



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

EN BANC

SPOUSES ELENA AND  
ROMEO CUÑA, SR.,  
Complainants,

A.C. No. 5314

Present:

-versus-

PERALTA, C.J.,  
PERLAS-BERNABE,  
LEONEN,  
CAGUIOA,  
GESMUNDO,  
REYES, J. JR.,  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ,  
DELOS SANTOS, and  
GAERLAN, \* JJ.

ATTY. DONALITO ELONA,  
Respondent.

Promulgated:

June 23, 2020

X ----- X

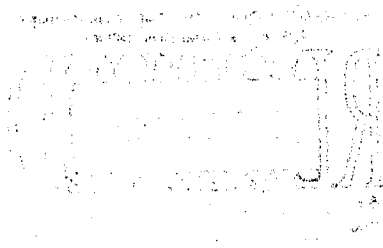
DECISION

PER CURIAM:

Before this Court is a Complaint<sup>1</sup> for Disbarment dated November 15, 1999 filed by spouses Romeo Cuña, Sr. and Elena Cuña (complainants) against Atty. Donalito Elona (respondent) for violation of specific provisions of the Code of Professional Responsibility (CPR).

\* On leave.

<sup>1</sup> Rollo, pp. 2-6.



### Antecedent Facts

The Complaint was originally filed before this Court. After respondent filed his Answer<sup>2</sup> to the complaint, this Court, by Resolution dated July 18, 2001,<sup>3</sup> referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation/decision.

Upon referral of the case by the IBP to IBP Davao City, several mandatory conferences were held. During the mandatory conference on May 26, 2006, complainants, through counsel, and respondent appeared thereat and submitted their respective admissions and stipulation of facts.<sup>4</sup> The Hearing Officer set another mandatory conference on October 19, 2006 for the presentation of evidence, which respondent, however, failed to attend despite due notice thereof. Complainants, through counsel, on the other hand, proceeded to mark their documentary exhibits *ex parte*.<sup>5</sup> The parties were then ordered to submit their respective Position Papers. Only the complainants filed their Position Paper<sup>6</sup> which reiterated the allegations and arguments in their complaint.

### Report and Recommendation of the Investigating Commissioner

On March 1, 2007, the Hearing Officer issued an Order submitting the case for resolution and forwarded all records of the case to the IBP for its appropriate action.<sup>7</sup> Accordingly, on July 24, 2007, then Investigating Commissioner Salvador B. Hababag (Investigating Commissioner) of the IBP Commission on Bar Discipline issued his Report and Recommendation<sup>8</sup> finding respondent to have violated Canons 16 and 17 of the CPR and recommending that respondent be suspended from the practice of law for a period of six months with stern warning that commission of similar offenses shall be dealt with more severely.<sup>9</sup>

The Investigating Commissioner concluded in this wise:

Respondent's deliberate failure to disclose to the complainants that he extracted a contract to sell with the buyer, Law [F]irm Ilagan, Te[,] *et al.*, for seven million one hundred thousand (₱7,100,000.00) pesos on terms manifested malicious taking x x x advantage o[f] his moral dominion and emotional and intellectual control over complainants

<sup>2</sup> Id. at 22-31.

<sup>3</sup> Id. at 33.

<sup>4</sup> Id. at 77-95.

<sup>5</sup> Id. at 96-100.

<sup>6</sup> Id. at 116-144.

<sup>7</sup> Id. at 148.

<sup>8</sup> Id. at 351-353.

<sup>9</sup> Id. at 353.



who are impoverished and [not] mentally equipped to grasp the gravity of his acts/omission and by preparing a Special Power of Attorney and to enjoin them to sign and authorize him to represent complainants manifested lack of integrity and propriety on his part. x x x<sup>10</sup>

**Report and Recommendation of the  
Board of Governors (BOG)**

The BOG, in its Resolution No. XVIII-2007-137<sup>11</sup> dated September 28, 2007, adopted and approved the Investigating Commissioner's Report and Recommendation with modification that the recommended penalty of suspension from the practice of law be increased to three years. On January 4, 2008, respondent filed his Motion for Reconsideration<sup>12</sup> praying that Resolution No. XVIII-2007-137 be reconsidered and set aside, and a new one be entered dismissing the complaint for lack of merit,<sup>13</sup> which was, however denied by the IBP-BOG in Resolution No. XX-2012-46<sup>14</sup> dated January 15, 2012. Meanwhile, the IBP-BOG received respondent's Supplemental Motion for Reconsideration<sup>15</sup> (of Resolution No. XVIII-2007-137 dated February 29, 2008) on June 10, 2008.

On February 28, 2012, the IBP forwarded the case to this Court for proper disposition pursuant to Section 12, Rule 139-B of the Rules of Court.<sup>16</sup> In an Indorsement Letter<sup>17</sup> dated April 17, 2012, the IBP referred additional records to this Court, which included respondent's Urgent Motion for Reconsideration (of Resolution No. XX-2012-46) and/or Motion to Suspend Proceedings<sup>18</sup> dated April 10, 2012 filed with the IBP on even date, which prayed, among others, for the suspension of the resolution of the instant case pending the filing of a civil complaint for collection of a sum of money by respondent against complainants.

**Report and Recommendation of the  
Office of the Bar Confidant (OBC)**

In a Resolution<sup>19</sup> dated September 26, 2012, this Court referred to the OBC respondent's Motion for Reconsideration (of Resolution No. XX-2012-46) and/or Motion to Suspend Proceedings for evaluation, report, and recommendation. Thus, on May 22, 2015, the OBC issued its

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<sup>10</sup> Id. at 352.

<sup>11</sup> Id. at 349.

<sup>12</sup> Id. at 354-363.

<sup>13</sup> Id. at 362.

<sup>14</sup> Id. at 426.

<sup>15</sup> Id. at 370-412.

<sup>16</sup> Id. at 424.

<sup>17</sup> Id. at 433.

<sup>18</sup> Id. at 434-436.

<sup>19</sup> Id. at 445.



Report and Recommendation<sup>20</sup> which recommended respondent's suspension from the practice of law for three years. The OBC found respondent to have violated Rule 16.01, Canon 16 of the CPR for his failure to properly account for the money and property entrusted to him by complainants.

As to respondent's prayer to suspend the resolution of the administrative proceedings pending the filing of a civil complaint for collection of a sum of money which respondent intends to institute against complainants, the OBC held that there was no ground to suspend the administrative case considering that the resolution of the civil case has no bearing on the outcome of the disbarment proceedings.

The OBC also emphasized that respondent should have inhibited himself from acting as counsel for complainants considering that he was a Trial Attorney of the Department of Agrarian Reform (DAR) at the time complainants' application for the subject property was pending with the Bureau of Lands. The OBC observed that respondent even took advantage of his position as Trial Attorney in his dealings with complainants which led to their eventual acquisition of the subject property and the subsequent sale thereof to the buyer without complainants' knowledge or consent. The OBC also found that respondent failed to account for and return the purchase price of the property and, by his own admissions, refused to deliver Original Certificate of Title (OCT) No. P-29483 to complainants despite their repeated demands. The OBC thus recommended respondent's suspension from the practice of law for three years.

On June 17, 2015, the IBP received respondent's Supplemental Motion for Reconsideration dated May 22, 2015 of Resolution No. XVIII-2007-137<sup>21</sup> which was later indorsed to this Court on June 23, 2015.<sup>22</sup>

### ***Complainants' Allegations***

In their Complaint and Position Paper, complainants alleged that they were applicants/occupants of a Four Thousand Two Hundred Ninety-Seven (4,297) square meters parcel of land situated in Tagum City, Davao Del Norte. At the instance of and through the efforts of herein respondent, complainants, in September of 1992, were able to acquire ownership and possession of the property by virtue of a favorable decision of the Bureau of Lands.

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<sup>20</sup> Id. at 446-450.

<sup>21</sup> Id., unpaginated.

<sup>22</sup> Id., unpaginated.





Sometime in January 1996, respondent made complainants sign a Special Power of Attorney (SPA)<sup>23</sup> which gave respondent absolute authority to sell the property to third parties. Respondent did not explain the contents of the SPA and the implications thereof to herein complainants.

During the period from March to June 1996, respondent, on several occasions, released to complainants various sums of money ranging between One Thousand Pesos (₱1,000.00) to Two Hundred Thousand Pesos (₱200,000.00). Complainants alleged, however, that respondent did not advise them of their source, and for what reason the sums of money were released to them.

After respondent paid to the government the appraised value of the land which amounted to One Hundred Seven Thousand Four Hundred Twenty-Four and 40/100 Pesos (₱107,424.40), the owner's duplicate of OCT No. P-29483 covering the property was issued in the name of herein complainants in July of 1996. OCT No. P-29483, however, remained in the possession of respondent despite complainants' repeated demands to return the same. For this reason, complainants were constrained to file a complaint against respondent before the Office of the Ombudsman (OMB) for violation of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act on the ground of respondent's willful refusal to turn over to them OCT No. P-29483. It was during the proceedings before the OMB that they discovered respondent's alleged misconduct.

It was revealed to complainants that without their knowledge and consent, respondent, sometime in May of 1996, entered into a Contract to Sell<sup>24</sup> involving the property with the Davao City Law Firm of Ilagan, Te, Escudero, Laguindam, & Jocom ("Buyer") under the following terms and conditions:

1) PRICE AND TERMS OF PAYMENT: The purchase price of the land shall be SEVEN MILLION ONE HUNDRED THOUSAND (₱7,100,000.00) PESOS, Philippine Currency, to be paid by the VENDEE in the following manner:

a. TWO MILLION (₱2,000,000.00) PESOS to be paid upon execution of this Contract to Sell, and

b. FIVE MILLION ONE HUNDRED THOUSAND (₱5,100,000.00) PESOS to be paid upon the eviction of occupants/squatters on the land and after delivery of a clean title and possession of the land in favor of the herein VENDEE free from occupants and squatters[.]<sup>25</sup>

<sup>23</sup> Id. at 127-128.

<sup>24</sup> Id. at 130-133.

<sup>25</sup> Id. at 131.



Complainants alleged that respondent received from the buyer Four Million Pesos (₱4,000,000.00) as down payment and/or partial payment of the property, thus leaving a balance of Three Million One Hundred Thousand Pesos (₱3,100,000.00) of the property's total purchase price under the Contract to Sell. Considering the same, complainants concluded that the sums of money released to them from March to June 1996 were derived from the ₱4,000,000.00 received by respondent from the buyer as partial payment of the property.

### *Respondent's Allegations*

By way of rebuttal, respondent averred in his Answer to complainants' Complaint, and Motion for Reconsideration of Resolution No. XVIII-2007-137 that it was complainants themselves who availed of his services in his capacity as Trial Attorney III of the DAR to handle their application for the property which, at that time, was already pending before the Bureau of Lands in Tagum City, Davao Del Norte.

Several years after their application with the Bureau of Lands was granted in their favor, complainants, due to financial constraints, requested assistance from respondent in securing the funds needed for the survey and segregation of the subject property, and payment of the acquisition value including its subsequent titling. In this regard, respondent suggested to complainants to sell the property to an interested buyer and utilize the proceeds of the sale to settle all expenses for the survey, segregation, and titling of the property. Pursuant to respondent's proposal, complainants agreed to execute a notarized SPA in favor of respondent which authorized him to sell and convey the property for and in complainants' behalf. Respondent further alleged that he endeavored to explain the contents of the SPA to complainants in detail. Complainants then agreed that they will only collect Three Million Pesos (₱3,000,000.00) of the purchase price of the property from the prospective buyer,<sup>26</sup> while the remainder thereof will be given to respondent after the latter finally secures a title of the property and dispose the same to any interested buyer.

After entering into a Contract to Sell with the buyer, respondent received Six Hundred Fifty Thousand Pesos (₱650,000.00) as partial payment of the purchase price of the property, which respondent released to complainants in various sums ranging from One Thousand Pesos (₱1,000.00) to Two Hundred Thousand Pesos (₱200,000.00) during the period from March 1996 to August 1998 as evidenced by a number of acknowledgment receipts<sup>27</sup> signed by complainants. Notably, respondent later claimed in his Supplemental Motion for Reconsideration dated May

<sup>26</sup> Id. at 393.

<sup>27</sup> Id. at 379-397 and 401.



22, 2015 that he only received Four Hundred Fifty Thousand Pesos (₱450,000.00) from Atty. Timothy C. Te, one of the named partners of the buyer. Respondent further alleged that he did not receive ₱4,000,000.00 from the buyer, and that said amount was, in fact, released to a certain Atty. Sergio Serrano.

In his Supplemental Motion for Reconsideration dated February 29, 2008, respondent claimed that pursuant to and in compliance with complainants' obligations under the Contract to Sell, respondent, for the benefit of complainants, incurred expenses amounting to Eight Hundred Nine Thousand Four Hundred Ninety-Five and 61/100 Pesos (₱809,495.61), particularly for the titling of the property, relocation of illegal settlers, and the development of their resettlement area.

Complainants later demanded from the buyer One Million Pesos (₱1,000,000.00) as partial payment of the property. However, considering that the property was not completely cleared of illegal settlers, the buyer refused to release the said amount in their favor. For this reason, complainants demanded from respondent to turn over to them OCT No. P-29483. While respondent admitted that he refused to turn over to complainants OCT No. P-29483, respondent averred that such was justified by their refusal, notwithstanding repeated demands, to reimburse him of all monies advanced by him pursuant to the Contract to Sell, which respondent claims to be over and above the amount received by him from the buyer.

### **Our Ruling**

We find that respondent deserves to be sanctioned for his unbecoming behavior as a member of the bar.

### ***Disbarment Proceedings are Sui Generis***

At the outset, we take note of respondent's Urgent Motion for Reconsideration and/or Motion to Suspend Proceedings dated April 10, 2012, which prayed, among others, for the suspension of the resolution of the instant case pending his filing of a civil complaint for collection of a sum of money against complainants.

We agree with the recommendation of the OBC that there is no ground to suspend the resolution of the instant proceedings pending the institution of the civil action by respondent against complainants.



“A disbarment case is *sui generis* for it is neither purely civil nor purely criminal but is rather an investigation by the court into the conduct of its officers. The issue to be determined is whether [a member of the bar] is still fit to continue to be an officer of the court in the dispensation of justice.”<sup>28</sup> Thus, in *In re: Almacen*,<sup>29</sup> this Court held that:

Accent should be laid on the fact that disciplinary proceedings like the present are *sui generis*. Neither purely civil nor purely criminal, this proceeding is not — and does not involve — a trial of an action or a suit, but is rather an investigation by the Court into the conduct of its officers. x x x Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. x x x (Citations omitted)

Based on record, the civil case for sum of money has not been filed before any courts of law. This makes respondent's motion to suspend proceedings premature, if not misplaced. Even supposing a civil case against complainants is already pending before the court, the resolution of this case shall proceed as respondent's administrative liability is not dependent on the resolution of the civil case for sum of money. Conversely, findings of the court in relation to the pending civil case does not necessarily result in administrative exculpation. So long as the quantum of proof in administrative cases against lawyers, which is substantial evidence, is met, then respondent's liability attaches. *Gonzales v. Alcaraz*<sup>30</sup> is instructive on this point, to wit:

Respondent's administrative liability stands on grounds different from those in the other cases previously filed against him; thus, the dismissal of these latter cases does not necessarily result in administrative exculpation. Settled is the rule that, being based on a different quantum of proof, the dismissal of a criminal case on the ground of insufficiency of evidence does not necessarily foreclose the finding of guilt in an administrative proceeding.

<sup>28</sup> *Yoshimura v. Panagsagan*, A.C. No. 10962 (Formerly CBD Case No. 10-2763), September 11, 2018.

<sup>29</sup> G.R. No. L-27654, February 18, 1970, 31 SCRA 562, 600-601.

<sup>30</sup> 534 Phil. 471, 482 (2006).





***Non-filing of Position Paper and Piecemeal filing of Supplemental Pleadings***

Rule 139-B of the Rules of Court, which was the applicable rule at the time the instant complaint was filed with this Court on November 15, 1999, governs the investigation of administrative complaints against lawyers by the IBP. The Rule states that every case heard by an Investigating Commissioner shall be reviewed by the IBP-BOG upon the record and evidence transmitted to it by the Investigating Commissioner with his report.<sup>31</sup> If the IBP-BOG, by the vote of a majority of its total membership, determines that the lawyer 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 this Court for final action.<sup>32</sup>

It is thus essential, if not indispensable, on the part of respondent that he files the necessary pleadings, *e.g.*, Answer, Position Paper, and other allied pleadings, which would afford him the opportunity to explain his side of the controversy before the IBP-BOG issues its recommendation and transmits the case to this Court for proper disposition and resolution. On this point, this Court notes that while he appeared during the mandatory conferences before the IBP Davao City, respondent, despite due notice, failed to file his Position Paper as ordered. The records would bear that respondent had more than sufficient time from October 2006 until September 2007, or anytime prior to the issuance of Resolution No. XVIII-2007-137 of the IBP-BOG, to file his Position Paper (*albeit* belatedly) which respondent, however, clearly failed to do in this case. It bears noting that respondent even failed to appear during the October 19, 2006 mandatory conference for the presentation of the parties' respective evidence despite due notice.

His attitude of disobeying the orders of the IBP manifests his clear lack of respect to the institution and its established rules and regulations. The IBP is empowered by this Court to conduct proceedings regarding the discipline of lawyers.<sup>33</sup> In this regard, it is only proper to remind respondent to be mindful of his duty as a member of the bar to maintain his respect towards a duly constituted authority.

For his behavior, respondent violated Canon 11 of the CPR:

CANON 11 – A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL

<sup>31</sup> RULES OF COURT, Rule 139-B, Section 12(a).

<sup>32</sup> *Id.* at Section 12(b).

<sup>33</sup> *Robiñol v. Bassig*, A.C. No. 11836, November 21, 2017, 845 SCRA 447, 455.



OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

Notably, it was only on January 4, 2008 that respondent filed his Motion for Reconsideration with the IBP praying for the dismissal of the complaint for disbarment for lack of merit, which the IBP denied in its Resolution No. XX-2012-46. In *Ramientas v. Reyala*,<sup>34</sup> this Court, on one hand, held that the aggrieved party of the disciplinary case can file a motion for reconsideration of the Resolution issued by the IBP-BOG within 15 days from notice thereof. Applicable rules on disciplinary proceedings, on the other hand, do not recognize the filing of a second motion for reconsideration.<sup>35</sup>

Despite the absence of an express provision which allows the filing of additional/supplemental motions and other allied pleadings, respondent filed with the IBP the following: (1) Supplemental Motion for Reconsideration (of Resolution No. XVIII-2007-137) dated February 29, 2008; (2) Urgent Motion for Reconsideration (to Resolution No. XX-2012-46) and/or Motion to Suspend Proceedings dated April 10, 2012; and (3) Supplemental Motion for Reconsideration (of Resolution No. XVIII-2007-137) dated May 22, 2015. Worse still, respondent's Supplemental Motion for Reconsideration dated May 22, 2015 of Resolution No. XVIII-2007-137 was filed more than eight years after the said resolution was issued by the IBP. Moreover, respondent simply filed the aforesaid motions, including the documentary evidence attached thereto, without leave of court or any such motion to admit the same. Respondent did not even attempt to provide a plausible reason as to why copies of his supporting documentary evidence could not be timely produced and furnished to this Court, or any reason that would merit their inclusion in the records of the instant case.

While there is no express prohibition on the filing of supplemental motions for reconsideration, piecemeal filings thereof is a manifestation of respondent's intent to delay the instant proceedings and his propensity to ignore basic rules of procedure, which are, first and foremost, designed to expedite the resolution of cases pending in courts. If respondent had enough resolute to have his case disposed with reasonable dispatch, he would have filed his supplemental motions within reasonable length of time, and not long after the issuance of the subject resolutions. In as much as disbarment proceedings are sui generis and are thus, not confined within the rigidity of technical rules of procedure,<sup>36</sup> respondent cannot simply be allowed to do as he pleases and expect this Court,

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<sup>34</sup> 529 Phil. 128, 135 (2006).

<sup>35</sup> *Id.* in relation to Section 12(b), Rule 139-B. See also *Ramientas v. Reyala*, *id.* at 137-138.

<sup>36</sup> *Yoshimura v. Panagsagan*, *supra* note 28.



including herein complainants, to wait and wonder if he will file his pleadings and supporting evidence or not.

All told, respondent's acts are in contravention of Rules 10.3 and 12.04, Canons 10 and 12, respectively, of the CPR, which provide:

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

Rule 12.04 - A lawyer shall not unduly delay a case, impede the execution of judgment or misuse court processes.

### *Acting as Counsel for Complainants*

Complainants alleged that it was respondent who offered his legal services in connection with their application for the property with the Bureau of Lands in Tagum City, Davao Del Norte. From the foregoing recitals, it appears that complainants attempted to impress upon the IBP and this Court that respondent engaged in the unauthorized private practice of law, particularly when he handled their application for the property with the Bureau of Lands whilst being a Trial Attorney of the DAR.

On his part, respondent claimed that complainants themselves availed his services in his capacity as Trial Attorney III of the DAR to handle their application for the property which, at that time, was already pending before the Bureau of Lands. Respondent emphasized that, in any case, he handled complainants' case before the Bureau of Lands in his official capacity as Trial Attorney of the DAR, as in fact, complainants' case was included in his reports to his immediate superior.

On this point, the OBC, in its Report and Recommendation, stressed that respondent should have inhibited himself from acting as counsel for complainants. The OBC observed that respondent even took advantage of his position as Trial Attorney in his dealings with complainants.

We agree with the above conclusion reached by the OBC.

The point at issue is whether respondent, as Trial Attorney III of the DAR, engaged in the unauthorized practice of law. This Court rules in the affirmative. 9



DAR Memorandum Circular No. 12-09 (DAR-MC 12-09), or the DAR Manual on Legal Assistance, lays down the procedure to be observed by Trial Attorneys of the DAR in “the acceptance for representation of judicial and quasi-judicial cases and in the handling of agrarian law implementation (ALI) cases.”<sup>37</sup> Significantly, while the DAR allows its Trial Attorneys to render legal assistance to qualified agrarian reform beneficiaries in ALI cases, we note, however, that respondent in this case failed to prove with certainty that: (1) complainants were tenant farmers or agricultural lessees at the time their application for the property was pending before the Bureau of Lands; and/or (2) their case falls within the purview of ALI cases. Respondent’s claim that he handled complainants’ case in his *official capacity* as Trial Attorney of the DAR is, therefore, of doubtful veracity, if not wholly improper under relevant DAR rules. On this point, we are inclined to conclude that respondent acted in his private capacity as counsel for complainants.

In this regard, Section 7(b)(2) of Republic Act No. 6713, also known as the Code of Conduct and Ethical Standards for Public Officials and Employees, provides that government officials or employees are prohibited from engaging in private practice of their profession:

Section 7. *Prohibited Acts and Transactions.* – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

x x x x

(b) *Outside employment and other activities related thereto.* – Public officials and employees during their incumbency shall not:

x x x x

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions[.]

Along the same lines, Memorandum Circular No. 17, series of 1986 (MC 17-86), provides that no government officer or employee shall engage in any private business, profession, or undertaking unless authorized in writing by their respective department heads:

<sup>37</sup> Section 4, DAR Memorandum Circular No. 12-09 (2009).





The authority to grant permission to any official or employee shall be granted by the head of the ministry or agency in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules, which provides:

“Sec. 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without a written permission from the head of Department; Provided, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government: Provided, further, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of the agency to the end that it will not impair in any way the efficiency of the other officer or employee: And provided, finally, That no permission is necessary in the case of investments, made by an officer or employee, which do not involve any real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer or member of the board of directors,”

subject to any additional conditions which the head of the office deems necessary in each particular case in the interest of the service, as expressed in the various issuances of the Civil Service Commission.

In *Yumol, Jr. v. Ferrer Sr.*,<sup>38</sup> this Court suspended a Commission on Human Rights (CHR) lawyer from the practice of law for failing to obtain a written authority to engage in private practice with a duly approved leave of absence from the CHR. Particularly, we held in *Yumol* that:

Crystal clear from the foregoing is the fact that private practice of law by CHR lawyers is not a matter of right. Although the Commission allows CHR lawyers to engage in private practice, a written request and approval thereof, with a duly approved leave of absence for that matter are indispensable. In the case at bar, the record is bereft of any such written request or duly approved leave of absence. No written authority nor approval of the practice and approved leave of absence by the CHR was ever presented by respondent. Thus, he cannot engage in private practice.<sup>39</sup>

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<sup>38</sup> 496 Phil. 363 (2005)

<sup>39</sup> Id. at 376.



Similarly, in *Abella v. Cruzabra*,<sup>40</sup> this Court reprimanded a lawyer for engaging in notarial practice without the written authority from the Secretary of the Department of Justice. Thus:

It is clear that when respondent filed her petition for commission as a notary public, she did not obtain a written permission from the Secretary of the D[epartment] [of] J[ustice]. Respondent's superior, the Register of Deeds, cannot issue any authorization because he is not the head of the Department. And even assuming that the Register of Deeds authorized her, respondent failed to present any proof of that written permission. Respondent cannot feign ignorance or good faith because respondent filed her petition for commission as a notary public after Memorandum Circular No. 17 was issued in 1986.<sup>41</sup>

In the instant case, the records do not bear proof that respondent was given written permission or authority to engage in private practice by the Secretary of the DAR. Even assuming that he was authorized by his immediate superiors to handle complainants' application before the Bureau of Lands, such authority is clearly not within the contemplation of MC 17-86.

### ***Special Power of Attorney and Contract to Sell***

While they do not deny the existence of the SPA which gave respondent absolute authority to sell the property for and in their behalf, they asserted, however, that respondent failed to explain to them the contents of the SPA and its implications thus rendering the same defective. Following this allegation, complainants then imputed fault upon respondent for surreptitiously executing a Contract to Sell with the buyer covering the subject property without their prior consent.

By way of rebuttal, respondent contended that the SPA was executed pursuant to his proposal to complainants – to sell the property to an interested buyer and utilize the proceeds of the sale to settle all expenses for the survey, segregation, and titling of the property. Respondent further insisted that the terms of the SPA were duly explained to them in detail and that complainants were made aware and have understood the contents thereof. It necessarily follows, therefore, that complainants were duly notified of the intended sale of the property, and that respondent was authorized to enter into a Contract to Sell with the buyer.

At the outset, there is a need to ascertain whether the SPA executed by complainants in favor of respondent is defective due to their supposed

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<sup>40</sup> 606 Phil. 200 (2009).

<sup>41</sup> Id. at 206-207.



lack of understanding of its contents. Notably, a finding of a defective SPA will lend credence to complainants' allegation that respondent entered into a Contract to Sell of the property with the buyer without their knowledge and prior authority. Conversely, a valid SPA belies complainants' allegation of respondent's act of concealing from them the sale of the property. Indeed, it would be highly illogical for complainants to execute an SPA in favor of respondent granting him full authority to sell the property if there was no underlying agreement to sell the same as earlier proposed by respondent, and later agreed upon by complainants.

On this point, both the IBP and the OBC observed that respondent, by taking advantage of his moral dominion and intellectual control over complainants, willfully concealed from them the Contract to Sell entered into by him with the buyer in direct contravention of his ethical duties under the CPR.

We disagree.

The existence of the notarized SPA which granted respondent authority to sell the property of complainants is undisputed. Notably, a perusal thereof readily reveals that the same was validly executed by complainants due to the following reasons:<sup>42</sup>

*First*, the IBP and the OBC failed to observe that the SPA, which even bears the signature of both complainants, is notarized. Being a notarized document, it carries in its favor the presumption of regularity. While the Court is aware that as a rule, clear and convincing evidence is needed to overcome its recitals,<sup>43</sup> it bears stressing, however, that the required quantum of proof in disbarment proceedings is substantial evidence. In *Reyes v. Nieva*,<sup>44</sup> we held that:

[T]here is no evidence to establish that complainant was impelled by any improper motive against respondent or that she had reasons to fabricate her allegations against him. Therefore, absent any competent proof to the contrary, the Court finds that complainant's story of the April 2, 2009 incident was not moved by any ill-will and was untainted by bias; and hence, worthy of belief and credence. In this regard, it should be mentioned that respondent's averment that complainant was only being used by other CAAP employees to get back at him for implementing reforms within the CAAP was plainly unsubstantiated, and thus, a mere self-serving assertion that deserves no weight in law. x x x<sup>45</sup>

<sup>42</sup> See *Manuel v. Sarmiento*, 685 Phil. 65, 76 (2012).

<sup>43</sup> *Philippine Trust Company v. Gabinete*, 808 Phil. 297, 314 (2017).

<sup>44</sup> 794 Phil. 360 (2016).

<sup>45</sup> *Id.* at 375.



Thus, in the absence of substantial evidence that complainants did not understand the contents of the SPA, or that they did not execute the same freely and voluntarily, it is presumed regular on its face with respect to its execution, including the recitals stated therein.

*Second*, complainants never denied before the IBP and the OBC the genuineness and authenticity of their signatures appearing on the SPA.

*Third*, respondent's authority to sell the property is clearly spelled out on the SPA in this wise:

- 1.) To sell, assign and transfer to JS Gaisano, NCCC, Felcris and any other persons for such price or prices and under such terms and conditions, as my said attorney-in-fact may deem proper x x x;
- 2.) To make, sign, execute and deliver any contract of sale or assignment, or any other documents of whatever nature or kind, including the signing, indorsement, cashing, negotiation and execution of promissory notes, checks, money orders or their negotiable instruments which may be necessary or proper in connection with the sale, transfer and/or assignment herein mentioned.<sup>46</sup>

Since the SPA is considered valid and binding, we are inclined to agree with respondent that by executing a written authority to sell the property, complainants knew, at the very least, that it was intended to be sold to third persons. This belied their claim that respondent entered into a Contract to Sell of the property with the buyer without their knowledge and prior authority. Indeed, it would be incredible, if not absurd, for one to execute a written authority to sell a property without any intent of enforcing it, or giving effect to its terms.

It bears noting at this point that even before the Contract to Sell was perfected between respondent and the buyer, and for two years thereafter, complainants were receiving from respondent various sums of money as evidenced by several acknowledgment receipts signed by them. Moreover, the acknowledgment receipts specifically indicated that the amounts paid to complainants were *in partial payment of the property in Tagum City, Davao*.<sup>47</sup> This notwithstanding, the records of the case would bear that complainants, for a period of more than two years, never inquired from respondent the source and for what reason the sums of money were released to them. Certainly, this lends credence to respondent's claim that complainants were indeed aware of the existence of a sale covering the property.

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<sup>46</sup> *Rollo*, p. 127.

<sup>47</sup> *Id.* at 379-397 and 401.





***Obligation to make a prompt and accurate accounting of funds and deliver OCT No. P-29483 upon demand.***

Complainants contended that respondent retained possession of OCT No. P-29483 despite repeated demands to return the same. Complainants further claimed that respondent has not delivered to them the money received by respondent from the buyer which supposedly amounted to ₱4,000,000.00.

On his part, respondent admitted that he refused to return to complainants OCT No. P-29483 considering their refusal, notwithstanding repeated demands, to reimburse all monies advanced by him for the titling of the property, relocation of unlawful settlers, and the development of their resettlement area. Moreover, to substantiate his right of possession of OCT No. P-29483, respondent cited an Agreement<sup>48</sup> between complainant Romeo Cuña and a certain Rodrigo Cuña. The pertinent portion thereof states, to wit:

That as soon as the corresponding title shall be generated and registered at the Register of Deeds of Davao Province the title shall be under the custody of Atty. Donalito M. Elona, who shall kept [sic] the same until both parties would be able to sign up an agreement and or document/s for the partition of the subject landholding by both parties[.]<sup>49</sup>

Respondent also contended that he did not receive from the buyer ₱4,000,000.00 and that due to incursion of illegal settlers in the property, respondent received from the buyer partial payment thereof only in the amount of ₱450,000.00. To substantiate his defense, respondent presented various acknowledgment receipts signed by complainants indicating payment to them in various amounts of money which supposedly represented partial payments of the property. Respondent also presented in his Supplemental Motion for Reconsideration dated February 29, 2008 an account of expenses advanced by him for the titling of the property and expenses incurred in relocating illegal settlers, which allegedly amounted to ₱809,495.61. Considering that the expenses disbursed are more than the amount collected from the buyer, respondent averred that he has the right to retain possession of OCT No. P-29483 until he is reimbursed of the costs incurred by him for complainants' property.

On this matter, the OBC found respondent liable for his failure to account for and return the purchase price of the property and, by his own

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<sup>48</sup> Id. at 375.

<sup>49</sup> Id.



admissions, his refusal to deliver OCT No. P-29483 to complainants despite repeated demands.

We agree with the findings of the OBC. This Court has consistently held that any money or property collected for the client coming into the lawyer's possession should be promptly declared and reported to him or her.<sup>50</sup> Canon 16 of the CPR provides that:

CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

x x x x

Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

Clearly, respondent's act of unduly withholding from complainants OCT No. P-29483 until such time they reimburse him of the expenses incurred by him in their favor was without basis and, therefore, constituted a clear transgression of his duties as a member of the bar.

This Court is not unaware, however, that a lawyer is entitled to a lien over funds, documents and papers of his client which have lawfully come into his possession.<sup>51</sup> Under Canon 16, Rule 16.03 of the CPR, he may "apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client." Along the same lines, Section 37, Rule 138 of the Rules of Court provides for attorney's retaining lien as follows:

Section 37. *Attorneys' liens.* – An attorney shall have a lien upon the funds, documents and papers of his client, which have lawfully come into his possession and may retain the same until his lawful fees and disbursements have been paid, and may apply such funds to the satisfaction thereof. x x x

The attorney's retaining lien applies not only to the balance of the account between the attorney and his/her client, but also to the funds and documents, such as certificates of title of the land, of the client which

<sup>50</sup> *Luna v. Galarrita*, 763 Phil. 175, 187 (2015).

<sup>51</sup> Canon 16, Rule 16.03 of the Code of Professional Responsibility states: A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.



may come into the attorney's possession in the course of his/her employment.<sup>52</sup>

While complainants do not deny that respondent expended certain amounts of money for their Property, and the total sum thereof, the fact that he may have a lien for his disbursements does not relieve him from his obligation of returning to complainants OCT No. P-29483 and respondent's failure to do so constitutes professional misconduct.<sup>53</sup> Before respondent can claim a lien on the title, there must be: (1) an agreement between respondent and complainants that respondent will shoulder the expenses incurred relative to the titling of the property and pursuant to the obligations under the Contract to Sell; and (2) an express recognition of his right to retain possession thereof until such time respondent has been reimbursed of his expenses. These circumstances are clearly wanting in this case.

Without such agreement between complainants and respondent, or a recognition of respondent's right to retain OCT No. P-29483, respondent had no authority to withhold the same from complainants. On the premise that money was indeed owed to respondent, he was nonetheless duty-bound to deliver OCT No. P-29483 to complainants. What respondent should have properly done in this case was to provide complainants a breakdown of monies he advanced for the property, and turn over to complainants OCT No. P-29483, without prejudice to his filing a case to recover his money claims. *Luna v. Galarrita*<sup>54</sup> is instructive on this point, thus:

True, the Code of Professional Responsibility allows the lawyer to apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. But this provision assumes that the client agrees with the lawyer as to the amount of attorney's fees and as to the application of the client's fund to pay his lawful fees and disbursements, in which case he may deduct what is due him and remit the balance to his client, with full disclosure on every detail. Without the client's consent, the lawyer has no authority to apply the client's money for his fees, but he should instead return the money to his client, without prejudice to his filing a case to recover his unsatisfied fees.

On this point, this Court cannot rely on the provisions of the Agreement<sup>55</sup> between complainant Romeo Cuña and a certain Rodrigo Cuña considering that the document itself does not state that the property specified therein pertains specifically to the subject property involved in

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<sup>52</sup> *Miranda v. Carpio*, 673 Phil. 665, 672 (2011).

<sup>53</sup> *Rayos v. Hernandez*, 544 Phil. 447, 458 (2007).

<sup>54</sup> *Supra* note 50 at 191, citing the findings of the Integrated Bar of the Philippines Investigating Commissioner.

<sup>55</sup> *Rollo*, p. 375.



the instant case. Assuming *arguendo* that respondent is authorized to retain possession of OCT No. P-29483 under the Agreement, this is only for a limited purpose and time, *i.e.*, until the parties sign an agreement and or document/s for the partition of the property.

This Court also notes that respondent admitted having received the amount of ₱650,000.00 from the buyer. And although he released certain amounts to the complainants, this Court is not convinced that he has promptly and accurately accounted for said amount/s to complainants. As mentioned, a lawyer shall account for all money or property collected or received for or from the client,<sup>56</sup> and that he/she shall deliver the funds and property of his/her client when due or upon demand.<sup>57</sup> This necessarily encompasses the duty of a lawyer to make a *prompt and accurate* account of his/her client's money in his/her possession.

Here, respondent has not shown that he has promptly delivered the funds received by him to the complainants, as in fact, after respondent received the buyer's partial payment of the property, he did not release the same to complainants in its entirety, but in piecemeal fashion for a period of two years. Unless there is an agreement to the contrary, respondent is required under the CPR to deliver all funds held in his possession within a reasonable time.

It must be emphasized that respondent himself appears to be confounded with the amount of money actually received from the buyer. To recall, respondent claimed in his Answer to complainant's Complaint that he received ₱650,000.00 from the buyer as partial payment of the purchase price of the property. Respondent later claimed in his Supplemental Motion for Reconsideration dated May 22, 2015 that he only received ₱450,000.00 from Atty. Te, one of the named partners of the buyer. Such inconsistency in respondent's claims not only casts serious doubt on the veracity of his assertions, but also manifests respondent's inability to render an accurate account of complainants' money from the sale of the property.

The relationship of attorney and client is rightly regarded as one of special trust and confidence.<sup>58</sup> Thus, when respondent failed to deliver the title to complainants and render a prompt and accurate accounting for the amount actually received by him on behalf of complainants, on the assertion that he has not been reimbursed of the expenses incurred by him, it is a transgression of the trust reposed in him by his client, and a clear violation of Rules 16.01 and 16.03, Canon 16 of the CPR.

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<sup>56</sup> Canon 16, Rule 16.01 of the Code of Professional Responsibility states: A lawyer shall account for all money or property collected or received for or from the client.

<sup>57</sup> *Id.*, Rule 16.03.

<sup>58</sup> *Rayos v. Hernandez*, supra note 53 at 459.





***Amount to be returned to complainants***

As the records would bear and by his own admission in his pleadings filed before the IBP,<sup>59</sup> respondent received ₱650,000.00 from the buyer as partial payment of the purchase price of the property. Respondent then contended that the amount of the purchase price was released to complainants in various sums of money as evidenced by a number of acknowledgment receipts signed by complainants.<sup>60</sup> Provided below is the breakdown of the amount delivered to complainants:

<b>Date of Receipt</b>	<b>Amount Received</b>
March 14, 1996	₱ 6,000.00
March 28, 1996	2,000.00
April 3, 1996	5,000.00
April 22, 1996	1,350.00
May 14, 1996	1,000.00
May 28, 1996	10,000.00
June 3, 1996	10,000.00
June 7, 1996	10,742.00
June 25, 1996	96,682.00
June 28, 1996	5,000.00
July 12, 1996	20,000.00
August 21, 1996	10,000.00
August 21, 1996	35,000.00
August 21, 1996	10,000.00
August 26, 1996	32,000.00
August 26, 1996	10,000.00
September 2, 1996	20,000.00
October 28, 1996	30,000.00
November 22, 1996	56,000.00
December 2, 1996	2,000.00
January 18, 1997	19,500.00
January 25, 1997	10,000.00
February 12, 1997	15,000.00
March 6, 1997	200,000.00
August 27, 1998	20,000.00

<sup>59</sup> *Rollo*, supra notes 2 and 15.

<sup>60</sup> *Id.* at 371-397.



<b>TOTAL AMOUNT</b>	<b>₱637,274.00<sup>61</sup></b>
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Notably, complainants failed to refute the figures presented by respondent.

Considering the foregoing recitals, herein respondent is liable to return to complainants the amount of Twelve Thousand Seven Hundred Twenty-Six Pesos (₱12,726.00), representing the balance of the amount received by respondent from the buyer, plus legal interest of 6% *per annum* reckoned from the finality of this Decision until full payment.<sup>62</sup>

### ***Penalty of Respondent***

The penalty for violation of Canon 16 of the CPR ranges from suspension for six months, to suspension for one year, or two years, and even disbarment depending on the amount involved and the severity of the lawyer's misconduct.<sup>63</sup>

Guided by this Court's rulings for acts committed in violation of Rules 16.01 and 16.03, taking into consideration respondent's transgressions of Rules 10.3, 12.04, and Canon 11 of the CPR, and in view of his engagement in the unauthorized practice of law, disbarment of the respondent is justified in this case.

**WHEREFORE**, respondent Atty. Donalito Elona is hereby **DISBARRED** and his name **ORDERED STRICKEN OFF** from the Roll of Attorneys effective immediately. He is **ORDERED** to: (1) return OCT No. P-29483 to complainants Romeo Cuña, Sr. and Elena Cuña; (2) deliver to complainants the amount of ₱12,726.00, with interest at the rate of 6% *per annum* from the finality of this Decision until full payment;<sup>64</sup> and (3) promptly submit to this Court written proof of his compliance within fifteen (15) days from payment of the full amount.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into respondent Atty. Donalito Elona's records as attorney. Copies shall likewise be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

<sup>61</sup> Respondent's computation as shown in his Supplement to Respondent's Motion for Reconsideration erroneously indicated ₱637,224.00 as the total amount delivered to complainants.

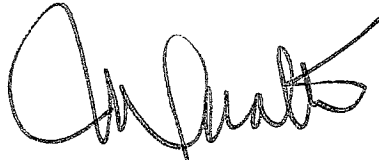
<sup>62</sup> *Nacar v. Gallery Frames*, 716 Phil. 267, 282-283 (2013).

<sup>63</sup> *Cerdan v. Gomez*, 684 Phil. 418, 428 (2012).


<sup>64</sup> *Nacar v. Gallery Frames*, supra note 62.



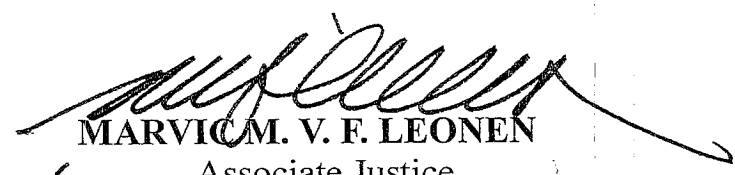
**SO ORDERED.**



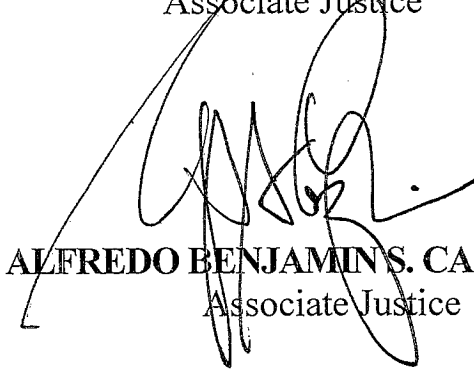
**DIOSDADO M. PERALTA**  
Chief Justice



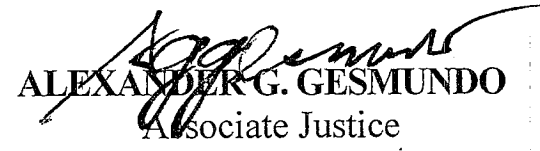
**ESTELA M. PERLAS-BERNABE**  
Associate Justice



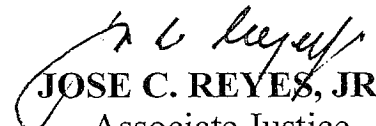
**MARVIC M. V. F. LEONEN**  
Associate Justice



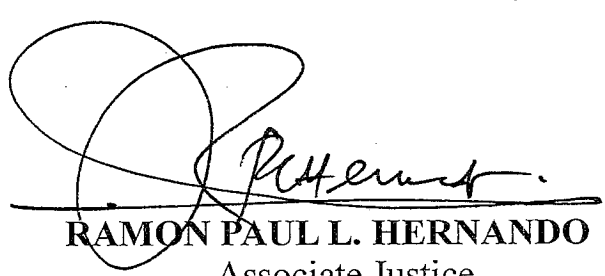
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**ALEXANDER G. GESMUNDO**  
Associate Justice



**JOSE C. REYES, JR.**  
Associate Justice




**RAMON PAUL L. HERNANDO**  
Associate Justice



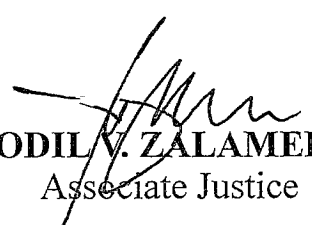
**ROSLARI D. CARANDANG**  
Associate Justice



**AMY C. LAZARO-JAVIER**  
Associate Justice

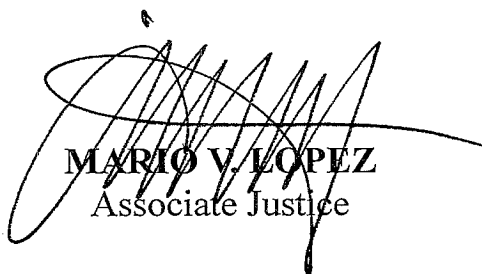


**HENRI JEAN PAUL B. INTING**  
Associate Justice

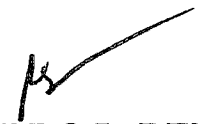


**RODIL V. ZALAMEDA**  
Associate Justice



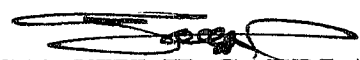


**MARIO V. LOPEZ**  
Associate Justice



**EDGARDO L. DELOS SANTOS**  
Associate Justice

On leave



**SAMUEL H. GAERLAN**  
Associate Justice

