19, 2016.⁷

In Resolutions dated September 10, 2018⁸ and November 5, 2018,⁹ the Court docketed the matter as a separate administrative case against respondent, *i.e.*, A.C. No. 12323, and thereafter, required the latter to show cause as to why he should not be sanctioned as a member of the Bar.¹⁰ In this connection, both complainant and respondent submitted their respective position papers which essentially reiterated their contentions in A.M. No. 2017-07-SC.¹¹

Meanwhile, on November 17, 2019, respondent resigned from his position as Court Attorney IV, Legal Office, OCA.¹²

The OBC's Report and Recommendation

In a Report and Recommendation¹³ dated March 1, 2021, the OBC recommended that respondent be found administratively liable as a member of the Bar, and accordingly, be meted with the penalty of suspension from the practice of law for a period of one (1) year.¹⁴

The OBC found that respondent violated Rule 1.01, Canon 1 and Rules 10.01 and 10.03, Canon 10 of the CPR when he blatantly violated the rule on *custodia legis* by repeatedly taking the subject vehicle out of the court premises without the prior knowledge of and authority from MeTC-Marikina Br. 93. The OBC did not lend credence to respondent's claim that he was the

⁶ Id. at 213.

⁷ See id. at 209-212.

⁸ Id. at 1-2.

⁹ Id. at 6-7.

¹⁰ See id. at 1 and 6.

¹¹ See id. at 540-552 and 603-612.

¹² Was verbally inquired from the Office of Administrative Services, Supreme Court of the Philippines.

¹³ *Rollo* (A.C. No. 12323), pp. 482-487.

¹⁴ Id. at 487.

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highest bidder in the auction of the said vehicle conducted on August 19, 2016, in the absence of any document supporting the same. In this regard, the OBC opined that of all people, respondent should have been well-versed with the proper procedure in dealing with properties under *custodia legis*, considering his previous works as a court employee at the Court of Appeals, a Branch Clerk of Court of a Regional Trial Court, and a Court Attorney IV of the Legal Office, OCA. For his misconduct, respondent deserves to be sanctioned. Finally, the OBC pointed out that to date, respondent has yet to pay the ₱10,000.00 fine imposed on him in A.M. No. 2017-07-SC, and hence, should be made to pay for the same.¹⁵

The Issue Before the Court

The essential issue for resolution is whether or not respondent should be administratively sanctioned for the acts complained of.

The Court's Ruling

The Court adopts the findings and recommendations of the OAS-SC and the OBC, respectively, except for the penalty to be imposed in A.M. No. 2017-07-SC.

I. A.M. No. 2017-07-SC

At the outset, it bears pointing out that respondent's supervening resignation during the pendency of an administrative case against him will not prevent the Court from determining his administrative liability and meting the proper penalty therefor. It is settled that "[c]essation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint against him while he was still in the service nor does it render said administrative case moot and academic."¹⁶ Expounding further on this matter, the Court in *OCA v. Fuensalida*¹⁷ held:

Jurisprudence is replete with rulings that in order for the Court to acquire jurisdiction over an administrative proceeding, the complaint must be filed during the incumbency of the respondent public official or employee. This is because the filing of an administrative case is predicated on the holding of a position or office in the government service. However, once jurisdiction has attached, the same is not lost by the mere fact that the public official or employee was no longer in office during the pendency of the case. In fine, cessation from office by reason of resignation, death or retirement is not a ground to dismiss the case filed against the said officer or employee at the time that he was still in the public service or render it moot and academic.¹⁸

¹⁵ See *id.* at 485-487.

¹⁶ *Baquerfo v. Sanchez*, 495 Phil. 10, 16-17 (2005); citations omitted.

¹⁷ See A.M. No. P-15-3290, September 1, 2020.

¹⁸ See *id.*, citing *OCA v. Grageda*, 706 Phil. 15, 21 (2013).

In this case, the instant administrative matter was instituted against respondent when he was still actively employed by the Court as a Court Attorney IV in the Legal Office of the OCA. As such, his resignation on November 17, 2019 will not prevent the Court from determining the existence of any administrative liability on his part, and if the finding is in the affirmative, to impose on him the proper sanctions.

After a punctilious examination of the records, the Court agrees with the findings of the OAS-SC that respondent, in connivance with the sheriff, committed irregularities when he skirted various processes and procedures relating to properties in *custodia legis*, such as the subject vehicle. Contrary to respondent's claims, the said vehicle has not undergone any valid auction proceedings – particularly the one purportedly held on August 19, 2016, as evinced by the Notice of Levy and Sale¹⁹ which did not include the said vehicle among the properties to be auctioned on that date. In spite of this, respondent still repeatedly took the same in and out of court premises without the prior knowledge and approval of MeTC-Marikina Br. 93. Clearly, these are acts of misconduct for which respondent must be held administratively liable.

It is well to clarify, however, that respondent's acts cannot be officially deemed as either Grave Misconduct or Simple Misconduct since said acts were not committed in relation to his official duties as Court Attorney IV, Legal Office of the OCA. Under prevailing case law, "misconduct is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer."²⁰ "Without the nexus between the act complained of and the discharge of duty, the charge of misconduct shall necessarily fail."²¹ Thus, "where the misconduct committed was not in connection with the performance of duty, the proper designation of the offense should not be Misconduct but rather, Conduct Prejudicial to the Best Interest of the Service[.]"²² as recommended by the OAS-SC.

However, it appears that the OAS-SC's recommended penalty of a fine in the amount of ₱10,000.00 is bereft of legal basis.

In determining the proper penalty to be imposed on respondent, the Court notes that respondent committed the acts complained of in 2016, when the 2011 Revised Rules on Administrative Cases in the Civil Service (2011 RRACCS) was still applicable to all Judiciary personnel who are not justices

¹⁹ *Rollo* (A.C. No. 12323), pp. 693-698.

²⁰ See *Rodil v. Posadas*, A.M. No. CA-20-36-P, August 3, 2021; citations omitted.

²¹ See *id.*; citations omitted.

²² See *id.*; citations omitted.

or judges, such as respondent, by virtue of the incorporation clause²³ found in the Code of Conduct for Court Personnel.²⁴

However, it must be noted that due to the Court's promulgation of the Resolutions dated October 2, 2018²⁵ and July 7, 2020²⁶ in A.M. No. 18-01-05-SC, Rule 140 of the Rules of Court was amended, resulting in, *inter alia*, the expansion of its scope to cover all administrative cases against all judges and justices of the lower courts, as well as all other court officials and employees. This development posed a novel question as to which rule shall govern administrative cases involving non-judge/justice judiciary personnel who committed the act/omission subject of the administrative case prior to

²³ The pertinent provision of the Code of Conduct for Court Personnel reads:

INCORPORATION OF OTHER RULES

SECTION 1. All provisions of law, Civil Service rules, and issuances of the Supreme Court governing or regulating the conduct of public officers and employees applicable to the Judiciary are deemed incorporated into this Code.

²⁴ See *Boston Finance and Investment Corporation v. Gonzalez*, 841 Phil. 701 (2018).

²⁵ Pertinent portions of the Resolution dated October 2, 2018 in A.M. No. 18-01-05-SC read:

NOW, THEREFORE, the Court resolved to:

x x x x

2. APPROVE the recommendation of the Technical Working Group to amend Rule 140 of the Rules of Court, subject to the following modifications under Sections 1, 2, 4, 6, 9, 11, 12 thereof:

x x x x

RULE 140

**DISCIPLINE OF JUDGES OF REGULAR AND SPECIAL COURTS,
JUSTICES OF THE COURT OF APPEALS, THE SANDIGANBAYAN, COURT
OF TAX APPEALS, COURT ADMINISTRATOR, DEPUTY COURT
ADMINISTRATOR AND ASSISTANT COURT ADMINISTRATOR**

SECTION 1. *How Instituted.* — Proceedings for the discipline of Justices of the Court of Appeals, the Sandiganbayan, Court of Tax Appeals and Judges and personnel of the lower courts, including the Shari'a Courts, and the officials and employees of the Office of the Jurisconsult, Court Administrator, Deputy Court Administrator, Assistant Court Administrator and their personnel, may be instituted, *motu proprio*, by the Supreme Court, in the Judicial Integrity Board. (Emphases and underscoring supplied)

x x x x

²⁶ Pertinent portions of the Resolution dated July 7, 2020 in A.M. No. 18-01-05-SC read:

**AMENDMENTS TO RULE 140
OF THE REVISED RULES OF COURT**

RULE 140

DISCIPLINE OF JUDGES OF REGULAR, SPECIAL OR *SHARI'AH* COURTS, PRESIDING JUSTICES AND ASSOCIATE JUSTICES OF THE COURT OF APPEALS, THE SANDIGANBAYAN, COURT OF TAX APPEALS, AND *SHARI'AH* HIGH COURT, COURT ADMINISTRATOR, DEPUTY COURT ADMINISTRATORS AND ASSISTANT COURT ADMINISTRATORS, AND PERSONNEL OF THE JUDICIARY

Section 1. How Instituted. — Proceedings for the discipline of the Presiding Justices and Associate Justices of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the *Shari'ah* High Court and Judges of the lower courts, including the *Shari'ah* District or Circuit Courts, and the officials and employees of the Judiciary, Court Administrator, Deputy Court Administrators, Assistant Court Administrators and their personnel, may be instituted, *motu proprio*, by the Supreme Court, in the Judicial Integrity Board. (Emphases and underscoring supplied)

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the amendment to Rule 140 and are still pending resolution after the said amendment became effective, as in this case. This matter was addressed by the Court *En Banc* in the recent case of *Dela Rama v. De Leon (Dela Rama)*,²⁷ where it held that Rule 140 would apply in the aforementioned scenario, *unless* such application would be more prejudicial to the non-judge/justice judiciary personnel involved, *viz.*:

In the interest of a uniform application of charges and imposition of penalties in the administrative cases involving Judiciary personnel, **we will apply Rule 140 of the Revised Rules of Court since it is the prevailing rule at present, unless the retroactive application of Rule 140 would not be favorable to the employee.** Otherwise stated, **if the application of Rule 140, as amended would be prejudicial to the employee, then the framework of rules prevailing at the time of the commission of the offense should apply** (*e.g.*, URACCS in this case). This mirrors the rule in Criminal Law that penal laws shall have a retroactive effect if the same is favorable to the accused – which the Court, as a matter of policy now adopts.²⁸ (emphases and underscoring supplied)

Hence, in order to determine if Rule 140 would be the more prejudicial rule, and therefore inapplicable to the respondent, there is a need to conduct a comparative analysis between (1) the prevailing framework of civil service rules at the time of the commission of the offense subject of the administrative case and (2) the framework of penalties under Rule 140. Ultimately, this comparison would entail a determination of which of these frameworks shall provide for a lighter imposable penalty, given the prevailing circumstances of the case.

To restate, respondent is found administratively liable for Conduct Prejudicial to the Best Interest of the Service. Under Section 46 (B) (8) of the 2011 RRACCS, it is classified as a grave offense punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense. However, the disciplining authority may allow payment of fine in place of suspension, provided that: (a) the circumstances provided under Section 47 (1)²⁹ of the 2011 RRACCS are present; (b) the respondent is found administratively liable

²⁷ See A.M. No. P-14-3240, March 2, 2021.

²⁸ See *id.*; citation omitted.

²⁹ Section 47 (1) of the 2011 RRACCS reads:

Section 47. *Penalty of Fine.* – The following are the guidelines for the penalty of fine:

1. Upon the request of the head of office or the concerned party and when supported by justifiable reason/s, the disciplining authority may allow payment of fine in place of suspension if any of the following circumstances are present:

a. When the functions/nature of the office is impressed with national interest such as those involved in maintenance of peace and order, health and safety, education; or

b. When the respondent is actually discharging frontline functions or those directly dealing with the public and the personnel complement of the office is insufficient to perform such function; and

c. When the respondent committed the offense without utilizing or abusing the powers of his/her position or office.

for (i) a grave, less grave, or light offense and the penalty imposed is suspension for a period of six (6) months or less, or (ii) a grave offense but a mitigating circumstance is present, and the penalty imposed is suspension for a period of six (6) months and one (1) day;³⁰ and (c) the amount of the fine to be paid shall be equivalent to the respondent's salary for the period that he/she ought to have been suspended.³¹

Applying the foregoing rules, and further considering the OAS-SC's finding of mitigating circumstances consisting of respondent's outstanding performance ratings in the last rating periods and the fact that this is his first offense, respondent would have been meted with the penalties of either suspension for a period of six (6) months and one (1) day, or to pay a fine in an amount equivalent to his salary for six (6) months, or a total of ₱604,728.00.³²

On the other hand, Section 22 (3) of Rule 140 categorizes the same as a serious charge, punishable by any of the following penalties: (a) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or -controlled corporations; *provided, however*, that the forfeiture of benefits shall in no case include accrued leave credits; (b) suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or (c) a fine of more than ₱100,000.00 but not exceeding ₱200,000.00.³³ Since the penalties of dismissal and suspension may no longer be imposed on respondent due to his supervening resignation, he may only be meted with the penalty of a fine.

From the foregoing, it readily appears that the application of Rule 140 in this case would be less prejudicial to respondent; and hence, he should be penalized under this penalty framework. In light of the mitigating circumstances appreciated by the OAS-SC, the Court finds it reasonable to impose on respondent the penalty of a fine in the reduced amount of ₱90,000.00.³⁴

³⁰ See Section 47 (2), 2011 RRACCS.

³¹ See *id.*

³² As of present time, the salary grade of a Court Attorney IV is SG-25, which is equivalent to a gross salary of ₱100,788.00 per month. (See Republic Act No. 11466, otherwise known as the "Salary Standardization Law of 2019.")

³³ See Section 25 (A) of Rule 140, as amended by A.M. No. 21-03-17-SC entitled "AMENDMENTS TO THE FINES PROVIDED IN RULE 140 OF THE REVISED RULES OF COURT."

³⁴ See *Office of the Court Administrator v. Chavez* (815 Phil. 41, [2017]) and *Moreno v. Court of Appeals* (G.R. No. 238566, February 20, 2019) where the Court reduced the penalty imposed on the concerned personnel due to the existence of the mitigating circumstances of first offense and prior outstanding performance, respectively.

II. A.C. No. 12323

Canon 6³⁵ of the CPR expressly provides that the rules governing the conduct of lawyers shall apply to those in the government service. Thus, the fact that respondent was occupying a government position at the time he committed the acts complained of will not insulate him from any administrative disciplinary proceedings as a member of the Bar. Verily, case law states that “where a lawyer’s misconduct as a government official is of such nature as to affect his qualification as a lawyer or to show moral delinquency, then he may be disciplined as a member of the [B]ar on such grounds.”³⁶

As officers of the court, lawyers are called upon to assist in the administration of justice. They are vanguards of the legal system who are tasked to protect and uphold the truth and the rule of law; and are expected to act with honesty in all their dealings, especially with the court.³⁷ Otherwise stated, “[t]o say that lawyers must at all times uphold and respect the law is to state the obvious, but this statement’s profound importance can never be overstressed. Considering that, of all classes and professions, lawyers are most sacredly bound to uphold the law, it is imperative that they also live by the law.”³⁸ In this regard, the CPR emphatically reiterates the core values of honesty, integrity, and trustworthiness,³⁹ as evinced in its numerous provisions, such as Rule 1.01, Canon 1, and Rules 10.01 and 10.03, Canon 10, all of which respectively read:

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.

X X X X

CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

RULE 10.01 A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead or allow the Court to be misled by any artifice.

X X X X

³⁵ Canon 6 of the CPR reads:

CANON 6 — THESE CANONS SHALL APPLY TO LAWYERS IN GOVERNMENT SERVICE IN THE DISCHARGE OF THEIR TASKS.

³⁶ See *Lahm III v. Mayor, Jr.*, 682 Phil. 1, 9 (2012), citing *Ali v. Bubong*, 493 Phil. 172, 182 (2005).

³⁷ *Genato v. Mallari*, A.C. No. 12486, October 15, 2019, 924 SCRA 21, 283, citing *Jimenez v. Francisco*, 749 Phil. 551, 568 (2014).

³⁸ *Id.*, citing *Resurreccion v. Sayson*, 360 Phil. 313, 315 (1998).

³⁹ See *Lim v. Mendoza*, A.C. No. 10261, July 16, 2019, 909 SCRA 60, 68.

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RULE 10.03 A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

Finally, Rule 12.04, Canon 12 exhorts all lawyers to assist in the speedy and efficient administration of justice, and in furtherance of this purpose, prohibits them from, *inter alia*, misusing court processes, to wit:

CANON 12 — A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

X X X X

RULE 12.04 A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

X X X X

In this case, respondent failed to abide by these tenets when he committed the acts as already discussed above. In so doing, respondent failed to fulfill his solemn oath of upholding and obeying the law and its legal processes, and even misused court processes for his own personal gain. In so doing, he committed an act of falsehood and engaged in an unlawful, dishonest, and deceitful conduct – for which he must be duly sanctioned.

Anent the proper penalty to be imposed on respondent as a member of the bar, the Court, in *Salomon, Jr. v. Frial*,⁴⁰ has previously meted the penalty of suspension from the practice of law for a period of one (1) year for taking a vehicle under *custodia legis* without the court's prior knowledge and authority. Guided by this pronouncement, the Court hereby metes the same penalty on respondent, as recommended by the OBC.

WHEREFORE, the Court rules as follows:

1. In A.M. No. 2017-07-SC, respondent Atty. Albert N. Lavandero is found **GUILTY** of Conduct Prejudicial to the Best Interest of the Service, which is mitigated by the circumstances of outstanding performance ratings in the last rating periods and first offense. Accordingly, he is meted with a penalty of a **FINE** in the amount of ₱90,000.00; and
2. In A.C. No. 12323, respondent Atty. Albert N. Lavandero is found **GUILTY** of violating Rule 1.01, Canon 1; Rules 10.01 and 10.03, Canon 10; and Rule 12.04, Canon 12 of the Code of Professional Responsibility. Accordingly, he is **SUSPENDED** from the practice

⁴⁰ 586 Phil. 580 (2008).

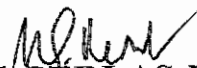
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of law for a period of one (1) year, effective immediately upon his receipt of this Decision, with a **STERN WARNING** that a repetition of the same or similar acts in the future shall be dealt with more severely.

He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

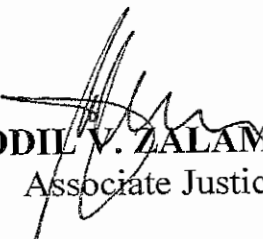
Let copies of this Decision be furnished the Office of the Bar Confidant to be entered in respondent's personal record as a member of the Philippine Bar, the Integrated Bar of the Philippines for distribution to all its chapters, and the office of the Court Administrator for circulation to all courts.

SO ORDERED.

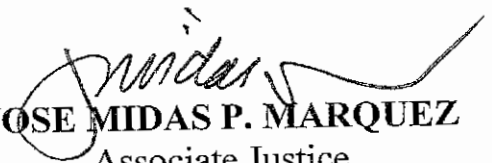

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Division Chairperson

WE CONCUR:


RAMON PAUL L. HERNANDO
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice