



Republic of the Philippines
Supreme Court
 Manila

EN BANC

ELEANOR P. OLIVAN,
 Complainant,

A.M. No. P-12-3063
 (Formerly A.M. OCA IPI No. 09-3082-P)

Present:

SERENO, C.J.,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 BRION,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 ABAD,
 VILLARAMA, JR.,
 PEREZ,
 MENDOZA,
 REYES,
 PERLAS-BERNABE,* and
 LEONEN,* JJ.

- versus -

**ARNEL JOSE A. RUBIO, Deputy Sheriff
 IV, Office of the Clerk of Court, Regional
 Trial Court, Naga City,**
 Respondent.

Promulgated:

NOVEMBER 26, 2013

X-----X

DECISION

PER CURIAM:

Before us is a sworn administrative complaint¹ dated February 11, 2009, filed by complainant Eleanor² P. Olivan against respondent Arnel Jose A. Rubio, Deputy Sheriff IV, Office of the Clerk of Court (OCC), Regional Trial Court (RTC), Naga City, for malversation.

The facts, as culled from the records, follow:

* On official leave.

¹ Rollo, pp. 2-3.

² Also referred to as Eleonor, Elonor and Elenor in some parts of the records.

Complainant is the daughter-in-law and representative of the applicants in a land registration case, docketed as Land Registration Case No. N-594, GLRC Record No. N-8109 entitled, “*Domingo P. Oliván and Venancia R. Oliván, Applicants v. Municipality of Pasacao, Camarines Sur, Oppositor.*” She averred that the case was decided in their favor by the Court of Appeals whose decision became final and executory. Hence, a writ of execution³ was issued in favor of the applicants. Subsequently, an Alias Writ of Execution⁴ (Alias Writ) was issued on September 29, 2005 and respondent was tasked to enforce the same.

On April 27, 2006, respondent received ₱20,000 from complainant as partial payment for the sheriff’s incidental expenses for the implementation of the Alias Writ, as evidenced by a handwritten receipt⁵ signed by respondent.

On May 10, 2006, respondent filed a Manifestation⁶ pursuant to Rule 141 of the Rules of Court, detailing the Sheriff’s Expenses in the amount of ₱150,000 as incidental expenses and ₱3,000 as the court’s commission fee, or a total of ₱153,000 for the implementation of said writ. The Manifestation was with the conformity of complainant, the recommending approval of Atty. Egmedio C. Blacer, Clerk of Court VI and *Ex Officio* Sheriff of the RTC, and was approved by Judge Pablo M. Paqueo, Jr., then Executive Judge of the RTC. On the same day, complainant deposited ₱153,000 with the OCC of the RTC as evidenced by Official Receipt No. 3453158.⁷ Also on the same day, respondent withdrew the full amount of ₱153,000.⁸

Complainant averred that to her damage and prejudice, respondent failed to execute the decision despite receipt of a total sum of ₱173,000. She also averred that respondent failed to return to the OCC or to her the remaining cash of ₱22,866 as indicated in his Liquidation of Sheriff’s Expenses⁹ dated December 20, 2008. Said report showed that the total amount spent was only ₱150,134, thereby leaving a balance of ₱22,866.

In his Comment¹⁰ dated April 7, 2009, respondent stated that implementing the Alias Writ required the delivery of the material possession of the subject property to the applicants and the service of the said writ to more than 40 residents in the area. He informed complainant of the expenses that will be needed to implement the writ considering the number of residents affected and their opposition thereto, the location of the subject property and the need for additional assistance from other court sheriffs.

³ *Rollo*, pp. 147-148.

⁴ *Id.* at 65-67.

⁵ *Id.* at 4.

⁶ *Id.* at 73-74.

⁷ *Id.* at 5.

⁸ *Id.* at 47.

⁹ *Id.* at 6-9.

¹⁰ *Id.* at 34-36.

Thus, on April 27, 2006, complainant gave him the aforementioned amount of ₱20,000.

He adds that on April 24, 2006 Atty. Fiel V. Bagalacsa-Abad, Clerk of Court V of the OCC issued a Travel Order¹¹ to him and other assisting sheriffs namely, Pelagio Papa, Jr., Edgar Surtida II¹² and the late Donn Valenciano. Together with said other sheriffs, he went to the subject property several times to serve the writ.

On May 10, 2006, he filed the aforementioned Manifestation and submitted a Partial Return of Alias Writ of Execution¹³ on May 11, 2006 reporting the actions he had undertaken in the implementation of the writ. He also requested that a precision survey be conducted for the purpose of identifying the actual occupants of the subject property so that they may be duly served in person with the notice to vacate and the alias writ. He also requested that the survey be conducted with the assistance of the members of the Philippine Army or the Philippine National Police (PNP) to maintain peace and security. In an Order¹⁴ dated May 16, 2006, the RTC duly took note of the said Partial Return and ordered the conduct of the precision survey. The RTC also directed the PNP Provincial Commander of Camarines Sur to provide respondent at least ten PNP personnel to maintain peace and order during the said survey.

Subsequently, Travel Orders were issued in his favor and in favor of his companions for the periods May 18 to 19, 2006;¹⁵ May 23 to 24, 2006;¹⁶ and June 20 to 23, 2006.¹⁷

On June 26, 2006, he submitted a Sheriff's Report¹⁸ stating the actions he pursued and the events that transpired during the service of the RTC's Order dated May 16, 2006. Respondent alleged therein that the occupants resisted and refused to obey the Alias Writ and that respondent and his companions were met with threats and violence. Thus, respondent opined that a precision survey and a writ of demolition were proper under the circumstances. Respondent claimed that complainant's counsel filed a motion for issuance of a writ of demolition but the court had not yet resolved the motion. Respondent also claimed that complainant would oftentimes visit him, insisting that he demolish the houses erected on the subject property but he refused as there was no writ of demolition yet.

On November 30, 2008, he received a letter¹⁹ from complainant, copy furnished Judge Jaime E. Contreras (Judge Contreras), Executive Judge of

¹¹ Id. at 68.

¹² Also referred to as Edgar Surtida IV in some parts of the records.

¹³ *Rollo*, pp. 69-70.

¹⁴ Id. at 71-72.

¹⁵ Id. at 77.

¹⁶ Id. at 78.

¹⁷ Id. at 79.

¹⁸ Id. at 80-82.

¹⁹ Id. at 83.

the RTC, asking for an accounting of the expenses he incurred in the implementation of the Alias Writ. Judge Contreras treated the letter as an administrative complaint and met the parties for a conference. As a result, he was ordered to return the full amount or make a full and detailed liquidation, which he did on January 13, 2009, through the aforementioned Liquidation of Sheriff's Expenses. However, complainant manifested to Judge Contreras that she was not satisfied with the accounting rendered. Complainant was then informed by Judge Contreras that the matter was properly within the jurisdiction of the Office of the Court Administrator (OCA).²⁰

In her Opposition to Respondent's Comment,²¹ complainant maintained that respondent's liquidation report contained bloated expenses. She submitted that respondent malversed a portion of the total amount he received. In his Reply,²² respondent countered that the expenses he incurred were all legitimate.

Considering the conflicting allegations of the parties and the gravity of the charges which required a full-blown investigation, the OCA referred the matter to Judge Contreras for investigation, report and recommendation.²³

In his Report and Recommendation²⁴ dated December 5, 2010, Judge Contreras concluded that respondent incurred unnecessary and/or unsubstantiated expenses. He found that respondent's claim for expenses regarding police assistance was refuted by the Certifications issued by Police Superintendent Marlon Celetaria Tejada of the PNP Camarines Sur Provincial Office²⁵ and Police Senior Inspector Venerando Flor Ramirez of the Pasacao Municipal Police Station²⁶ stating that their respective offices based on record did not deploy any PNP personnel to assist respondent in implementing the alias writ covering the period of April 28 to June 22, 2006. Said police officers confirmed the veracity of these Certifications in their respective testimonies made before Judge Contreras.²⁷ Judge Contreras further noted that respondent submitted his liquidation of expenses only after almost two years. Thus, Judge Contreras made the following conclusion and recommendation:

CONCLUSION AND RECOMMENDATION

In view of all the foregoing, the undersigned Investigating Judge respectfully recommends to hold respondent Sheriff Jose Arnel Rubio liable for Serious Misconduct for having committed the following acts, to wit:

²⁰ Id. at 61.

²¹ Id. at 90-91.

²² Id. at 94-95.

²³ Id. at 112-115, 118-119 and 119-A.

²⁴ Id. at 179-193.

²⁵ Id. at 129.

²⁶ Id. at 131.

²⁷ TSN, June 1, 2010, pp. 2-13; *rollo*, pp. 284-295.

1. For having received from the complainant Php 20,000.00 out of his demand for Php 100,000.00 in consideration of his services which allegedly entailed risk;
2. For having directly received from complainant [a] sum of money as sheriff's expense, without following the appropriate procedure;
3. For having knowingly or unknowingly failed to exercise proper prudence thereby incurring unnecessary expenses or financial losses, under the guise of implementing the writ, to the prejudice of the complainant;
4. For having presented questionable and falsified receipts to justify his bloated expenses; and
5. For having enlisted the assistance of several sheriffs, and in the process involved them in complicity in implementing the writ.

Likewise, it is respectfully recommended that he be **suspended** for six (6) months without pay.²⁸

As a related matter, in the course of the investigation, Judge Contreras found that other employees of the RTC, namely, Patricia De Leon, Sheriff Edgar Hufancia, Sheriff Edgar Surtida II and Sheriff Pelagio Papa, Jr. were likewise involved in anomalous or shady transactions which enabled them to collect certain sums of money from complainant under the guise of helping her in her case. Thus, Judge Contreras recommended that a case for Conduct Prejudicial to the Best Interest of the Service be filed against said employees. His recommendation was approved by this Court in its Resolution²⁹ dated June 13, 2012 and the matter is now separately docketed as A.M. OCA IPI No. 12-3896-P.³⁰

In its Memorandum³¹ dated March 14, 2012, the OCA found that the conclusions of fact of Judge Contreras are duly supported by evidence on record. The OCA agreed with said findings except for the recommended penalty. Invoking our ruling in *Anico v. Pilipiña*,³² the OCA opined that respondent's act of soliciting money from complainant constituted serious misconduct. The OCA added that such was further aggravated by respondent's act of receiving the amount of ₱20,000 and his failure to turn over said amount to the OCC, which is an act of misappropriation of funds amounting to dishonesty. Thus, the OCA recommended, among others, that respondent be found guilty of Serious Misconduct and Dishonesty and be ordered dismissed from the service with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

²⁸ *Rollo*, pp. 192-193.

²⁹ *Id.* at 595-596.

³⁰ *Id.* at 601.

³¹ *Id.* at 588-594.

³² A.M. No. P-11-2896 (Formerly OCA I.P.I. No. 08-2977-P), August 2, 2011, 655 SCRA 42.

The Court adopts in full the factual findings and the recommendation of the OCA.

The deposit and payment of expenses incurred in enforcing writs are governed by Section 10, Rule 141 of the Rules of Court, as revised by A.M. No. 04-2-04-SC,³³ viz:

SEC. 10. *Sheriffs, PROCESS SERVERS and other persons serving processes.* –

x x x x

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, **the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. THE LIQUIDATION SHALL BE APPROVED BY THE COURT.** Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor. (Emphasis supplied.)

The rule clearly requires that the sheriff executing a writ shall provide an estimate of the expenses to be incurred, and such estimated amount must be approved by the court. Upon approval, the interested party shall then deposit the amount with the clerk of court and *ex officio* sheriff. The expenses shall be disbursed to the assigned deputy sheriff to execute the writ, subject to liquidation upon the return of the writ. Any amount unspent shall be returned to the interested party.³⁴

In this case, respondent failed to comply with the prescribed procedure. His admitted act of receiving ₱20,000 for expenses to be incurred in the execution of the writ on April 27, 2006³⁵ as evidenced by a mere handwritten receipt, without having made an estimate and without securing prior approval of the court, is a violation of the above rules. Respondent's explanation that he merely received the ₱20,000 because complainant was very insistent to implement the Alias Writ, is not acceptable. The rules are clear. Respondent should not have received any money from complainant without first providing an estimate of the expenses to be incurred and submitting the same for approval of the court.³⁶ He did not even advise complainant that he was not authorized to receive any

³³ Effective August 16, 2004.

³⁴ *Aprieto v. Lindo*, A.M. No. P-07-2356, May 21, 2009, 588 SCRA 19, 25.

³⁵ TSN, June 17, 2010, pp. 44-45; *rollo*, pp. 502-503.

³⁶ See *Argoso v. Regalado II*, A.M. No. P-09-2735 (Formerly OCA I.P.I. No. 07-2614-P), October 12, 2010, 632 SCRA 692, 696.

amount from her and that the money for expenses should be deposited with the OCC.³⁷ Neither does it appear that he deposited the amount with the Clerk of Court and *Ex officio* Sheriff. In fact, the money which respondent had demanded and received from complainant was not among those prescribed and authorized by the Rules of Court as it was not even accounted for earlier in his Manifestation. He merely reported his receipt of the ₱20,000 in his liquidation of expenses only after complainant demanded an accounting and in compliance to Judge Contreras' directive. This Court has ruled that any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction and renders him liable for grave misconduct and gross dishonesty.³⁸

Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of one's duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness.³⁹ On the other hand, misconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause. The term "grave" means "very serious; involving or resulting in serious consequences: likely to produce real harm or damage."⁴⁰

We concur with Judge Contreras' findings that respondent indeed incurred unnecessary and/or unsubstantiated expenses. It is evident from the aforementioned certifications and the police officers' testimonies that respondent was not assisted by PNP personnel in the implementation of the writ contrary to his claim, as contained in his liquidation of expenses where for May 18, 2006 alone, respondent reported expenses for PNP/Military assistance in the substantial amount of ₱36,000.⁴¹ Judge Contreras thus stated:

Furthermore, Sheriff Rubio and his assisting sheriffs kept on proceeding to the place subject of the writ since 28 April until 9 May 2006 which entailed the total expense of Php 35,900.00 even if he had not yet filed his Manifestation of Estimated Sheriff's Expense and no money was deposited yet by the prevailing party to the court except the Php 20,000.00 he demanded from complainant on account of the risk involved in implementing the writ....⁴²

It bears stressing that respondent's issuance of a handwritten receipt⁴³ dated April 27, 2006 also constitutes a violation of Section 113, Article III,

³⁷ See *Aprieto v. Lindo*, supra note 34.

³⁸ *De Guzman, Jr. v. Mendoza*, 493 Phil. 690, 697 (2005) and *Alvarez, Jr. v. Martin*, 458 Phil. 85, 95-96 (2003).

³⁹ *Philippine Amusement and Gaming Corporation (PAGCOR) v. Ariel R. Marquez*, G.R. Nos. 191877 & 192287, June 18, 2013, p. 10.

⁴⁰ *PNP Supt. Gonzalo v. Mejia*, 479 Phil. 239, 248 (2004).

⁴¹ *Rollo*, p. 8.

⁴² *Id.* at 186.

⁴³ *Id.* at 4.

Chapter V of the National Accounting and Auditing Manual which provides “that no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof.”⁴⁴

Time and again we have ruled that high standards are expected of sheriffs who play an important role in the administration of justice. We have constantly reminded our sheriffs and deputy sheriffs⁴⁵ of our admonition in *Vda. de Abellera v. Dalisay*,⁴⁶ to wit:

At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with the litigants, hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice.

As to the appropriate penalty, grave misconduct and dishonesty are grave offenses each punishable by dismissal even on the first offense under Section 52,⁴⁷ Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.⁴⁸ The penalty of dismissal further carries with it the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits [except leave credits pursuant to Rule 140, Section 11 (1) of the Rules of Court] and disqualification from reemployment in the government service.⁴⁹ However, inasmuch as Section 53, Rule IV of the Uniform Rules allows the disciplining authority the discretion to consider mitigating circumstances in the imposition of the appropriate penalty, it is likewise imperative that aggravating and alternative circumstances attendant to the commission of the offense be considered.⁵⁰

Verily, this Court in many instances has mitigated the impossible penalty for humanitarian reasons; considered length of service in the

⁴⁴ *Peña, Jr. v. Regalado II*, A.M. No. P-10-2772 (Formerly A.M. OCA I.P.I No. 07-2615-P), February 16, 2010, 612 SCRA 536, 545; *Lopez v. Ramos*, 500 Phil. 408, 417 (2005); and *Sandoval v. Ignacio, Jr.*, 480 Phil. 698, 708 (2004).

⁴⁵ As reiterated in *Office of the Court Administrator v. Ramano*, A.M. No. P-90-488, January 25, 2011, 640 SCRA 370, 374; *Atty. Legaspi v. Tobillo*, 494 Phil. 229, 240-241 (2005); *Judge Balanag, Jr. v. Osita*, 437 Phil. 452, 460 (2002); and *Danao v. Franco, Jr.*, 440 Phil. 181, 186 (2002).

⁴⁶ 335 Phil. 527, 530-531 (1997).

⁴⁷ SEC. 52. *Classification of Offenses*. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

1. Dishonesty
1st Offense — Dismissal
x x x x

3. Grave Misconduct
1st Offense — Dismissal
x x x x

⁴⁸ *Beltran v. Monteroso*, A.M. No. P-06-2237, December 4, 2008, 573 SCRA 1, 6.

⁴⁹ *Civil Service Commission v. Ismael A. Hadji Ali*, A.M. No. SCC-08-11-P, June 18, 2013, p. 7.

⁵⁰ See *Ramas-Uypitching, Jr. v. Magalona*, A.M. No. P-07-2379 (Formerly OCA I.P.I. No. 03-1742-P), November 17, 2010, 635 SCRA 1, 12.

judiciary; and viewed the family circumstances, among others, in determining the proper penalty.⁵¹ In *Francisco v. Bolivar*,⁵² this Court enumerated cases wherein respondent sheriffs therein being first-time offenders — *De Guzman, Jr. v. Mendoza*⁵³ for grave misconduct and dishonesty; *Adoma v. Gatcheco*⁵⁴ for grave misconduct, dishonesty and conduct prejudicial to the best interest of the service; *Apuyan, Jr. v. Sta. Isabel*⁵⁵ for grave misconduct, dishonesty and conduct grossly prejudicial to the best interest of the service; and *Albello v. Galvez*⁵⁶ for dishonesty — were meted the penalty of one year suspension instead of dismissal.

However, we note that this is not the first time that respondent has been administratively sanctioned. In *Manaog v. Rubio*,⁵⁷ respondent was found guilty of simple misconduct for which he was suspended from the service for one month and one day without pay. The Court held therein that respondent together with his co-respondent had shown lack of decorum, propriety, and respect in their dealings with other people. Subsequently, in *Sales v. Rubio*,⁵⁸ the Court also found respondent, then Sheriff of the Municipal Circuit Trial Court of Magarao-Canaman, Camarines Sur, guilty of violation of Section 10, Rule 141 of the Rules of Court and of Discourtesy, and was again suspended for six months without pay. In both instances, this Court sternly warned respondent that a repetition of the same or similar offense or offenses shall be dealt with more severely.

This Court doubts if respondent indeed took to heart and heeded seriously these previous warnings. His conduct in this case and his prior infractions are grossly prejudicial to the best interest of the service. Leniency is of no moment for doing so would give the public the impression that incompetence and repeat offenders are tolerated in the judiciary.⁵⁹ The frequency of respondent's offenses only demonstrates his propensity to violate the Rules of Court and the Code of Conduct for Court Personnel. With two cases decided against him, and taking the substantive merits of this case, respondent has clearly demonstrated his incorrigibility and unfitness to be in the service.⁶⁰ Consequently, the imposition of the ultimate administrative penalty of dismissal from service is warranted.

WHEREFORE, respondent Arnel Jose A. Rubio, Deputy Sheriff IV, Office of the Clerk of Court, Regional Trial Court of Naga City, is found **GUILTY** of Dishonesty and Grave Misconduct and is ordered **DISMISSED** from the service with forfeiture of all retirement benefits and privileges,

⁵¹ *Office of the Court Administrator v. Nelson P. Magbanua*, A.M. No. P-12-3048 (formerly A.M. No. 11-3-29-MCTC), June 5, 2013, p. 7.

⁵² A.M. No. P-06-2212, July 14, 2009, 592 SCRA 591, 609.

⁵³ Supra note 38, at 699.

⁵⁴ 489 Phil. 273, 281 & 282 (2005).

⁵⁵ A.M. No. P-01-1497 (Formerly AM-OCA-IPI-00-837-P), May 28, 2004, 430 SCRA 1, 18.

⁵⁶ 443 Phil. 323, 329 (2003).

⁵⁷ A.M. No. P-08-2521 (Formerly OCA I.P.I. No. 05-2329-P), February 13, 2009, 579 SCRA 10, 15.

⁵⁸ A.M. No. P-08-2570 (Formerly A.M. OCA IPI No. 07-2547-P) September 4, 2009, 598 SCRA 195, 201-202.

⁵⁹ *Marcos v. Pamintuan*, A.M. No. RTJ-07-2062, January 18, 2011, 639 SCRA 658, 669.

⁶⁰ *Hofer v. Tan*, 555 Phil. 168, 185 (2007).

except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

This Decision is **IMMEDIATELY EXECUTORY.**

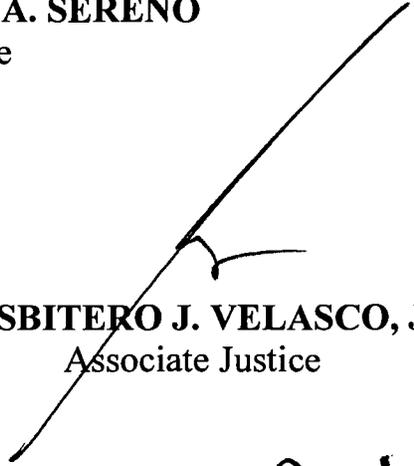
SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice



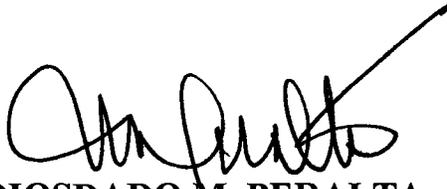
PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



ARTURO D. BRION
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



ROBERTO A. ABAD
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice




JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice

(On official leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

(On official leave)
MARVIC MARIO VICTOR F. LEONEN
Associate Justice

