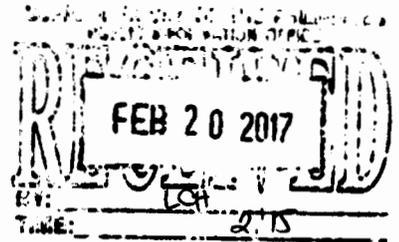




Republic of the Philippines
Supreme Court
Manila



EN BANC

SILVESTRA MEDINA and
SANTOS MEDINA LORAYA,
 Complainants,

A.C. No. 10533

Present:

SERENO, *CJ.*,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 MENDOZA,
 REYES,
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA, and
 CAGUIOA, *JJ.*

- versus -

ATTY. RUFINO LIZARDO,
 Respondent.

Promulgated:
 January 31, 2017

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

DECISION

LEONARDO-DE CASTRO, J.:

Complainants Silvestra Medina (Silvestra) and her nephew Santos Medina Loraya (Santos) filed a Complaint¹ with the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline against Atty. Rufino C. Lizardo (Atty. Lizardo). Complainants allege that Silvestra, because of her advanced age, entrusted the owner’s duplicates of Transfer Certificates of Title (TCT) Nos. 13866 and 3900 to Atty. Lizardo. However, since complainants are not the only owners of the properties covered by said TCTs, and other heirs were asking for the original duplicate copies, complainants went to the residence of Atty. Lizardo and requested the return of said TCTs on March 5, 2011. Atty. Lizardo refused to turn over the TCTs to the complainants. Complainants submitted the following prayer in their Complaint:

¹ Rollo, pp. 2-5.

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WHEREFORE, premises considered it is most respectfully prayed of this Honorable Commission, after hearing, THAT:

1. Respondent turnover to the custody of complainant SILVESTRA MEDINA the above-mentioned original duplicate of certificate of titles in the presence of the Honorable Commission or its duly authorized representative;
2. Other reliefs, just and equitable under the premises are also prayed for.²

In his Answer,³ Atty. Lizardo primarily argues that the Commission on Bar Discipline has no jurisdiction to hear and decide the complaint since it involves an action for specific performance.

Atty. Lizardo admitted that he is the counsel of Silvestra and her sister, the late Alicia Medina (Alicia), who is also the mother of Santos. According to Atty. Lizardo, Silvestra entrusted TCTs No. 13866 and 3900 to him sometime in 1987 because Silvestra, Santos, and Alicia sold their shares in lots 456, 457 and 458 in favor of a certain Renato Martinez (Martinez). Atty. Lizardo claims that he refused to return the subject TCTs because complainants did not secure the written consent of Martinez.

To prove his allegation, Atty. Lizardo presented the *Malayang Salaysay*⁴ of Silvestra dated April 10, 1981 which states:

1. Na, ako ay isang kamagari sa sa [sic] dalawang lagay na lupa na nasa Cupang, Muntinlupa, Rizal (Metro-Manila) na ang nasabing dalawang lagay na lupa ay kilala sa mga sumusunod:

“Lot 457 Muntinlupa Estate (LRC) Record No. 6137 situated at Cupang, Muntinlupa, Rizal, with an area of 664 Sqms.”

“Lot 458 Muntinlupa Estate (LRC) Record No. 6137 situated at Cupang, Muntinlupa, Rizal with and area of 1427 Sqms.

na ang nasabing mga lagay na lupa sa itaas nito ay sinasakop ng isang Titul, “Transfer Certificate of Title No. 23866 ng Talaan ng mga kasulatan sa Rizal[.]”

The *Malayang Salaysay* was signed by Silvestra and notarized by Atty. Lizardo. Atty. Lizardo also presented the *Sinumpaang Salaysay*⁵ of the late Alicia Medina dated May 24, 1982 stating that she received the amount of ₱10,000.00 as initial payment for the sale of the property.

Atty. Lizardo notes that complainants only had a one-fourth share in the subject lots. Atty. Lizardo presented the Decision⁶ dated May 16, 1962

² Id. at 4.

³ Id. at 9-14.

⁴ Id. at 15.

⁵ Id. at 16.

⁶ Id. at 17-19.

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of the Court of First Instance (CFI) of Rizal based on a compromise agreement wherein Silvestra and Alicia were awarded one-fourth share in Lot 456 (described in TCT No. 3900) and Lots 457 and 458 (described in TCT No. 13866). Complainants allegedly sold this one-fourth share to Martinez, but their co-owners resisted the transfer of the titles to said properties, forcing Silvestra and Alicia to file a Complaint for Partition,⁷ docketed as Civil Case No. 18400, on September 4, 1987. According to Atty. Lizardo, Martinez supposedly shouldered all the legal expenses for the partition to protect his interest, as evidenced by Martinez's affidavit⁸ dated May 10, 2011. Upon the death of Alicia, her heirs executed an Extrajudicial Settlement With Sale⁹ dated July 16, 1992 wherein said heirs appear to have agreed to convey in favor of Martinez and his spouse all their shares in TCTs No. 3900 and 13866 covering Lots 456, 457 and 458. The pertinent part of the Extrajudicial Settlement reads:

That, we, together with SILVESTRA MEDINA, owner of the other [o]ne (1/2) half portion of the above-mentioned [o]ne [f]ourth (1/4) portion of the estate of ALICIA MEDINA LORAYA by these presents have decided to sell the (sic) our share, interest and participation over the parcels of land described above:

That, for and in consideration of the sum of ONE HUNDRED FIFTY THOUSAND (₱150,000.00) PESOS, Philippine Currency, receipt of which in full satisfaction is acknowledged and confessed, hereby SELL, TRANSFER and CONVEY unto and in favor of Spouses RENATO MARTINEZ and PURIFICACION LOMEDA MARTINEZ our share, interest and participation in the above-mentioned Three (3) parcels of land, known as Lot 456, covered by TCT 3900 and Lot 457 and 458, covered by TCT 13866 free from any liens and encumbrances except those required by law.

Atty. Lizardo avers that when complainants learned that the sheriff was implementing the writ of execution issued in Civil Case No. 18400, they demanded the return of the two TCTs.

During the Mandatory Conference on July 21, 2011, Santos testified that he and Silvestra did not notice that Lot 456 covered by TCT No. 3900 was sold together with Lots 457 and 458 covered by TCT No. 13866. Santos claims that they did not read the Extrajudicial Settlement since they trusted Atty. Lizardo to sell only one parcel of land¹⁰ covering 1,000 square meters to Martinez.¹¹

In a Letter-Appeal/Manifestation, complainants informed the Investigating Commissioner of their letter terminating the services of Atty. Lizardo as counsel in Civil Case No. 18400 for total loss of trust and confidence and prayed for the latter's disbarment.

⁷ Id. at 20-22.

⁸ Id. at 23-24.

⁹ Id. at 30-33.

¹⁰ Complainants speak of Lots 457 and 458 both covered by TCT No. 13866 as one parcel of land.

¹¹ TSN, July 21, 2011, p. 37, *rollo*, p. 85.

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When the original Investigating Commissioner was elected president of his IBP chapter, the case was reassigned to a new commissioner who set another hearing for mandatory conference on November 4, 2011. At the November 4, 2011 mandatory conference, complainants were present while a paralegal appeared for Atty. Lizardo and brought a verified medical certificate attesting that Atty. Lizardo was indisposed. After noting the rule that failure of any party to appear at the mandatory conference despite notice is considered a waiver of his/her right to participate in the proceedings, the Investigating Commissioner proceeded with the mandatory conference and gave complainants an opportunity to clarify matters not tackled or discussed in the mandatory conference held on July 21, 2011. The parties were thereafter directed to file their respective verified position papers.¹²

In the Commissioner's Report¹³ dated August 3, 2012, the Investigation Commissioner recommended that Atty. Lizardo be suspended from the practice of law for two years, since the former believed that disbarment was too harsh a penalty under the circumstances. On March 21, 2013, the Board of Governors of the IBP issued a Resolution adopting and approving the Report and Recommendation of the Investigating Commissioner, thereby suspending Atty. Lizardo from the practice of law for two years.

The Investigating Commissioner observed that Martinez stated in his Affidavit dated May 10, 2011 that Silvestra sold her share in Lots 456, 457 and 458 to him, and incorporated into said affidavit a copy of Silvestra's *Malayang Salaysay* dated April 10, 1981. In the *Malayang Salaysay*, however, Silvestra mentioned only two parcels of land: Lot 457 with an area of 664 square meters, and Lot 458 with an area of 1,427 square meters. According to the Investigating Commissioner, Atty. Lizardo should have known this because he was the one who prepared and notarized Silvestra's *Malayang Salaysay*.

The Commissioner's Report adopted in the IBP Board of Governors Resolution thereby found Atty. Lizardo to have represented conflicting interests, to wit:

As above stated, during the mandatory conference, Mr. Santos Medina Loraya stated the following:

Mr. Santos Medina Loraya: Paanong mangyaring naiipit e sya ang legal counsel po namin. Siguro kami ang dapat niyang protektahan.

(TSN dated July 21, 2011, page 38)

The question thrown by the complainants during the said conference is very alarming as far as the undersigned is concerned.

¹² See Order dated November 4, 2011, *rollo*, p. 102.

¹³ *Rollo*, pp. 133-144, submitted by Commissioner Jose I. dela Rama, Jr.



Complainants firmly believe that as their lawyer, Atty. Lizardo should protect their interests and legal rights. Respondent should not favor other persons except his clients. It would appear that as admitted by Renato Martinez, he was the one who shouldered all legal expenses including that of the respondent. Respondent should not have allowed the same to happen because definitely, a conflict of interest might arise later on, as what is happening now. Respondent is lawyering for the complainants and at the same time, lawyering for the interest of Renato Martinez.¹⁴

The Investigating Commissioner further observed that Atty. Lizardo did not merely represent conflicting interests, but even actively participated in deceiving his clients, the complainants in the case at bar:

Not only that, respondent allowed himself to be used by Renato Martinez in deceiving the complainants to make it appear that they sold three (3) parcels of land. The intention to deceive the complainants and the heirs is very evident because as stated by the complainants, the Extra-judicial Settlement with Sale was signed during the wake of Alicia Medina. Why would an Extra-judicial Settlement with Sale be executed and signed at the time of the wake of Alicia Medina? Why is the respondent and Renato Martinez in a hurry to have the document signed?

Probably, the heirs, at the time were still grieving for the loss of Alicia Medina. The timing of the preparation and signing is highly questionable as far as the undersigned is concerned.¹⁵ (Underscoring omitted.)

On Atty. Lizardo's allegation that the Commission on Bar Discipline does not have jurisdiction over the complaint, the report adopted by the IBP Board of Governors held:

It is the position of the respondent that the Commission on Bar Discipline has no jurisdiction on the subject controversy. The undersigned begs to differ. The Commission on Bar Discipline, as the investigating body of the Integrated Bar of the Philippines and the Supreme Court, has jurisdiction over all cases involving lawyers. The jurisdiction of this Commission covers transactions committed either in their personal or professional capacity. x x x.¹⁶

Atty. Lizardo filed a Motion for Reconsideration,¹⁷ alleging that he did not represent conflicting interests. He claims that Silvestra, Alicia and Martinez all engaged his services to file the partition case, but agreed that the named complainants shall only be Silvestra and Alicia in accordance with the decision of the CFI of Pasay City. As the share of Silvestra and Alicia were already sold to Martinez, it was Martinez who shouldered the expenses and appeared in every hearing. According to Atty. Lizardo, Silvestra, Alicia, and Martinez had the same interest in the filing of the partition case.

¹⁴ Id. at 140.

¹⁵ Id. at 141-142.

¹⁶ Id. at 143.

¹⁷ Id. at 195-212.

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Atty. Lizardo denied that the Extrajudicial Settlement with Sale was signed during the wake of Alicia. He claims that the preparation, execution, signing and notarization of the Extrajudicial Settlement with Sale were all done in his office in Alabang, Muntinlupa City in the presence of the parties and Martinez on July 16, 1992, which was already beyond the period of the wake of Alicia who died sometime in May 1992. Atty. Lizardo further alleges that in said meeting on July 16, 1992, Silvestra and the heirs of Alicia, including Santos himself, expressed that the sale includes Lot 456 covered by TCT No. 3900.¹⁸

Complainants filed their Comment¹⁹ expressing that Atty. Lizardo's allegations that Martinez was also his client and that Silvestra and the heirs of Alicia appeared before him on July 16, 1992 are fabrications and mere afterthoughts.

On March 21, 2014, the Board of Governors of the IBP issued a Resolution²⁰ denying Atty. Lizardo's Motion for Reconsideration with a modification further directing Atty. Lizardo to return TCTs No. 3900 and 13866 to complainant Silvestra.

This Court resolves to adopt with modification the Resolutions of the IBP Board of Governors.

The main charge against Atty. Lizardo is his alleged violation of Rule 15.03, Canon 15 of the Code of Professional Responsibility, which provides:

Rule 15.03 – A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts[.]

This Court has explained the test in determining whether conflicting interests are being represented in this wise:

There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is **whether the acceptance of a new relation will prevent an attorney from the full**

¹⁸ Id. at 201.

¹⁹ Id. at 214-219.

²⁰ Id. at 226-227.

discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof.²¹ (Citations omitted; emphasis supplied.)

In another case, we held that:

The rule prohibiting conflict of interest applies to situations wherein a lawyer would be representing a client whose interest is directly adverse to any of his present or former clients. It also applies when the lawyer represents a client against a former client in a controversy that is related, directly or indirectly, to the subject matter of the previous litigation in which he appeared for the former client. **This rule applies regardless of the degree of adverse interests.** What a lawyer owes his former client is to maintain inviolate the client's confidence or to refrain from doing anything which will injuriously affect him in any matter in which he previously represented him. A lawyer may only be allowed to represent a client involving the same or a substantially related matter that is materially adverse to the former client only if the former client consents to it after consultation.²² (Citations omitted; emphasis supplied.)

In the case at bar, it is undeniable that complainants Silvestra and Santos, on one hand, and Martinez, on the other, have conflicting interests with regard to the disputed property, particularly Lot 456 covered by TCT No. 3900 which complainants assert they never sold to Martinez. Atty. Lizardo now finds himself arguing against the ownership by Silvestra and Santos of their shares in the disputed property, which is the very legal position he was bound to defend as their counsel in the partition case.

Atty. Lizardo, however, tries to find justification for the situation by implying in his pleadings that Martinez engaged his services concurrently with Silvestra and Alicia in the filing of the partition case, and that they all had the same interest in the outcome of the case: the eventual transfer of the shares of Silvestra and Alicia to Martinez.

The Court observes that the complaint for partition²³ in the Regional Trial Court (RTC) of Makati, Branch 143 is the only case filed in court concerning the subject properties, and Atty. Lizardo is the counsel of record therein of Silvestra and Alicia. There is no mention of Martinez in said Complaint. As argued by complainants, if Martinez was indeed also Atty. Lizardo's client in the partition case, he should have included Martinez as one of the plaintiffs in order to protect the latter's interests. Likewise, after the death of Alicia and the execution of the Extrajudicial Settlement of her estate, Atty. Lizardo had yet another chance to implead Martinez to protect his interest as sole owner of the shares of Silvestra and Alicia in TCTs No. 13866 and 3900, but again failed to do so for no discernible reason. These inactions make it hard for us to believe Atty. Lizardo's claim that Martinez engaged his services concurrently with Silvestra and Alicia in the filing of

²¹ *Hornilla v. Salunat*, 453 Phil. 108, 111-112 (2003).

²² *Mabini Colleges, Inc. v. Pajarillo*, A.C. No. 10687, July 22, 2015, 763 SCRA 288, 295.

²³ *Rollo*, p. 20.

the partition case. There is no credible proof on record that Atty. Lizardo was from the beginning engaged to represent Silvestra, Alicia and Martinez as their common counsel.

In his Motion for Reconsideration of the IBP Board of Governors Resolution dated March 21, 2013, Atty. Lizardo admits that after the signing of the Extrajudicial Settlement with Sale he received instructions from Martinez to hold the TCTs allegedly for the transfer in the latter's name of the interest of Silvestra and Alicia's heirs in the subject properties. This subsequent engagement by Martinez of Atty. Lizardo as counsel against Silvestra and Santos in the matter of the possession of the subject titles amounts to conflict of interest and requires the written consent of all the parties concerned given after a full disclosure of the facts, a requirement he clearly failed to procure.

As counsels for Silvestra and Alicia, Atty. Lizardo is required to deliver the property of his client when due or upon demand, and mandated to always be loyal to them and vigilant to protect their interests, in accordance with the following provisions of the Code of Professional Responsibility:

CANON 16 – A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

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.

CANON 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

Atty. Lizardo's withholding of the TCTs entrusted to him by his clients to protect another purported client who surreptitiously acquired his services despite a conflict of interest is therefore a clear violation of several provisions of the Code of Professional Responsibility. For this reason, we also uphold the grant of complainants' prayer for the return of the subject titles which they turned over to Atty. Lizardo for safekeeping. In any event, the return of said TCTs will not unduly prejudice Martinez who may cause his adverse claim to be duly annotated thereon.

As previously mentioned, the Investigating Commissioner found that Atty. Lizardo allowed himself to be used by Martinez to supposedly defraud Silvestra and the heirs of Alicia and therefore, held that Atty. Lizardo also violated Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the Code of

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Professional Responsibility.²⁴ However, we refrain from passing upon the finding of the Investigating Commissioner that Atty. Lizardo was guilty of deceit in allegedly inducing Silvestra and the heirs of Alicia into selling their interest in all three lots covered by the subject TCTs in the Extrajudicial Settlement with Sale when their purported intention was to sell only the parcels covered by TCT No. 13866. The matter of fraud in the execution of said agreement which will have implications on its validity and legal effects must be first threshed out by the parties in the appropriate proceedings.

The IBP recommends the suspension of Atty. Lizardo from the practice of law for a period of two years. This is the same penalty in *Villanueva v. Atty. Gonzales*,²⁵ one of the cases cited in the Commissioner's Report. We observe, however, that in *Villanueva*, the lawyer not only withheld the TCT entrusted to him by his client, but likewise avoided her for three years, and did not give her *any* information about the status of her case or respond to her request for information. He likewise repeatedly failed to file an answer to the complaint and to appear at the mandatory conference as required by the IBP. The Court held that these actions demonstrate his high degree of irresponsibility and lack of respect for the IBP and its proceedings.²⁶ We find that the conduct of Atty. Lizardo, while reprehensible and unworthy of a member of the Bar, is not quite at par with that in *Villanueva*. Moreover, considering that we find insufficient basis to hold Atty. Lizardo liable for violation of Canon 1, Rule 1.01 and Canon 7, Rule 7.03 at this point in time, a lighter penalty is in order. Suspension from the practice of law for one year is sufficient in the case at bar.

WHEREFORE, the Court finds respondent Atty. Rufino C. Lizardo **GUILTY** of violating Canons 16 and 17, and Rules 15.03 and 16.03 of the Code of Professional Responsibility. Accordingly, the Court **SUSPENDS** him from the practice of law for one year effective upon finality of this Decision, **ORDERS** him, under pain of contempt, to return TCTs No. 3900 and 13866 to complainant Silvestra Medina within 15 days from notice of this Decision, and **WARNS** him that a repetition of the same or similar offense shall be dealt with more severely.

²⁴ CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for the law and legal processes.

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 7 – A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the integrated bar.

x x x x

Rule 7.03 – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

²⁵ 568 Phil. 379, 388 (2008).

²⁶ Id.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to respondent Atty. Lizardo's personal record as attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

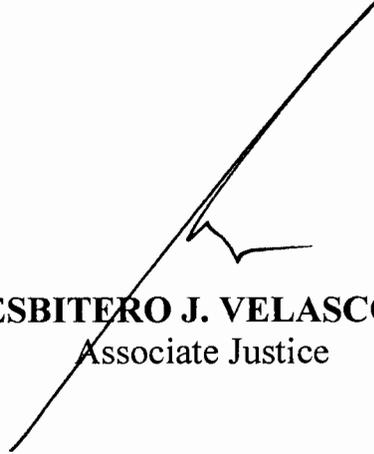
SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

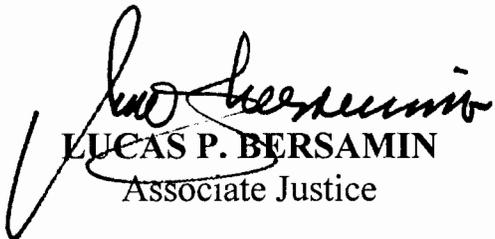
WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


ANTONIO T. CARPIO
Associate Justice


PRESBITERO J. VELASCO, JR.
Associate Justice


DIOSDADO M. PERALTA
Associate Justice

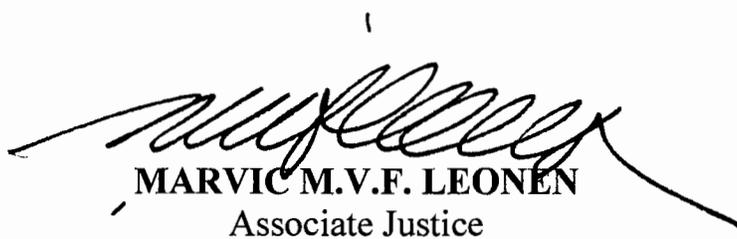

LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice

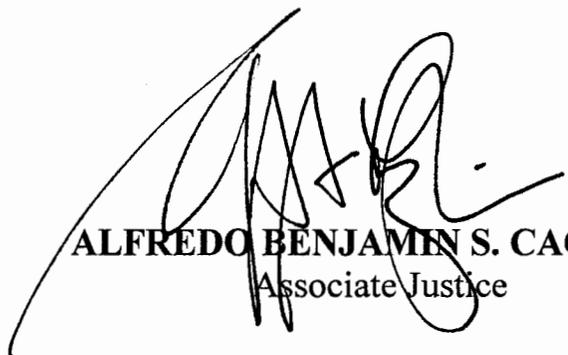

JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice

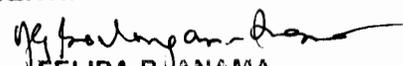

ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFIED XEROX COPY:


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