

BY: _____
TIME: _____

Republic of the Philippines
Supreme Court
Manila

EN BANC

JOAQUIN G. BONIFACIO,
Complainant,

A.C. No. 11754

Present:

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

- versus -

**ATTY. EDGARDO O. ERA and
ATTY. DIANE KAREN B.
BRAGAS,**
Respondents.

Promulgated:

October 3, 2017

[Signature]

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DECISION

TIJAM, J.:

This administrative case arose from a verified Affidavit-Complaint¹ filed before the Integrated Bar of the Philippines (IBP) by complainant Joaquin G. Bonifacio (Bonifacio) against respondents Atty. Edgardo O. Era (Atty. Era) and Atty. Diane Karen B. Bragas (Atty. Bragas) for violating the Code of Professional Responsibility (CPR).

¹Rollo, pp. 2-13.

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The Facts

Sometime in 2003, an illegal dismissal case was lodged against Bonifacio and his company, Solid Engine Rebuilders Corporation entitled *Gil Abucejo, Edgar Besmano, Efren Sager, Darlito Sosa, Gerardo G. Talosa, and Salvador Villanueva v. Solid Engine Rebuilders Corporation and/or Joaquin G. Bonifacio*, docketed as NLRC NCR Case No. 00-05-05953-03. Complainants therein (Abucejo Group) were represented by Era and Associates Law Office through Atty. Era.²

On June 15, 2004, the Labor Arbiter found Bonifacio and the corporation liable for illegal dismissal and, consequently, ordered them to pay Abucejo Group their separation pay, full backwages and pro-rated 13th month pay. More specifically, Bonifacio and his corporation were ordered to pay a partially computed amount of ₱674,128 for the separation pay and full backwages, and ₱16,050.65 for the 13th month pay.³ Bonifacio and the corporation brought their case up to the Supreme Court but they suffered the same fate as their appeals and motions were decided against them.⁴

Thus, on January 26, 2006, a Writ of Execution⁵ was issued to implement the June 15, 2004 Decision. A Notice of Garnishment dated February 6, 2006 was likewise issued.⁶ Two alias writs dated May 8, 2008⁷ and April 16, 2013⁸ were later on issued, directing the sheriff to collect the sum of ₱4,012,166.43, representing the judgment award plus interest and attorney's fees.

Meanwhile, an administrative complaint was filed against Atty. Era for representing conflicting interests entitled *Ferdinand A. Samson v. Atty. Edgardo O. Era*, docketed as A.C. No. 6664.⁹ In a July 16, 2013 Decision, this Court found Atty. Era guilty of the charge and imposed the penalty of suspension from the practice of law for two years, the dispositive portion of which reads:

WHEREFORE, the Court FINDS and PRONOUNCES Atty. EDGARDO O. ERA guilty of violating Rule 15.03 of Canon 15, and Canon 17 of the Code of Professional Responsibility; and SUSPENDS him from the practice of law for two years effective upon his receipt of this decision, with a warning that his commission of a similar offense will be dealt with more severely.

²Id. at 424.

³Id. at 128.

⁴Id. at 107-109.

⁵Id. at 148-150.

⁶Id. at 109.

⁷Id. at 151-156.

⁸Id. at 157-159.

⁹*Samson v. Era*, 714 Phil. 101 (2013).

Let copies of this decision be included in the personal record of Atty. EDGARDO O. ERA and entered in [sic] his file in the Office of the Bar Confidant.

Let copies of this decision be disseminated to all lower courts by the Office of the Court Administrator, as well as to the Integrated Bar of the Philippines for its guidance.

SO ORDERED.¹⁰

On November 28, 2013, the scheduled public auction over Bonifacio's and/or the corporation's properties in the business establishment was conducted to implement the alias writ. Atty. Era actively participated therein. He attended the public auction and tendered a bid for his clients who were declared the highest bidders. On the same day, a certificate of sale was issued, which Atty. Era presented to the corporation's officers and employees who were there at that time. Armed with such documents, Atty. Era led the pulling out of the subject properties but eventually stopped to negotiate with Bonifacio's children for the payment of the judgment award instead of pulling out the auctioned properties. Atty. Era summoned Bonifacio's children to continue with the negotiation in his law office. On behalf of his clients, their counter-offer for the satisfaction of the judgment award went from ₱6 Million to ₱9 Million.¹¹

As the parties were not able to settle, on December 3, 2013, Attys. Era and Bragas went back to Bonifacio's business establishment together with their clients and several men, and forced open the establishment to pull out the auctioned properties. This was evidenced by the videos presented by Bonifacio in the instant administrative complaint.¹²

This prompted Bonifacio to file a criminal complaint for malicious mischief, robbery, and trespassing with the Office of the City Prosecutor, Pasay City. In its Resolution¹³ dated March 31, 2014, the Office of the City Prosecutor found probable cause to indict Attys. Era and Bragas for grave coercion.¹⁴

Meanwhile, Atty. Era's name remains to appear in pleadings filed before the NLRC and this Court sometime in February and April, 2014 with regard to the subject labor case.¹⁵

¹⁰Id. at 113.

¹¹*Rollo*, p. 441.

¹²Id. at 5-9.

¹³Id. at 69-74.

¹⁴Id. at 438.

¹⁵Id. at 30 and 62.

On August 8, 2014, Bonifacio filed the instant administrative complaint.¹⁶

In their Answer,¹⁷ Attys. Era and Bragas alleged that Bonifacio has no personal knowledge as to what transpired on November 28, 2013 and December 3, 2013 as the latter was not present therein at that time.¹⁸ Hence, his allegations of force, threat, and intimidation in the execution of the judgment is without basis.¹⁹ In his defense, Atty. Era further argued that he did not violate the Court's order of suspension from the practice of law as he merely acted as his clients' attorney-in-fact pursuant to a Special Power of Attorney²⁰ (SPA) dated May 3, 2006. It is Atty. Era's theory that with such SPA, he was not engaged in the practice of law in representing his clients in the implementation of the alias writ. He added that he never signed any document or pleading on behalf of his clients during his suspension. For Atty. Bragas, being an associate of Era and Associates Law Firm, she was merely representing the Abucejo Group as said law firm's clients. Anent the Php 6 Million to 9 Million counter-offer that they made, Attys. Era and Bragas explained that the parties were still on negotiation, hence, both parties are free to have their own computations, which they could respectively accept or otherwise.²¹

In his Report and Recommendation²² dated March 17, 2015, Investigating Commissioner Jose Villanueva Cabrera recommended the dismissal of the instant administrative complaint for insufficiency of evidence.

The Investigating Commissioner found nothing wrong with the indication of a suspended lawyer's name in a pleading considering that the same was not signed by the latter. There was also no proof that a pleading was prepared by Atty. Era. On the other hand, there was no impediment against Atty. Bragas to sign the pleadings. There was also no proof that in doing so, Atty. Bragas was assisting suspended Atty. Era in filing a pleading. Neither the presence of Atty. Era during the public auction and the negotiations was an implication or proof that Atty. Era was engaging in the practice of law during his suspension. According to the Investigating Commissioner, anybody, not exclusively lawyers, can be present at an auction sale or negotiation.

¹⁶*Rollo*, pp. 2-13.

¹⁷*Id.* at 106-124.

¹⁸*Id.* at 115.

¹⁹*Id.* at 116.

²⁰*Id.* at 185.

²¹*Id.* at 117.

²²*Id.* at 422-434.



As to whether Attys. Era and Bragas violated any rules/laws in the implementation of the judgment by using force, threat, and intimidation, the Investigating Commissioner noted that complainant contradicted such imputations by filing the following pleadings, to wit: (1) a Motion to Close and Terminate Case²³ dated December 18, 2013, acknowledging the full satisfaction of the judgment award and even prayed for Attys. Era and Bragas' clients to take possession of the remaining machines in his business establishment; (2) a Manifestation²⁴ dated March 12, 2014, wherein complainant stated that he has surrendered the vehicles listed in the certificate of sale; (3) an Omnibus Motion with Entry of Appearance (Motion to Withdraw and Motion to Reiterate Motion to Close and Terminate Case and release of TRO Bond²⁵ dated February 4, 2014; (4) A Motion for Consignation with Motion to Lift Levy²⁶ dated October 29, 2014; and (5) a Motion to Withdraw Complaint²⁷ dated December 10, 2013 on the criminal case for Malicious Mischief, Robbery, and Trespassing against Attys. Era and Bragas. In fine, the Investigating Commissioner ratiocinated that in acknowledging the satisfaction of the judgment in the labor case and withdrawing the criminal case that he filed against Attys. Era and Bragas with regard to the implementation of the said judgment, complainant contradicted and demolished his own allegation that the satisfaction of the judgment was improperly and unlawfully implemented.²⁸

Thus, the Investigating Commissioner recommended that the administrative charges against Attys. Era and Bragas be dismissed for insufficiency of evidence.²⁹

The IBP Board of Governors (Board), in its Resolution No. XXI-2015-270³⁰ dated April 18, 2015 reversed and set aside the Investigating Commissioner's findings and conclusions:

RESOLUTION No. XXI-2015-270
CBD Case No. 14-4300
Joaquin G. Bonifacio vs.
Atty. Edgardo O. Era and
Atty. Diane Karen B. Bragas

RESOLVED to REVERSE as it is hereby REVERSED and SET ASIDE, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and considering Atty. Era's continued

²³Id. at 239-242.

²⁴Id. at 244-246.

²⁵Id. at 258-261.

²⁶Id. at 273-275.

²⁷Id. at 351.

²⁸Id. at 431-433.

²⁹Id. at 433-434.

³⁰Id. at 419-420.

*engagement in the practice of law during the period of his suspension by admittedly participating in the negotiation for the payment of money judgment including pegging of interest he acted as his clients advocate instead as an agent in view of the presence also of his client in the negotiation, for holding office and admittedly summoned the complainant's children to determine the money judgment. Hence, Atty. Edgardo O. Era is hereby **SUSPENDED from the practice of law for three (3) years.***

*RESOLVED FURTHER, for her assistance in the unauthorized practice of law of Atty. Edgardo O. Era, Atty. Diane Karen B. Bragas is hereby **SUSPENDED from the practice of law for one (1) month.***

In its Extended Resolution³¹ dated October 17, 2016, the IBP Board of Governors found Atty. Era's argument that he merely acted pursuant to an SPA given to him untenable. The Board explained that the invoked SPA gave Atty. Era the authority to appear and represent the Abucejo Group only on the May 4, 2006 auction and did not include the November 28, 2013 auction. Also, while he was authorized to receive payment on behalf of his clients, the SPA specifically stated that said payments should be made in the form of checks and not machinery or property. Thus, Atty. Era had no authority under the SPA to represent his clients during the November 28, 2013 auction and to pull out and receive the corporation's machines as payment of the judgment award. At any rate, according to the Board, Atty. Era's clients relied on his legal knowledge in having the judgment award satisfied. Clearly, Atty. Era violated Section 28,³² Rule 138 of the Rules of Court.³³

Corollary to this, the Board also found Atty. Bragas liable for allowing and assisting Atty. Era to engage in an unauthorized practice of law. The Board concluded that Atty. Bragas ought to know that Atty. Era's acts during the satisfaction of the alias writ could be performed only by a member of the bar in good standing.³⁴

Pursuant to Section 12(b),³⁵ Rule 139-B of the Rules, the records of the instant case were transmitted to this Court.

³¹Id. at 435-444.

³²Sec. 28. *Suspension of attorney by the Court of Appeals or a Court of First Instance.* – The Court of Appeals or a Court of First Instance may suspend an attorney from practice for any of the causes named in the last preceding section, and after such suspension, such attorney shall not practice his profession until further action of the Supreme Court in the premises.

³³*Rollo*, pp. 441-442.

³⁴Id. at 442-443.

³⁵Section 12. *Review and decision by the Board of Governors.* – x x x x

(b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

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No motion for reconsideration or petition for review was filed by either party as of June 29, 2017.

Necessarily, the Court will now proceed to give its final action on the instant administrative case, the issues being: (1) Did Atty. Era engage in the practice of law during his suspension therefrom that would warrant another disciplinary action against him?; and (2) In the affirmative, is Atty. Bragas guilty of directly or indirectly assisting Atty. Era in his illegal practice of law that would likewise warrant this Court's exercise of its disciplining authority against her?

We sustain the findings and recommendations of the Board of Governors.

Atty. Era's acts constituted "practice of law".

On this matter, Our pronouncement in the landmark case of *Renato L. Cayetano v. Christian Monsod, et. al.*³⁶ is on point. Thus, We quote herein the relevant portions of the said Decision, *viz.*:

Black defines "practice of law" as:

"The rendition of services requiring the knowledge and the application of legal principles and technique to serve the interest of another with his consent. It is not limited to appearing in court, or advising and assisting in the conduct of litigation, but embraces the preparation of pleadings, and other papers incident to actions and special proceedings, conveyancing, the preparation of legal instruments of all kinds, and the giving of all legal advice to clients. It embraces all advice to clients and all actions taken for them in matters connected with the law. An attorney engages in the practice of law by maintaining an office where he is held out to be an attorney, using a letterhead describing himself as an attorney, counseling clients in legal matters, negotiating with opposing counsel about pending litigation, and fixing and collecting fees for services rendered by his associate." (*Black's Law Dictionary*, 3rd ed.)

The practice of law is not limited to the conduct of cases in court. (*Land Title Abstract and Trust Co. v. Dworken*, 129 Ohio St. 23, 193 N.E. 650) A person is also considered to be in the practice of law when he:

³⁶278 Phil. 235 (1991).

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“xxx for valuable consideration engages in the business of advising person, firms, associations or corporations as to their rights under the law, or appears in a representative capacity as an advocate in proceedings pending or prospective, before any court, commissioner, referee, board, body, committee, or commission constituted by law or authorized to settle controversies and there, in such representative capacity performs any act or acts for the purpose of obtaining or defending the rights of their clients under the law. **Otherwise stated, one who, in a representative capacity, engages in the business of advising clients as to their rights under the law, or while so engaged performs any act or acts either in court or outside of court for that purpose, is engaged in the practice of law.**” (*State ex. rel. Mckittrick v. C.S. Dudley and Co.*, 102 S.W. 2d 895, 340 Mo. 852).

This Court in the case of *Philippine Lawyers Association v. Agrava*, (105 Phil. 173, 176-177) stated:

“*The practice of law* is not limited to the conduct of cases or *litigation in court*; it embraces the preparation of pleadings and other papers incident to actions and special proceedings, the management of such actions and proceedings on behalf of clients before judges and courts, and in addition, conveying. In general, all *advice to clients*, and all action taken for them in matters *connected with the law* incorporation services, assessment and condemnation services contemplating an appearance before a judicial body, the foreclosure of a mortgage, enforcement of a creditor's claim in bankruptcy and insolvency proceedings, and **conducting proceedings in attachment**, and in matters of estate and guardianship have been held to constitute law practice, as do the preparation and drafting of legal instruments, **where the work done involves the determination by the trained legal mind of the legal effect of facts and conditions.**” (5 Am. Jur. pp. 262, 263).

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The University of the Philippines Law Center in conducting orientation briefing for new lawyers (1974-1975) listed the dimensions of the practice of law in even broader terms as advocacy, counselling and public service.

“One may be a practicing attorney in following any line of employment in the profession. If what he does exacts knowledge of the law and is of a kind usual for attorneys engaging in the active practice of their profession, and he follows some one or more lines of employment such as this he is a practicing attorney at law within the meaning of the statute.” (*Barr v. Cardell*, 155 NW 312)

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Practice of law means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. "To engage in the practice of law is to perform those acts which are characteristics of the profession. Generally, to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill." (111 ALR 23)³⁷ (Emphasis supplied)

In *Atty. Edita Noe-Lacsamana v. Atty. Yolando F. Bustamante*,³⁸ We succinctly ruled that the term practice of law implies customarily or habitually holding oneself out to the public as a lawyer for compensation as a source of livelihood or in consideration of services. Holding one's self out as a lawyer may be shown by acts indicative of that purpose, such as identifying oneself as an attorney, appearing in court in representation of a client, or associating oneself as a partner of a law office for the general practice of law.³⁹

In this case, it is undisputed that Atty. Era committed the following acts: (1) appeared on behalf of his winning clients in the public auction of the condemned properties; (2) tendered bid in the auction for his clients; (3) secured the certificate of sale and presented the said document to the corporation's officers and employees present in the premises at that time; (4) insisted that his clients are now the new owners of the subject properties, hence, should be allowed entry in the premises; (5) initiated the pull out of the properties; and (6) negotiated with Bonifacio's children in his law office as regards the payment of the judgment award with interest instead of pulling out the properties.⁴⁰

It is true that being present in an auction sale and negotiating matters relating to the same may not be exclusively for lawyers, as opined by the Investigating Commissioner. However, in this case, as aptly put by the Board in its Resolution, Atty. Era's acts clearly involved the determination by a trained legal mind of the legal effects and consequences of each course of action in the satisfaction of the judgment award.⁴¹ Precisely, this is why his clients chose Atty. Era to represent them in the public auction and in any negotiation/settlement with the corporation arising from the labor case as stated in the SPA being invoked by Atty. Era.⁴² Such trained legal mind is what his clients were relying upon in seeking redress for their claims. This is evident from the fact that they agreed not to enter into any amicable settlement without the prior written consent of Atty. Era, the latter being their lawyer.⁴³ It could readily be seen that the said SPA was executed by

³⁷Id. at 241-243.

³⁸677 Phil. 1 (2011).

³⁹Id. at 5.

⁴⁰*Rollo*, pp. 437-438.

⁴¹Id. at 441.

⁴²Id. at 185.

⁴³Id.

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reason of Atty. Era being their legal counsel. Thus, We are one with the Board's submission that the said SPA cannot be invoked to support Atty. Era's claim that he was not engaged in the practice of law in performing the acts above-cited as such SPA cunningly undermines the suspension ordered by this Court against Atty. Era, which We cannot countenance.

Atty. Era was engaged in an unauthorized practice of law during his suspension

As mentioned, Atty. Era was suspended from the practice of law for a period of two years in this Court's Decision dated July 16, 2013. He performed the above-cited acts on the same year, specifically November to December 2013. Indubitably, Atty. Era was engaged in an unauthorized law practice.

Atty. Era's acts constitute willful disobedience of the lawful order of this Court, which under Section 27,⁴⁴ Rule 138 of the Rules of Court is a sufficient cause for suspension or disbarment. Further, Atty. Era's intentional maneuver to circumvent the suspension order not only reflects his insubordination to authority but also his disrespect to this Court's lawful order which warrants reproach. Members of the bar, above anyone else, are called upon to obey court orders and processes.⁴⁵ Graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to their processes.⁴⁶

This case is not novel. We had previously disciplined erring lawyers who continue in their practice despite being suspended by the Court. In *Rodrigo A. Molina v. Atty. Ceferino R. Magat*,⁴⁷ this Court suspended Atty. Magat from the practice of law for practicing his profession despite this Court's previous order of suspension. Likewise in another case, We suspended a lawyer for continuing in her practice despite the clear language of this Court's suspension order.⁴⁸

⁴⁴Sec. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* – A member of the Bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. xxx

⁴⁵*Sebastian v. Bajar*, 559 Phil. 211, 224 (2007).

⁴⁶*Id.*

⁴⁷687 Phil. 1 (2012).

⁴⁸*Ibana-Andrade and Andrade-Casilihan v. Atty. Paita-Moya*, A.C. No. 8313, July 14, 2015, 762 SCRA 571.

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In view of the foregoing, We agree with the Board of Governors' Resolution, finding Atty. Era guilty of willfully disobeying the lawful order of this Court warranting the exercise of Our disciplining authority. We also adopt the Board's recommendation as to the penalty to be imposed upon Atty. Era, *i.e.*, three years suspension from the practice of law, taking into account that this is his second infraction.

Atty. Bragas is guilty of assisting Atty. Era in his unauthorized practice of law and, thus, must likewise be reprovved.

There is no question that Atty. Bragas has knowledge of Atty. Era's suspension from the practice of law and yet, she allowed herself to participate in Atty. Era's unauthorized practice. Clearly, Atty. Bragas violated the CPR, specifically:

CANON 9 – A lawyer shall not, directly or indirectly, assist in the unauthorized practice of law.

Indeed, it is a lawyer's duty to prevent, or at the very least not to assist in, the unauthorized practice of law. Such duty is founded upon public interest and policy, which requires that law practice be limited only to individuals found duly qualified in education *and* character.⁴⁹

As correctly observed by the Board, Atty. Bragas ought to know that Atty. Era's acts constitutive of law practice could be performed only by a member of the Bar in good standing, which Atty. Era was not at that time. Hence, she should have not participated to such transgression.

Being an associate in Atty. Era's law firm cannot be used to circumvent the suspension order. The factual circumstances of the case clearly shows that Atty. Bragas did not act to replace Atty. Era as counsel for his and/or the law firm's clients during the latter's suspension. Atty. Bragas merely assisted Atty. Era, who admittedly was the one actively performing all acts pertaining to the labor case he was handling.

Considering the foregoing, We also adopt the Board's recommendation as regards Atty. Bragas' guilt in the violation of the CPR.

WHEREFORE, premises considered, Atty. Edgardo O. Era is found **GUILTY** of willfully disobeying this Court's lawful order and is hereby **SUSPENDED** from the practice of law for a period of three (3) years, while Atty. Diane Karen B. Bragas is likewise found **GUILTY** of violating

⁴⁹*Cambaliza v. Atty. Cristal-Tenorio*, 478 Phil. 378, 389 (2004).

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CANON 9 of the Code of Professional Responsibility and is hereby **SUSPENDED** from the practice of law for one (1) month, effective immediately from receipt of this Decision. Also, both Attys. Era and Bragas are **WARNED** that a repetition of the same or similar offense, or a commission of another offense will warrant a more severe penalty.

Let a copy of this Decision be entered in the personal records of respondents as members of the Bar, and copies furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.



NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice



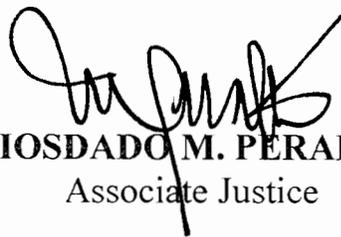
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Associate Justice



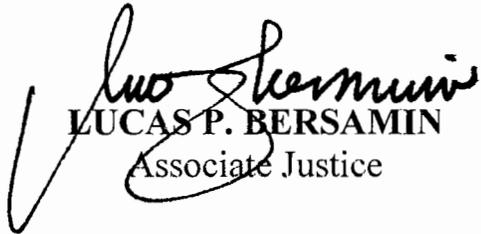
PRESBITERO J. VELASCO, JR.
Associate Justice

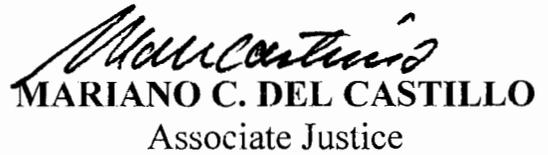


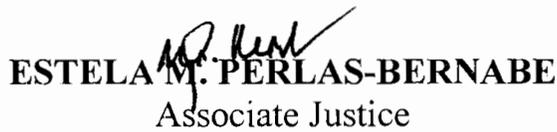
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Associate Justice



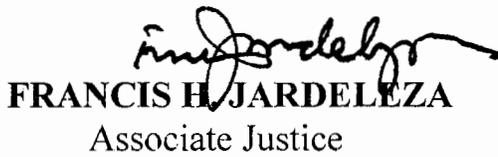
DIOSDADO M. PERALTA
Associate Justice

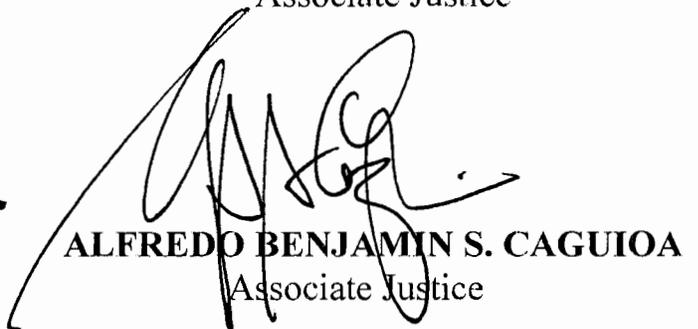

LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

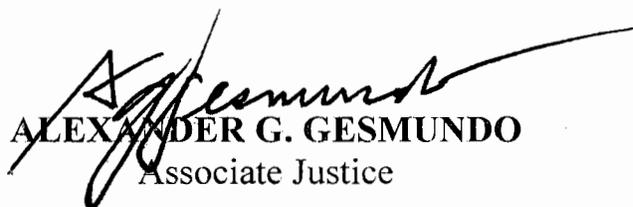

MARVIC M.V.F. LEONEN
Associate Justice

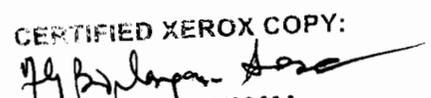

FRANCIS H. JARDELEZA
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


SAMUEL R. MARTIRES
Associate Justice


ANDRES B. REYES, JR.
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

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FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT