



Republic of the Philippines
Supreme Court
Manila

EN BANC

OFFICE OF THE COURT
ADMINISTRATOR,
Complainant,

A.M. No. RTJ-18-2514
[Formerly A.M. No. 16-10-387-RTC]

Present:

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

- versus -

JUDGE HECTOR B. SALISE,
PRESIDING JUDGE, BRANCH
7, REGIONAL TRIAL COURT,
BAYUGAN CITY, AGUSAN
DEL SUR,

Respondent.

Promulgated:

January 30, 2018

X-----*[Signature]*-----X

DECISION

PER CURIAM:

This case is pursuant to the judicial audit conducted in the Regional Trial Courts (RTC), Branch 6, Prosperidad and Branch 7, Bayugan City, both in the Province of Agusan del Sur. At that time, respondent Judge Hector B. Salise was the Acting Presiding Judge of Branch 6 and the Executive Judge of Branch 7.

* On leave.
** On official leave.

The following are the factual and procedural antecedents of the instant case:

For Branch 6, RTC, Prosperidad, the judicial audit team found that the court allowed substituted service of summons when, under Section 6¹ of the Rule on Declaration of Nullity of Void Marriages and Annulment of Voidable Marriages, the modes of service of summons are only: a) personal service or service in person on defendant; and b) service by publication. In Criminal Case No. 8172, entitled *People v. Peter*, for Qualified Theft, in which no bail was recommended, the court granted the Urgent Petition for Bail without first conducting a hearing to prove that the evidence of guilt against the accused was strong despite the offense charged being a capital offense, in violation of Sections 7² and 8,³ Rule 114 of the Rules of Criminal Procedure. In Criminal Case No. 8155, entitled *People v. Lopez, Jr.*, for Illegal Possession of an Explosive, in which no bail was again recommended as the offense charged is considered a capital offense under Presidential Decree (P.D.) 1866,⁴ as amended by Republic Act (R.A.) 9516,⁵ the court once again granted the reduction of bail in the amount of ₱20,000.00 even if there was no showing that a bail hearing was conducted.

In Civil Case No. 1639, a case for Declaration of Nullity of Marriage, Judge Salise prematurely rendered a decision granting the petition, without ruling on the petitioner's motions to dispense with the presentation of her last witness and to admit her Formal Offer of Exhibits, and even though the case was still set for hearing in a month's time.

¹ A.M. No. 02-11-10-SC, March 4, 2003.

Section 6. Summons. - The service of summons shall be governed by Rule 14 of the Rules of Court and by the following rules:

(1) Where the respondent cannot be located at his given address or his whereabouts are unknown and cannot be ascertained by diligent inquiry, service of summons may, by leave of court, be effected upon him by publication once a week for two consecutive weeks in a newspaper of general circulation in the Philippines and in such places as the court may order. In addition, a copy of the summons shall be served on the respondent at his last known address by registered mail or any other means the court may deem sufficient.

x x x

² **Section 7. Capital offense of an offense punishable by reclusion perpetua or life imprisonment, not bailable.** — No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.

³ **Section 8. Burden of proof in bail application.** — At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, *reclusion perpetua*, or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial, but upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify.

⁴ Entitled *Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations thereof and for Relevant Purposes.*

⁵ Entitled *An Act Further Amending the Provisions of Presidential Decree No. 1866* x x x.

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The manner by which Judge Salise dismissed several cases before this court would suggest impropriety, manifest bias and partiality, grave abuse of discretion, and gross ignorance of the law and procedure. Notably, Judge Salise ordered the dismissal of Criminal Case Nos. 7912, 7999, and 8000 before the scheduled day of arraignment, while Criminal Case No. 8028 was dismissed prior to the scheduled hearing on the Motion to Suppress Illegally Seized Evidence and without the accused filing a motion for said dismissal. The court personnel of Branch 6 likewise testified that Judge Salise would call cases, although they were not included in the calendar of cases for hearing, even to the point of dismissing these cases.

Judge Salise also issued a Resolution dated September 5, 2014 in a case which was never docketed in Branch 6 for failure to pay the required docket fee. The court staff only came to know about this when someone filed a Motion for Reconsideration of said Resolution sometime in September 2014.

For Branch 7, RTC, Bayugan City, Judge Salise may be considered to have railroaded the proceedings for a number of cases for declaration of nullity of marriage. In Civil Case No. 1887, Judge Salise rendered a decision granting the petition barely eight (8) months since the case was filed on July 14, 2014, without conducting the mandatory pre-trial, and worse, without petitioner presenting his evidence before the court. In Civil Case No. 1770, he proceeded with the hearing of the case and later penned a decision granting the petition although the court did not acquire jurisdiction over the person of the respondent as the summons was returned to the court unserved. Similarly, in Civil Case No. 1888, he proceeded to hear the case until the same was submitted for decision even if there was a serious question on the court's jurisdiction over the case. In Civil Case No. 1806, he proceeded with and decided the case without complying with the mandatory requirements under the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages such as the investigation report of no collusion between the parties from the public prosecutor, the pre-trial, and the notice to the respondent. In other cases, he proceeded with and decided the case without due notice to the respondents. In Civil Case No. 1506, he again decided the case in favor of the petitioner without the mandatory investigation report of no collusion between the parties from the public prosecutor. And lastly, Judge Salise would allow substituted service of summons in most cases for declaration of nullity of marriage and annulment of voidable marriage before the court in violation of Section 6 of the Rule on Declaration of Nullity of Void Marriages and Annulment of Voidable Marriages.

J. Salise

In Special Proceeding No. 1741 for Cancellation of Affidavit of Legitimation, Judge Salise issued an Order directing the then OIC-Clerk of Court of Branch 7, a non-lawyer, to receive evidence *ex parte*, in violation of the rule⁶ that the court may delegate the reception of evidence to its clerk of court, who is a member of the bar. Also, in several criminal cases, the issuance of warrants of arrest was extremely delayed, taking four (4) to eight (8) months from the time the case was filed.⁷

For his part, Judge Salise apologized for whatever procedural lapses he has committed. He explained that his actions were all done in good faith and judges would sometimes deviate from the rules on a case-to-case basis. He, likewise, claimed that the reported irregularities were mostly due to inadvertence, but he did them in good faith and without malice. He fervently asked for the kind indulgence and consideration of the Court for the lapses, delays, negligence, and inadvertence, and promised to be more circumspect in the future.

On October 21, 2016, after an extensive review and evaluation of the case, the Office of the Court Administrator (*OCA*) recommended the imposition of the extreme penalty of dismissal, thus:

PREMISES CONSIDERED, we respectfully recommend for the consideration of the Court that:

1. the Joint Judicial Audit Report by way of a Memorandum dated 10 September 2015 be **TREATED** as an administrative complaint against Judge Hector B. Salise, Executive Judge, Branch 7, Regional Trial Court, Bayugan City, and formerly Acting Presiding Judge, Branch 6, Regional Trial Court, Prosperidad, both in the Province of Agusan del Sur;

⁶ Section 9, Rule 30 of the Rules of Court provides:

Section 9. *Judge to receive evidence; delegation to clerk of court.* — The judge of the court where the case is pending shall personally receive the evidence to be adduced by the parties. However, in default or *ex parte* hearings, and in any case where the parties agree in writing, the court may delegate the reception of evidence to its clerk of court who is a member of the bar. The clerk of court shall have no power to rule on objections to any question or to the admission of exhibits, which objections shall be resolved by the court upon submission of his report and the transcripts within ten (10) days from termination of the hearing.

⁷ In violation of Section 6, Rule 112 which provides:

Section 6. *When warrant of arrest may issue.* — (a) *By the Regional Trial Court.* — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

J. B. Salise

2. the letter dated 13 November 2015 and the twin compliance letters, both dated 16 November 2015, all of Judge Salise be **NOTED**; and
3. Judge Salise be **ADJUDGED GUILTY** of serious misconduct prejudicial to the integrity and dignity of the judiciary, and be **DISMISSED** from the service, with forfeiture of all or part of the benefits as the Court may determine, except accrued leave credits, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporations.

Respectfully submitted.⁸

The Court's Ruling

The Court finds no logical reason to depart from the findings and recommendations of the OCA.

At the outset, the Court stresses that Judge Salise never refuted, much less denied the aforementioned judicial audit findings and observations. In fact, he even admitted that:

- a. he granted bail to some accused charged with capital offenses in criminal cases in which no bail was recommended, without conducting the mandatory bail hearing. He merely mentioned excuses such as “there is an ongoing settlement,” “private complainant is open to settlement,” the prosecution did not object to the motion for bail,” “to decongest jail,” “upon agreement of the parties,” or “it was done without malice or bad faith”;
- b. with his permission, the court interpreter drafted the Decision in Civil Case No. 1887, granting the petition for declaration of nullity of marriage based solely on the petition and the psychological report, and there were no copies of the Pre-trial Order, the Order showing that petitioner had been presented, and the minutes. No transcript of stenographic notes could likewise be seen in the records at the time of the judicial audit;
- c. he erred in proceeding to hear the case in Civil Case No. 1770 (for declaration of nullity of marriage) when the return of the summons states that it is unserved. He decided the case in favor of the petitioner despite the court’s lack of jurisdiction over the defendant;

⁸ Evaluation and recommendation submitted by Officer-in-Charge Raul B. Villanueva and Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino, dated October 21, 2016. *Rollo*, pp. 238-239.

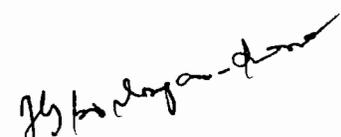
Jenny Lind R. Aldecoa-Delorino

- d. his act of proceeding to hear the case in Civil Case No. 1888 (for declaration of nullity of marriage) despite the question on the court's jurisdiction was due to the words of the petitioner's lawyer that his client was able to find a job in Bayugan and that he was renting a house in Purok II, Poblacion, Bayugan City;
- e. he failed to issue an Order directing the public prosecutor to conduct a background check in Civil Case Nos. 1506 and 1806, both for declaration of nullity of marriage, due to a mere oversight and the same was without malice; and
- f. he allowed plea-bargaining in cases for violation of R.A. 9165 or the Dangerous Drugs Act of 2002, with the consent of the prosecution in order to decongest the jails.

Furthermore, Judge Salise failed to refute several factual circumstances, showing an implied admission of their truthfulness and accuracy. It was established that he rendered a premature decision in Civil Case No. 1639 (for declaration of nullity of marriage) granting the petition without first ruling on the pending motions filed by the petitioner. He likewise dismissed criminal cases on his own initiative, supposedly "for paucity of proof and dearth of evidence," even after he had already determined, expressly or impliedly, that there was probable cause against the accused. He ordered the dismissal of these cases after either the accused had been arraigned or after the cases had been set for arraignment.

Judge Salise also dismissed cases based on fabricated grounds. For instance, he issued an Order in Criminal Case No. 7994, for illegal possession of firearm and ammunition, dismissing the case on the ground that "this case has not been moving for almost three (3) years," when in reality, said case was dismissed on May 17, 2013 or less than two (2) months after the same had been filed on March 26, 2013. In Criminal Case No. 8011 for acts of lasciviousness, he dismissed the case *motu proprio* "considering that private complainant x x x has not been appearing in this court since the scheduled hearing of this case." However, an examination of the records of the case would reveal that following the filing of the Information on July 13, 2013, there had only been four (4) settings of the case before it was ordered dismissed on March 24, 2014. Out of those four (4) settings, three (3) were cancelled due to the absence of the defense counsel, ongoing plea-bargaining, and "as there was no showing that private complainant x x x has been notified of the day's setting." Verily, those cancellations could not reasonably be attributed to the private complainant.

Moreover, there were also irregularities in the manner by which Judge Salise disposed of or dismissed criminal cases for violation of R.A. 9165. Supposedly to "decongest the jail," he allowed plea-bargaining as early as

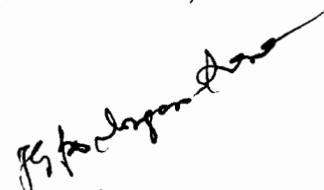


2012, which was still prohibited then under Section 23,⁹ Article II of R.A. 9165. In Criminal Case No. 3441 for possession of dangerous drugs under Section 11, with an imposable penalty of twelve (12) years to life imprisonment and a fine of ₱300,000.00 to ₱500,000.00, he allowed the accused to plead guilty to possession of drug paraphernalia and sentenced him to suffer a straight penalty of one (1) year of imprisonment and to pay a fine of ₱10,000.00. In Criminal Case No. 3488 for violation of Section 5, he allowed the two (2) accused to plead guilty to the lesser offense of use of *shabu* and sentenced them to a straight penalty of six (6) months of imprisonment and to pay a fine of ₱10,000.00. In Criminal Case No. 4450 for possession of dangerous drugs under Section 11, he again allowed the accused to plead guilty to possession of drug paraphernalia and sentenced him to suffer a straight penalty of one (1) year of imprisonment and to pay a fine of ₱5,000.00.

Judge Salise also dismissed similar cases under highly questionable circumstances and without due regard to the applicable procedural rules, to wit:

1. Criminal Case No. 3833 for violation of Section 5, Article II of R.A. 9165 was ordered dismissed “for paucity of proof” even after he had earlier issued an Order finding probable cause against the accused.
2. Criminal Case No. 3882 for violation of Section 11, Article II of R.A. 9165 was ordered dismissed “for lack of probable cause” even after he had earlier issued an Order finding probable cause against the accused.
3. He ordered *motu proprio* the dismissal of Criminal Case No. 4033 for violation of Section 11, Article II of R.A. 9165 against one of the accused “for insufficiency of evidence” even if said accused had already been arraigned and the case was awaiting pre-trial.
4. He ordered *motu proprio* the dismissal of Criminal Case No. 4098 for violation of Section 11, Article II of R.A. 9165 “in chambers” on the ground that the accused “were arrested without a search warrant or warrant of arrest,” even if both of them had already been arraigned and the case had been set for pre-trial conference.

⁹ Struck down as unconstitutional by the Court in *Estipona v. Judge Lobrigo*, G.R. No. 226679, August 15, 2017, thereby allowing plea-bargaining in violations of R.A. 9165.



5. He ordered *motu proprio* the dismissal of Criminal Case No. 4123 for violation of Section 11, Article II of R.A. 9165 on the ground that “the arresting officer dipped into the left pocket of the accused and allegedly found *shabu* worth ₱1,000.00, which is illegal and inadmissible in evidence,” even if the accused had already been arraigned and the pre-trial had been terminated.
6. He ordered *motu proprio* the dismissal of Criminal Case No. 4124 for violation of Section 11, Article II of R.A. 9165 on the ground that “a review of the records shows that SPO1 Juliano M. Ano did not specify how the *shabu* was found at the right hand pocket of the accused and that the latter was not committing a crime in the presence of the police,” even if the case was already at the trial stage.
7. He ordered *motu proprio* the dismissal of Criminal Case No. 4188 for violation of Section 11, Article II of R.A. 9165 after almost nine (9) months since the filing of the case, even if the case had already been set for arraignment. Interestingly, when the accused filed a motion for reduction of bail, Judge Salise dismissed the case *motu proprio* instead of acting on the motion.
8. He ordered *motu proprio* the dismissal of Criminal Case No. 4194 for violation of Section 11, Article II of R.A. 9165 “in chambers” citing the discrepancy between the residential addresses of the accused as appearing in the Information and in the search warrant, even if the accused had already been arraigned and the case had been set for pre-trial conference.
9. He ordered *motu proprio* the dismissal of Criminal Case No. 4247 for violation of Section 11, Article II of R.A. 9165 on the ground that there was a discrepancy between the time of apprehension of the accused as alleged in the Information (9:30 p.m. of June 18, 2014) and that stated in the affidavit of the arresting officer (10:30 p.m. of June 18, 2014). One of the accused had already been arraigned and the pre-trial conference had been scheduled. Upon motion of one of the accused, Judge Salise also ordered the prosecution to conduct a re-investigation and to submit a report on the same. Strangely, however, Judge Salise ordered the dismissal of the case *motu proprio* without waiting for the re-investigation report.
10. He ordered *motu proprio* the dismissal of Criminal Case No. 4317 for violation of Section 11, Article II of R.A. 9165 “for paucity of proof” even if the accused had already been arraigned and the case had been set for pre-trial.

Judge Salise

Judge Salise also never refuted or denied the testimonies of his court personnel affirming his breaches and even saying that litigants and lawyers would frequent his chamber to personally verify their cases. He would call cases, although not included in the court's calendar, "to the point of dismissing" the same. Worse, he was also reported to have issued and signed a Resolution in a case that was not in the court's docket.

The aforementioned circumstances surrounding the proceedings and disposition of cases are far too flagrant to simply be ignored and their totality strongly indicates Judge Salise's corrupt tendencies. His assertions that his procedural lapses were committed in good faith and without any monetary consideration simply do not hold water. The number of cases involved and the manner by which he disposed of said cases clearly show a pattern of misdeeds and a propensity to violate the law and established procedural rules, particularly the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, R.A. 9165, the Revised Rules of Criminal Procedure, and the Rules of Court.

Consequently, the Court finds Judge Salise guilty of serious misconduct.

Indeed, it is settled that, unless the acts were committed with fraud, dishonesty, corruption, malice or ill will, bad faith, or deliberate intent to do an injustice, the respondent judge may not be administratively liable for gross misconduct, ignorance of the law, or incompetence of official acts in the exercise of judicial functions and duties, particularly in the adjudication of cases.¹⁰ However, when the inefficiency springs from a failure to recognize such a basic and fundamental rule, law, or principle, the judge is either too incompetent and undeserving of the position and title vested upon him, or he is too vicious that he deliberately committed the oversight or omission in bad faith and in grave abuse of authority.¹¹ Here, the attendant circumstances would reveal that Judge Salise's acts contradict any claim of good faith.

Although a judge may not always be subjected to disciplinary actions for every erroneous order or decision he issues, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives. If judges wantonly misuse the powers granted to them by the law, there will be, not only confusion in the administration of justice, but also oppressive disregard of the basic requirements under the law and established rules. For repeatedly and deliberately committing

¹⁰ *Andrada v. Judge Banzon*, 592 Phil. 229, 233-234 (2008).

¹¹ *DOJ v. Judge Misleng*, A.M. No. RTJ-14-2369 and A.M. No. RTJ-14-2372, July 26, 2016, 798 SCRA 225, 235.

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irregularities in the disposition of his cases, thereby manifesting corrupt inclinations, Judge Salise can be said to have misused said powers.

Indubitably, Judge Salise violated the Code of Judicial Conduct ordering judges to ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.¹² He simply used oversight, inadvertence, and honest mistake as convenient excuses. He acted with conscious indifference to the possible undesirable consequences to the parties involved.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.¹³

To hold a judge administratively liable for serious misconduct, ignorance of the law or incompetence of official acts in the exercise of judicial functions and duties, it must be shown that his acts were committed with fraud, dishonesty, corruption, malice or ill will, bad faith, or deliberate intent to do an injustice.¹⁴ The Court has repeatedly and consistently held that the judge must not only be impartial but must also appear to be impartial as an added assurance to the parties that his decision will be just. The litigants are entitled to no less than that. They should be sure that when their rights are violated they can go to a judge who shall give them impartial justice. They must trust the judge; otherwise, they will not go to him at all. They must believe in his sense of fairness; otherwise, they will not seek his judgment. Without such confidence, there would be no point in invoking his action for the justice they expect.¹⁵ Judge Salise's acts indubitably violated said trust and confidence, seriously impairing the image of the judiciary to which he owes the duty of loyalty and obligation to keep it at all times above reproach and worthy of the people's trust.¹⁶

¹² Section 2, Canon 3 of the New Code of Judicial Conduct for the Philippine Judiciary.

¹³ *Office of the Ombudsman v. De Zosa*, 751 Phil. 293, 300 (2015).

¹⁴ *Supra* note 10, at 233-234.

¹⁵ *Lai v. People*, 762 Phil. 434, 443 (2015).

¹⁶ *Re: Release by Judge Manuel T. Muro, RTC, Branch 54 Manila, of an Accused in a Non-Bailable Offense*, 419 Phil. 567, 592 (2001).

WHEREFORE, the Court **FINDS** Judge Hector B. Salise, Acting Presiding Judge of Branch 6, Regional Trial Court, Prosperidad and Executive Judge of Branch 7, Regional Trial Court, Bayugan City, both in the Province of Agusan del Sur, **GUILTY** of serious misconduct and hereby **DISMISSES** him from the service with **FORFEITURE** of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice



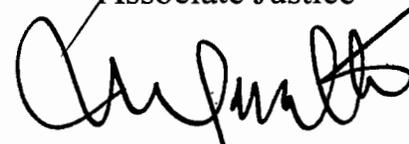
ANTONIO T. CARPIO
Associate Justice



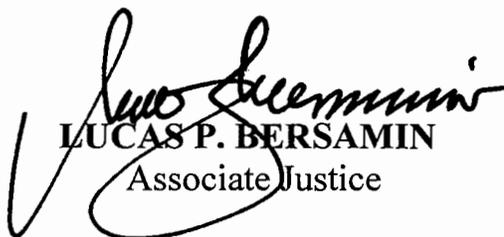
PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILO
Associate Justice

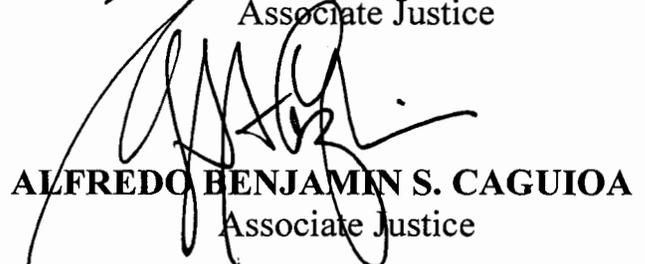
On leave
ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

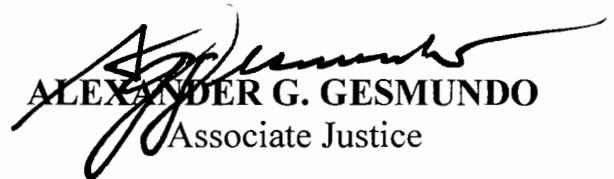


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

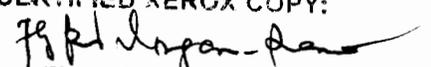
On official leave
SAMUEL R. MARTIRES
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice


ANDRES B. REYES, JR.
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

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