| SUPRE | ME COURT OF THE PHILIPPINES PUBLIC INFORMATION OFFICE |
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Republic of the Philippines Supreme Court Manila

EN BANC

EDGAR M. RICO,

Complainant,

A.C. No. 7231

Present:

BERSAMIN, *C.J.*, CARPIO, PERALTA, PERLAS-BERNABE, LEONEN, CAGUIOA, REYES, A., JR., GESMUNDO, REYES, J., JR., HERNANDO, CARANDANG,^{*} LAZARO-JAVIER, INTING, and ZALAMEDA, *JJ*.

- versus –

| ATTYS. JOSE R. MADRAZO, JR., ANTONIO V. A. TAN and LEONIDO | Promulgated: |
|---|---------------------------------------|
| C. DELANTE, | October 1, 2019 |
| Respondents. | · · · · · · · · · · · · · · · · · · · |
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DECISION

PERALTA, J.:

Before the Court is a Complaint for suspension or disbarment filed by herein complainant Edgar M. Rico against herein respondents Attys. Jose R. Madrazo, Jr. (*Madrazo*), Antonio V. A. Tan (*Tan*), and Leonido C. Delante (*Delante*) on grounds of fraud, conduct unbecoming a lawyer, and violation of the Notarial Law.

On official leave.

Complainant alleged in his Complaint¹ that: he is an "allocatee" of a certain parcel of land located in Tulip Drive, Matina, Davao, City; coconut trees are being grown in the said land; respondents, Madrazo and Tan, subsequently filed before the Philippine Coconut Authority (PHILCOA) an application for Permit to Cut these coconut trees; attached to Madrazo's and Tan's application are several Affidavits of No[n]-Encumbrance and Affidavits of Marking the Coconut Trees which they intend to cut; these affidavits were supposedly acknowledged by Madrazo and Tan before Delante; upon verification of the genuineness and validity of these affidavits, complainant found out that the document numbers and page numbers marked on these affidavits, as appearing on the Notarial Register of Delante, correspond to other documents, such as a deed of absolute sale, a secretary's certificate, and other affidavits executed by persons other than Madrazo and Tan. Complainant contends that respondents are guilty of fraud, deceit, malpractice and other gross misconduct in attaching invalid and spurious documents to their application for Permit to Cut coconut trees.

In his Answer,² respondent Delante denied the material allegations in the Complaint and claimed that: on the dates appearing in the Affidavits being disputed by complainant, both respondents Tan and Madrazo personally appeared before him and swore to the truth and veracity of the contents of their Affidavits; in fact, Madrazo holds office in the same building as he does; through inadvertence, Delante's office secretary failed to enter in his notarial register the details of the documents complained of; his secretary's omission was unintentional and done without malice; under settled jurisprudence, even the fact that the questioned documents did not appear in the notarial register, did not make said documents spurious, fake, and non-existent, because the notarial register is not always the memorial of all the daily transactions of a notary public.

In his Comment,³ respondent Madrazo also denied the material allegations in the Complaint and alleged that: the lot being referred to by complainant forms part of a much larger tract of land comprised of more than 127 hectares which was originally covered by Original Certificate of Title No. 5609 in the name of Francisco Villa Abrille Juna (*Francisco*); the subject property was, subsequently, inherited by a certain Milagros Villa Abrille (*Milagros*) who is one of the many heirs of Francisco; on August 12, 1999, complainant leased the subject property from Milagros for a period of two years; for complainant's subsequent failure to pay rentals, Milagros, with herein respondent Madrazo acting as her counsel, filed before the Municipal Trial Court in Cities (*MTCC*) of Davao City an ejectment case against complainant; in his defense, complainant questioned the ownership of Milagros over the subject property contending that her title thereto is spurious; the MTCC as well as the RTC and the CA, and eventually, this

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¹ *Rollo*, Vol. I, pp. 1-5.

 $^{^{2}}$ Id. at 57-59.

Id. at 91-97.

Court all ruled in favor of Milagros; the present Complaint is a mere retaliatory move on the part of the complainant who was ordered ejected from the subject property by reason of the final and executory Decision of this Court; complainant, subsequently, filed a Free Patent Application over the disputed lot and even connived with several persons to deprive Milagros and other members of the Villa Abrille family their rightful possession of their properties. As to the alleged falsification of documents presented by respondents to the PHILCOA, Madrazo claims that before granting the permits applied for by respondents, the PHILCOA inspected the premises of the property subject of the application. Madrazo also claims that he personally appeared before respondent Delante to acknowledge the documents he executed and that he had no knowledge nor participation in the alleged failure to record the said documents in Delante's notarial register.

On his part, respondent Tan, in his Comment,⁴ likewise, denied the material allegations in the Complaint and averred that: his grandfather, Carlos Villa Abrille (*Carlos*), was one of the heirs of Francisco; upon the death of Carlos, Tan was appointed as the judicial administrator of the intestate estate of Carlos; among the properties comprising this estate, is the subject lot which is being claimed by herein complainant; complainant is illegally occupying the said property and that he had been falsifying documents to make it appear that the disputed property is still public, alienable and disposable land; a criminal case for falsification had been filed against complainant where he was convicted by the trial court and his appeal is pending before the Court of Appeals; Tan adopts the Comment of correspondent Madrazo as his own; Tan also denies that he conspired with correspondent Delante in the alleged falsification of the entries in the latter's notarial register.

Complainant filed separate Replies⁵ to the Comment/Answer of herein respondents.

In a Resolution⁶ dated August 22, 2007, this Court referred the case to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation or decision. Thereafter, the Commission on Bar Discipline (CBD) of the IBP set the case for mandatory conference on January 29, 2009⁷ and March 9, 2009,⁸ but, on both dates, the complainant failed to appear. This prompted the IBP-CBD to issue an Order⁹ dated March 9, 2009 to proceed with the mandatory conference and considered complainant's absence as a waiver of his right to participate in the said conference. In the same Order, the IBP-CBD required the parties to submit their respective

Id. at 234.
See Notice

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- See Notice, rollo, vol. II, pp. 556-557.
- ⁸ *Rollo*, Vol. II, pp. 563-564.
- ⁹ *Id.* at 577-578.

Id. at 215-218.

Id. at 63-65, 224-227, and 230-231.

verified position papers within ten (10) days from receipt of the same, after which the case shall be considered submitted for resolution.

Subsequently, the Investigating Commissioner¹⁰ of the IBP-CBD issued his Report and Recommendation¹¹ dated April 19, 2011 which disposed as follows:

WHEREFORE, it is respectfully recommended that the complaint against respondents Atty. Jose R. Madrazo, Jr. and Atty. Antonio A. Tan be dismissed.

And it [is] recommended that respondent Atty. Leonide C. Delante be reprimanded and warned to be more careful in his duty as notary public, and in the event a similar error be committed by him in the future, the same should be dealt with more seriously.¹²

The Investigating Commissioner held that: there is want of evidence to "show that deceit, malpractice, or other gross misconduct attended the execution of the affidavits that were submitted by respondents Madrazo and Tan in behalf of their principals before the Philippine Coconut Authority"; based on the evidence on record, it has been shown that respondents Madrazo and Tan personally appeared before respondent Delante to subscribe to their affidavits; by reason of oversight due to voluminous work, Delante's secretary simply failed to enter the said Affidavits in Delante's Notarial Register.

Thereafter, the IBP Board of Governors issued Resolution No. XX-2013-273¹³ dated March 20, 2013, adopting and approving the Report and Recommendation of the Investigating Commissioner, thus:

RESOLVED to ADOPT and APPROVE as it is hereby unanimously ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and for lack of evidence against Respondents Attys. Jose Madrazo, Jr. and Antonio V. Tan, the case against them is hereby DISMISSED. However, the recommendation against Atty. Leonido C. Delante is hereby unanimously REVERSED but is given a WARNING to be more careful in his duty as Notary Public and repetition of the same act shall be dealt with more severely.¹⁴

- *Rollo*, Vol. II, pp. 517-523.
- ¹² *Id.* at 523.
- ¹³ *Id.* at 515.
- ¹⁴ *Id.*

¹⁰ Commissioner Romualdo A. Din, Jr.

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Complainant filed a Motion for Reconsideration¹⁵ of the above Resolution reiterating his arguments in his Complaint. In addition, complainant mentioned that respondent Delante may no longer be warned nor reprimanded in the present case, considering that he was already disbarred in another case filed against him.

On March 23, 2014, the IBP Board of Governors issued Resolution No. XXI-2014-185¹⁶ denying complainant's Motion for Reconsideration.

In a letter¹⁷ dated July 15, 2014, the IBP-CBD transmitted to this Court the above Resolutions of the IBP Board of Governors, as well as the records of the instant case, for final action, pursuant to Rule 139-B of the Rules of Court.

On September 4, 2014, complainant filed before this Court a Motion to Declare Resolution No. XXI-2014-185 Adm. Case No. 7231 Null and Void¹⁸ on the ground that it was only the National Secretary of the IBP who signed the Resolution and that the IBP Investigating Commissioner inhibited from, and did not take part, in the issuance of the said Resolution.

In a Resolution¹⁹ dated January 21, 2015, this Court resolved to treat complainant's Motion (to Declare Resolution No. XXI-2014-185 Adm. Case No. 7231 null and void) as a petition for review on *certiorari* under Rule 45 of the Rules of Court and required respondents to comment thereon.

Respondents Madrazo and Tan filed their joint Comment,²⁰ while complainant filed his Reply²¹ thereto. hand, failed to file his comment.

Thus, the Court will now proceed to determine whether respondents are liable as charged.

As a preliminary procedural matter, it is fit to note that the Resolution of this Court, which treated complainant's Motion (to Declare Resolution No. XXI-2014-185 Adm. Case No. 7231 Null and Void), was anchored on Bar Matter No. 1755^{22} (*B.M. No. 1755*), which approved the Rules of Procedure of the Commission on Bar Discipline (*CBD*) of the IBP as a means of implementing the old Rule 139-B of the Rules of Court. In a

¹⁷ *Id.* at 691.

¹⁵ *Id.* at 524-526.

¹⁶ *Id.* at 692.

¹⁸ *Id.* at 702-708.

 I^{19} *Id.* at 722-723.

²⁰ *Id.* at 725-727.

Id. at 731-738.
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Dated September 25, 2007.

clarificatory Resolution²³ dated June 17, 2008, this Court explained the application of the said Rules of Procedure in relation to the former Section 12, Rule 139-B of the Rules of Court. Pertinent portions of the June 17, 2008 Resolution provided, thus:

In case a decision is rendered by the BOG [IBP Board of Governors] that exonerates the respondent or imposes a sanction less than suspension or disbarment, the aggrieved party can file a motion for reconsideration within the 15-day period from notice. If the motion is denied, said party can file a petition for a review under Rule 45 of the Rules of Court with this Court within fifteen (15) days from notice of the resolution resolving the motion. If no motion for reconsideration is filed, the decision shall become final and executory and a copy of said decision shall be furnished this Court.²⁴

However, Rule 139-B was later amended by Bar Matter No. 1645 (*B.M. No. 1645*), dated October 13, 2015. Thus, Section 12, Rule 139-B of the Rules of Court now reads as follows:

Sec. 12. Review and recommendation by the Board of Governors.

a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report.

b) After its review, the Board, by the vote of a majority of its total membership, shall recommend to the Supreme Court the dismissal of the complaint or the imposition of disciplinary action against the respondent. The Board shall issue a resolution setting forth its findings and recommendations, clearly and distinctly stating the facts and the reasons on which it is based. The resolution shall be issued within a period not exceeding thirty (30) days from the next meeting of the Board following the submission of the Investigator's report.

c) The Board's resolution, together with the entire records and all evidence presented and submitted, shall be transmitted to the Supreme Court for final action within ten (10) days from issuance of the resolution.

d) Notice of the resolution shall be given to all parties through their counsel, if any. 25

Hence, under the amended provisions of Section 12, Rule 139-B of the Rules of Court, a resolution of the IBP Board of Governors, arising from its review of the report of the IBP Investigator, and which either recommends the dismissal of the complaint or the imposition of disciplinary action against the respondent, shall be transmitted to the Supreme Court for final action. B.M. No. 1645 did away with the procedure of filing a motion

²⁴ Emphasis supplied.

²⁵ Emphasis supplied.

Re: Clarification on Rules of Procedure of the Commission on Bar Discipline.
Emphasis sumplied

for reconsideration as well as a petition for review of the resolution of the IBP Board of Governors.

On the basis of the foregoing, considering that the Resolution of the IBP Board of Governors has already been transmitted to and is pending review and final action by this Court, it is, thus, deemed proper, for reasons of expedience and for a more speedy disposition of the instant case, to recall and set aside this Court's January 21, 2015 Resolution treating complainant's Motion to Declare the March 23, 2014 Resolution of the IBP Board of Governors null and void as a petition for review on *certiorari* under Rule 45 of the Rules of Court.

The Court will, instead, proceed to take final action on the Complaint and on the IBP Board of Governors' Resolution adopting and approving the Investigating Commissioner's Report and Recommendation.

The basic issue for resolution in the present case is whether there is sufficient evidence to prove that respondents are guilty of fraud, malpractice, violation of the Notarial Law and other gross misconduct in connection with their submission and notarization of supposedly invalid and spurious documents attached to their application for Permit to Cut coconut trees on the disputed property.

After a review of the arguments and evidence submitted by the parties, this Court partly adopts the findings and conclusion of the IBP Board of Governors in its Resolutions dated March 20, 2013 and March 23, 2014.

It is settled that in disbarment and suspension proceedings against lawyers in this jurisdiction, the burden of proof rests upon the complainant. Thus, this Court has held that "in consideration of the gravity of the consequences of the disbarment or suspension of a member of the bar, we have consistently held that a lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to satisfactorily prove the allegations in his complaint through substantial evidence."²⁶ A complainant's failure to dispense the same standard of proof requires no other conclusion than that which stays the hand of the Court from meting out a disbarment or suspension order.²⁷

In the instant case, the Court agrees with both the Investigating Commissioner and the IBP Board of Governors that complainant failed to discharge his burden of proving the liability of respondents Madrazo and Tan with respect to his accusations against them. No proof was presented to show that the Affidavits of "No[n] Encumbrance" and "Marking the Coconut

²⁶ *Goopio v. Maglalang*, A.C. No. 10555, July 31, 2018,

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Trees," which were supposedly attached to their application for Permit to Cut coconut trees, were spurious. Neither was there evidence to prove that Madrazo and Tan were complicit in the alleged illegal act of respondent Delante in assigning document and page numbers to these notarized affidavits which already belonged to other documents that he previously notarized. It is settled that mere allegation is not evidence and is not equivalent to proof.²⁸ Charges based on mere suspicion and speculation likewise cannot be given credence.²⁹ Hence, for lack of sufficient, clear and convincing evidence against them, respondents Madrazo and Tan may not be held liable for fraud, conduct unbecoming a lawyer, and violation of the Notarial Law.

The same may not be said, however, with respect to respondent Delante. Complainant was able to present evidence to show that Delante assigned identical notarial details to each of the seven pairs of distinct documents cited by complainant. However, Delante failed to explain these alleged duplication of entries. Instead, he admitted another offense and that is, through inadvertence, his secretary failed or omitted to enter in his notarial register the details of the affidavits submitted by Madrazo and Tan which he notarized. Even assuming that this were the case, such a defense, of failure to make the proper entries in his Notarial Register, is still untenable.

Section 2, Rule VI of the 2004 Rules on Notarial Practice provides as follows:

Sec. 2. *Entries in the Notarial Register*. -(a) For every notarial act, the notary shall record in the notarial register at the time of the notarization the following:

(1) The entry number and page number;

(2) The date and time of day of the notarial act;

(3) The type of notarial act;

(4) The title or description of the instrument, document or proceeding;

(5) The name and address of each principal;

(6) The competent evidence of identity as defined by these Rules if the signatory is not personally known to the notary;

(7) The name and address of each credible witness swearing to or affirming the person's identity;

(8) The fee charged for the notarial act;

(9) The address where the notarization was performed if not in the notary's regular place of work or business; and

(10) Any other circumstance the notary public may deem of significance or relevance.

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Torres, et al. v. Dalangin, A.C. No. 10758, December 5, 2017, 847 SCRA 472, 497, citing Cabas v.
Atty. Sususco, et al., 787 Phil. 167 (2016).
Id.

(e) The notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument or document the page/s of his register on which the same is recorded. No blank line shall be left between entries.

In connection with the above, Rule XI of the same Rules provides the grounds for the revocation of a notarial commission as well as disciplinary sanctions upon erring notaries public. Pertinent portions of which read, thus:

SECTION 1. Revocation and Administrative Sanctions. -

(a) The Executive Judge shall revoke a notarial commission for any ground on which an application for a commission may be denied.

(b) In addition, the Executive Judge may revoke the commission of, or impose appropriate administrative sanctions upon, any notary public who:

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(2) fails to make the proper entry or entries in his notarial register concerning his notarial acts;

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(10) knowingly performs or fails to perform any other act prohibited or mandated by these Rules; and

(11) commits any other dereliction or act which in the judgment of the Executive Judge constitutes good cause for revocation of commission or imposition of administrative sanction.

Notarization is not an empty, meaningless, routinary act. It is invested with such substantial public interest that only those who are qualified or authorized may act as notaries public.³⁰ Notarization converts a private document into a public document, making that document admissible in evidence without further proof of its authenticity.³¹ For this reason, notaries must observe with utmost care the basic requirements in the performance of their duties.³² Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.³³

In the present case, respondent Delante is administratively liable for infractions in relation to his notarial acts and in keeping and maintaining his notarial register. His assignment of identical document numbers, page numbers and book numbers to several distinct documents on different dates,

 33 Id.

³⁰ *Pitogo v. Atty. Suello*, 756 Phil. 124 (2015).

Id. 31 Id. 32 Id

his failure to make the proper entry or entries in his Notarial Register of his notarial acts, and his delegation of his notarial function of recording entries in his Notarial Register to a member of his staff is a clear contravention of the explicit provisions of the Rules on Notarial Practice. He is also guilty of violating Canon 1 of the Code of Professional Responsibility which requires lawyers to "promote respect for law and legal processes." Moreover, his delegation to his secretary of his notarial function of recording entries in his notarial register is a breach of Canon 9, Rule 9.01 of the same Code, which provides that "a lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing."

In previous cases, the penalties imposed by this Court upon lawyers found guilty of violating the Rules on Notarial Practice and the Code of Professional Responsibility varied from disqualification from being commissioned as a notary public for a period ranging from one (1) year to an indefinite period of time, revocation of the respondent's notarial commission, and suspension from the practice of law for three (3) months up to two (2) years, depending upon the gravity of the offense.³⁴ In the instant case, the Court finds that the IBP Board of Governors was too lenient when it merely admonished and warned respondent Delante that a "repetition of the same act shall be dealt with more severely." Considering his various infractions, the Court finds it proper to suspend him from the practice of law for a period of three (3) months, revoke his notarial commission, and disqualify him from re-appointment as a notary public for a period of one (1) year.

The above disposition notwithstanding, this Court takes judicial notice of the fact that, in A.C. No. 7181, entitled "Maria Angalan, et al. v. Atty. Leonido C. Delante," respondent Delante was charged with gross violation of the Code of Professional Responsibility. The complainants in the said case engaged the services of respondent in the hope that he would help them recover their property. However, instead of protecting the interests of the complainants, respondent Delante took advantage of them and transferred the title of the property, comprising more than eight (8) hectares, to his name. This Court, in a per curiam Decision, promulgated on February 6, 2009, ruled in favor of the complainants therein and found herein respondent Atty. Leonido C. Delante, guilty of gross misconduct for violating Canons 16^{35} and 17^{36} of the Code of Professional Responsibility. Owing to the severity of his offense, he was disbarred from the practice of law and his name was ordered stricken from the Roll of Attorneys.

³⁴ Id. See Gemina v. Atty. Madamba, 671 Phil. 541 (2011); Caalim-Verzonilla v. Atty. Pascua, 674 Phil. 550 (2011).

³⁵ A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

³⁶ A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

The prevailing rule is that once a lawyer is disbarred, there is no penalty that could be imposed regarding his privilege to practice law, as there is no double or multiple disbarment in this jurisdiction.³⁷ Nonetheless, in previous cases,³⁸ this Court still imposed the corresponding penalty against a lawyer, who was previously disbarred, for the sole purpose of recording it in his or her personal file in the Office of the Bar Confidant (OBC). The Court shall be fully informed by his personal record in the OBC that aside from his disbarment, he also committed other infractions that would have merited the imposition of penalties were it not for his disbarment.³⁹ These factors shall be taken into consideration should the disbarred lawyer subsequently file a petition to lift his disbarment.⁴⁰ Thus, in the present case, the Court finds that, while respondent was previously disbarred, it is still proper to impose the corresponding penalty of suspension from the practice of law for a period of three (3) months, revocation of his notarial commission, and disqualification from re-appointment as a notary public for a period of one (1) year, for the sole purpose of recording it in his personal file in the OBC. In the event that respondent should apply for the lifting of his disbarment, the penalties in the present case should be considered in the resolution of the same.

WHEREFORE, the Resolution of this Court dated January 21, 2015, treating complainant's Motion to Declare Resolution No. XXI-2014-185 Adm. Case No. 7231 Null and Void, as a petition for review on certiorari under Rule 45 of the Rules of Court, is hereby RECALLED and SET ASIDE.

The Complaint against herein respondents ATTY. JOSE R. MADRAZO, JR. and ATTY. ANTONIO V. A. TAN is DISMISSED for lack of merit.

The Court finds ATTY. LEONIDO C. DELANTE guilty of violating Canons 1 and 9, Rule 9.01 of the Code of Professional Responsibility, and Section 2, Rule VI, in relation to Section 1, Rule XI, of the 2004 Rules on Notarial Practice, and is hereby SUSPENDED from the practice of law for three (3) months. In addition, his present notarial commission is hereby **REVOKED**, and he is **DISQUALIFIED** from re-appointment as a notary public for a period of one (1) year. However, considering that he has already been previously disbarred, the penalties may no longer be imposed. Nonetheless, in the event that he should apply for the lifting of his disbarment in Maria Angalan, et al. v. Atty. Leonido C. Delante, the penalty imposed in the present case should be considered in the resolution of the same.

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³⁷ Judge Ariel Florentino R. Dumlao, Jr. v. Atty. Manuel N. Camacho, A.C. No. 10498, September 4, 2018.

³⁸ Sanchez v. Atty. Torres, 748 Phil. 18 (2014); Paras v. Paras, 807 Phil. 153 (2017). 39

Judge Ariel Florentino R. Dumlao, Jr. v. Atty. Manuel N. Camacho, supra note 34. Id.

Let a copy of this Decision be furnished the Office of the Bar Confidant to be entered into the records of **ATTY. LEONIDO C. DELANTE**. Copies shall, likewise, be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for their information and guidance and for circulation to all courts concerned.

SO ORDERED.

DIOSDADO M. PERALTA Associate Justice Decision

WE CONCUR:

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ANTONIO T. CARPIO Associate Justice

MARVIC M.V.F. LEC

Associate Justice

leyer ANDRES B. REYES, JR. Associate Justice

The luga JOŚE C. REYYES, JR. Associate Justice

CARANDA

Associate Justice

HENRI JE NTING Associate Justice

ESTELAM. PERLAS-BERNABE Associate Justice ALFREDO BENJAMIN S. CAGUIOA

ALEXANDER G. GESMUNDO

ociate Justice

Associate Justice

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RAMON PAUL L. HERNANDO Associate Justice

AMY C.'LAZARO-JAVIER

Associate Justice

RODI ZÁLAMEDA sociate Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA Clerk of Court En Banc Supreme Court