

Republic of the Philippines
SANDIGANBAYAN
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

**CRIMINAL CASE NO SB-06-
CRM-0453**

*For: Violation of Sec. 3(E), R.A.
No. 3019, as amended*

-versus-

Present:
**Herrera, Jr., J., Chairperson
Musngi, J. &
Pahimna, J.**

EUGENIO L. FAMOR, ET.AL.,
Accused.

Promulgated:
March 29, 2019 ant

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DECISION

PAHIMNA, J.

Accused **EUGENIO L. FAMOR, NICASIO M. PEÑA, and CAMACHO L. CHIONG**, stand charged with violation of Section 3(e) of Republic Act No. 3019 (R.A. No. 3019), otherwise known as the Anti-Graft and Corrupt Practices Act, under Information dated 6 June 2006, the accusatory portion of which reads:

That during the period of October 2001 or prior or subsequent thereto in the Province of Zamboanga-Sibugay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused public officers, **EUGENIO L. FAMOR**, a high-ranking public official, being the Vice-Governor, **NICASIO PEÑA**, Secretary of the Sangguniang Panlalawigan, and **CAMACHO L. CHIONG**, Private Secretary, all of the Province of Zamboanga-Sibugay, while in the performance of their official functions and committing the offense in relation to office, conspiring and confederating with each other, with evident bad faith and manifest partiality, did then and there willfully, unlawfully and criminally issue a permanent appointment to **CAMACHO L. CHIONG** as Board Secretary IV without passing through the Personnel Selection Board, the Provincial Human Resource Management Office, and the Civil Service Commission as required by law, thus, granting **CAMACHO L. CHIONG** unwarranted benefits in the total amount of ONE HUNDRED SIXTY ONE THOUSAND

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FIVE HUNDRED SIXTY THREE PESOS and 30/100 (P161, 563.30) representing the seven (7) months salaries and allowances of accused CAMACHO L. CHIONG as Board Secretary IV, to the damage and prejudice of the Provincial Government of Zamboanga-Sibugay in the aforestated amount.

CONTRARY TO LAW.

Upon arraignment, Chiong, Peña, and Famor, respectively pleaded not guilty on 17 August 2011, 9 November 2012, and 9 January 2014. Thereafter, preliminary conference, and then, pre-trial was conducted. On 17 February 2014, the Court issued the Pre-Trial Order, with the following stipulations: (1) During the period October 2001 to May 2002, there were only two (2) filled-up positions in the Office of the Secretary to the *Sangguniang Panlalawigan*, those occupied by Peña and Chiong; (2) It is the duty of the Human Resource Management Officer to determine whether an applicant is qualified for the position applied for and to refer the application to the Provincial Selection Board; (3) The identities of all the accused; and, (4) The fact that they are all public officers at the time of the alleged commission of the crime.

Trial then ensued. The testimonies of prosecution witnesses Felicidad C. Tesoro and Ernesto T. Gonzaga were dispensed with considering that defense stipulated on the existence and authenticity of the Civil Service Commission (CSC) Certification (Exhibit A), Qualification Standard indicating the minimum qualification for the position of Board Secretary IV (Exhibit A-1), and Checklist reflecting the mandatory requirements for first salary (Exhibit A-2); and on the fact that Chiong was appointed as Board Secretary IV, and that he received salaries for the months of October, November, December 2001, and January, February, March and April 2002.¹

The prosecution also presented the following whose testimonies may be summed as follows:


1. NELSIE PATRIARCA LAZO

Witness is the Assistant Provincial Human Resource Management Officer of the Provincial Government of Zamboanga, Sibugay. Before her promotion as such, she was appointed as Human Resource Management Officer IV of the Provincial Government of Zamboanga, Sibugay on 1 August 2001.²

She narrated that the corporate existence of the Provincial Government of Zamboanga, Sibugay commenced on 1 July 2001. Most

¹ TSN, 13 May 2014, pp. 8-9, 13-14.

² TSN, 23 July 2014, p.5.



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of its employees, who came from the Provincial Government of Zamboanga del Sur, were, likewise appointed on 1 August 2001. For her transfer appointment, she was required to submit an approved request to transfer, clearance as to property and money accountability and certification of leave credits.³

According to Lazo, during that time, because their office was new, it was the Provincial Human Resource Management Office (PHRMO) who prepared the appointment papers of the executive offices - the Office of the Provincial Governor, Provincial Budget Office, Office of the Provincial Accountant, Provincial Human Resource Management Office and the Provincial General Service Office. Hence, in her case, she prepared her own appointment paper. Thereafter, it was approved by Governor George T. Hofer.⁴

On the other hand, the Office of the Vice-Governor, Office of the Legislative, and Office of the Provincial Board Secretary (OPBS) prepared their respective appointment papers. After the appointing authority signs the same, it had to be submitted together with the requirements to the PHRMO for the latter to review and certify (as to completeness of requirements) at the back of the appointment paper. Thereafter, the same is transmitted to the CSC.⁵

As to accused Chiong, it was allegedly the OPBS who prepared his appointment paper. However, it was not submitted to the PHRMO for review. She said that she learned of Chiong's appointment in January of 2002 when the daughter of Chiong came over to PHRMO and asked for his father's service record. Not finding Chiong's 201 File, Lazo asked from the daughter whether Chiong was already appointed. She said yes, adding that the appointment paper of her father was already submitted to the CSC. The following day, Chiong's daughter gave her the front page copy of Chiong's appointment paper.⁶

But upon verification from the CSC, they found out that the appointment paper of Chiong was not submitted to the CSC. Upon such discovery, Ester Yukoya, the PHRMO Officer, informed the Vice-Governor about the matter. Thereafter, Chiong was appointed on 6 May 2002 as Private Secretary II of Vice-Governor Famar. This time, it was the PHRMO who prepared his appointment paper. However, despite the supporting documents accompanying Chiong's appointment paper,⁷ PHRMO Officer Yukoya did not sign at the back of his appointment

³ TSN, 23 July 2014, pp. 5-6.

⁴ TSN, 23 July 2014, pp. 6-8.

⁵ TSN, 23 July 2014, pp. 8-10.

⁶ TSN, 23 July 2014, pp. 11-14.

⁷ Exhibits N and sub-markings.

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paper because Chiong lacked the clearance as to property and money accountabilities from his former office- the local government unit of Titay.⁸

Meanwhile, on the query as to who prepared the voucher for the first and subsequent salaries of new employees, Lazo said that it was the office concerned which prepared the same. In the case of Chiong, she said that it was the OPBS which prepared his voucher and payroll. She added that all the supporting documents for the payment of fist salary*did not pass through the PHRMO but were submitted only to the Budget Office and the Provincial Accountant's Office.⁹

On cross-examination, Lazo said that Chiong's appointment paper was given to her office. On the query as to who prepared the Personnel Schedule, she replied that the Provincial Budget Officer prepared the same in October 2001. She also affirmed that Chiong rendered service at the OPBS, which at that time had only two (2) employees: accused Peña as Provincial Secretary and Chiong as Board Secretary IV.¹⁰

On re-direct examination, Lazo clarified that the PHRMO actually received a copy of Chiong's appointment paper dated 1 October 2001 sometime in January of 2002, but the same was only a photocopy; they never saw its original copy.¹¹

2. ESTER R. YUKOYA

Witness is the Provincial Human Resource Management Officer (PHRMO Officer) of the Province of Zamboanga, Sibugay having been appointed as such on 1 August 2001 by Provincial Governor George T. Hofer.¹²

According to Yukoya, accused Peña was appointed as Provincial Secretary of Zamboanga, Sibugay on 2 July 2001, on a contractual basis considering that he did not have the civil service eligibility. She learned of Peña's appointment sometime in April 2002 when her office was provided with a copy of his disapproved appointment. It was allegedly the OPBS which submitted Peña's appointment paper to the CSC.¹³

She further claimed that she learned of the appointment of Chiong sometime in 2002 when the Assistant Provincial Human Resource

⁸ TSN, 23 July 2014, pp. 16-18

⁹ TSN, 23 July 2014, pp. 15, 19-20.

¹⁰ TSN, 23 July 2014, pp. 22-23, 27.

¹¹ TSN, 23 July 2014, p.29.

¹² TSN, 24 July, 2014, p. 10.

¹³ TSN, 24 July 2014, pp. 10-12.

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Management Officer, Nelsie Lazo informed her that the daughter of Camacho requested for a service record of his father from their office. Yukoya said that they did not issue the service record because Chiong did not have a File 201 in their office. Thus, they requested for a copy of Chiong's appointment. In turn, Chiong's daughter provided them with a photocopy of the front page of Chiong's appointment paper. The daughter also said that his father's appointment paper was submitted to the CSC Region IX. But upon verification from the CSC, they found out that none was submitted to it.¹⁴

Thereafter, Yukoya informed Vice-Governor Famor about the matter. Famor allegedly angrily replied, "*hindi ko ibibigay kay Camacho ang mataas na posisyon na iyan dahil hindi ko sya tao, tao lang sya ni Pepot.*" Pepot is allegedly the nickname of accused Peña.¹⁵

However, after the incident, the PHRMO was instructed by Vice-Governor Famor to prepare another appointment paper to Chiong, this time, as co-terminus Private Secretary of Vice-Governor Famor. The appointment paper was dated 6 May 2002 and attested by the CSC on 2 July 2002. Yukoya said that she did not sign the second page of the appointment paper because Chiong has not yet submitted his clearance from money and property accountability from his previous employer- the Municipal Government of Titay, Zamboanga, Sibugay. It was only in June 2002, when he was already Private Secretary, when Chiong allegedly actually submitted such clearance.¹⁶

According to her, the Personnel Schedule for 2002, which included the name of Chiong as Board Secretary IV, was prepared by the Budget Office sometime in October 2001. It was signed by her, the Provincial Governor, and the Provincial Budget Officer. She remembered that it was brought to her house in the evening for her signature. She did not want to sign it at first because her office has not yet reviewed the same. However, the staff of the Budget Office appealed to her saying that it had to be submitted to the *Sangguniang Panlalawigan* for legislation the following day; Yukoya also saw that her co-signatories had already signed it. Thus, she signed each page while the staff of the Budget Office flipped the pages.¹⁷

On cross-examination, Yukoya stated that she prepared her appointment paper and submitted it to the Governor for approval. She added that at that time, the Provincial Selection Board was not yet constituted.¹⁸ She also opined that the appointment of Chiong was not

¹⁴ TSN, 24 July 2014, pp. 18-22.

¹⁵ TSN, 24 July 2014, pp. 22-23.

¹⁶ TSN, 24 July 2014, pp. 23-28.

¹⁷ TSN, 24 July 2014, pp. 15-18.

¹⁸ TSN, 24 July 2014, pp. 30, 33.

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proper not because it did not pass Personnel Selection Board but because it was not submitted to the CSC where all appointments should be processed.¹⁹

3. ROSANNA T. PALALON

Rosanna T. Palalon is the Provincial Budget Officer of Zamboanga Sibugay, having been appointed as such on 16 October 2008. She was formerly with the Municipal Government of Ipil, Zamboanga Sibugay, as Budget Officer II. Then, on 16 September 2001, she transferred to the Provincial Government of Zamboanga Sibugay as Budget Officer III after being interviewed by the Provincial Human Resource Management Officer and Provincial Budget Officer.²⁰

For her transfer, she submitted to the then Provincial Budget Officer, the late Stella Torres, her authority to transfer, clearance and other credentials such as her Transcript of Records, Certificate of Eligibility, Certificate of Earned Leave Credits and training certificates. Thereafter, her papers were forwarded to the PHRMO. Then, she received her appointment paper already signed by Governor George T. Hofer, for which she was asked to sign on the side of the document. After which, it was returned to the PHRMO for transmittal to the CSC. Before March of 2002, she received her appointment paper, already attested and approved by the CSC.²¹

Anent the payrolls and disbursement vouchers, Palalon disclosed that since the beginning until 2013, they were prepared by the office concerned because it was only in 2014 when they centralized their payroll preparation. Meanwhile, it was the Provincial Budget Office which reviewed the Personnel Schedule for 2002 to determine if all the positions listed therein had appropriations.²²

On cross-examination, anent the Personnel Schedule for 2002, as a matter of procedure, it was allegedly the PHRMO Officer who first signs the same, followed by the Budget Officer, and finally by the Governor. On re-direct examination, she clarified that she did not know who actually signed first in the Personnel Schedule for 2002.²³

After presentation of its evidence, the prosecution offered the following documentary exhibits which were all admitted in the Court's Resolution of 27 February 2015, to wit:

¹⁹ TSN, 24 July 2014, pp.30, 33, 37.

²⁰ TSN, 1 October 2014, pp. 6-9.

²¹ TSN, 1 October 2014, pp. 7-10.

²² TSN, 1 October 2014, pp. 11-12.

²³ TSN, 1 October 2014, pp. 16-17.

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EXHIBITS	DESCRIPTION
"A"	Original Certification of CSC Director Azucena Perez-Esleta regarding qualification standards for the position of Board Secretary IV, Salary Grade 22 in a local government unit
"A-1"	Qualification Standards for the position Board Secretary IV, Salary Grade 22
"A-2"	List of Supporting Papers for first salary
"B"	Certified true copy of Appointment issued to Camacho Chiong, dated October 1, 2001
"B-1"	Certified true copy of Camacho Chiong's request to transfer dated October 1, 2001
"B-2"	Certified true copy of 1 st Indorsement dated October 1, 2001 from Mayor Gil Dillera of Titay, Zamboanga Sibugay
"C"	Original copy of Certification dated October 3, 2002 issued by accused Nicasio M. Peña, Provincial Secretary of Zamboanga Sibugay
"D"	Certified true copy of Disbursement Voucher in the net amount of P17,795.57 for claimant Camacho Chiong
"D-1"	Request for Obligation and Allotment (ROA) by Nicasio M. Peña for Camacho Chiong's first salary
"E"	Certified true copy of Disbursement Voucher No. 101-0111-2019 in the net amount of P8,896.78 for claimant Camacho Chiong's salary
"E-1"	Certified true copy of Daily Time Record (DTR) of Camacho Chiong for November 1-15, 2001.
"E-2"	Certified true copy of ROA for Salary of Camacho Chiong for the period November 1-30, 2001
"E-3"	Carbon copy of the check in the name of Camacho Chiong.
"F"	Certified true copy of Payroll for the period November 16-30, 2001.
"F-1"	Certified true copy of Daily Time Record (DTR) of Camacho Chiong for November 16-30, 2001.
"G"	Certified true copy of Payroll for the period December 1-31, 2001
"G-1"	Certified true copy of Daily Time Record (DTR) of

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	Camacho Chiong for December 1-31, 2001
"H"	Certified true copy of Payroll for the period January 1-15, 2002
"H-1"	Certified true copy of Payroll for the period January 16-31, 2002
"H-2"	Certified true copy of Daily Time Record (DTR) of Nicasio M. Peña for January 16-31, 2002
"H-3"	Certified true copy of Daily Time Record (DTR) of Camacho Chiong for January 16-31, 2002
"I"	Certified true copy of Payroll for the period February 1-15, 2002
"I-1"	Certified true copy of Payroll for the period February 16-28, 2002
"I-2"	Certified true copy of Daily Time Record (DTR) of Nicasio M. Peña for the period February 16-28, 2002
"I-3"	Certified true copy of Daily Time Record (DTR) of Camacho Chiong for the period February 16-28, 2002
"J"	Certified true copy of Payroll for the period March 1-15, 2002
"J-1"	Certified true copy of Payroll for the period March 16-28, 2002
"K"	Certified true copy of Payroll for the period April 1-15, 2002
"K-1"	Certified true copy of Payroll for the period April 16-30, 2002
"L"	Certified true copy of Mid-Year Bonus Payroll 2002
"L-1"	Certified true copy of 13 th Month Payroll 2002.
"M"	Certified true copy of Memorandum dated June 17, 2002 for Mr. Venancio C. Ferrer, Jr., Provincial Accountant of Zamboanga Sibugay, issued by Ester R. Yukoya, PHRMO
"M-1"	Certified true copy of Inter-Department Memo PacO 06-2002-001 dated June 15, 2002, issued by Venancio C. Ferrer, Jr., Provincial Accountant, to Ms. Ester R. Yukoya, PHRMO, Zamboanga Sibugay.
"N"	Certified true copy of Appointment as Private Secretary II (Co-terminous) issued to Camacho Chiong by accused Vice Governor Famor on May 6, 2002
"N-1"	Certified true copy of Personal Data Sheet (PDS) of

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	Camacho Chiong.
"N-1-a"	Page 2, Personal Data Sheet (PDS) of Camacho Chiong (unmarked)
"N-2"	Certified true copy of BC-CSC Form 1 – Duties and Responsibilities.
"N-2-a"	Page 2, BC-CSC Form 1 – Duties and Responsibilities.
"N-3"	Certified true copy of Certification issued by Eugenio L. Famor on October 1, 2001 certifying that the appointment of Chiong is in accordance with the limitations of Administrative Order 265 and Sec. 325 of R.A. 7160.
"N-4"	Original copy of "Panunumpa sa Katungkulan" of Camacho Chiong
"N-5"	Certified copy of Certification of Assumption of Duty as Board Secretary IV of Camacho Chiong
"N-6"	Certification from accused Famor
"N-7"	Another Certification from accused Famor.
"N-8"	Certification from Estela Z. Torres, Provincial Budget Officer, Zamboanga Sibugay.
"N-9"	Certified true copy of Disbursement Voucher dated May 30, 2002 for first salary of Camacho Chiong from May 6, 2002
"N-10"	Certified true copy of Allotment and Obligation Slip for salary of Camacho Chiong for the period May 6-31, 2002

The defense then presented accused Famor and Chiong, whose testimonies are summed in this wise:

1. EUGENIO L. FAMOR

Accused Eugenio L. Famor recalled that in the year 2001, he was among the first elective officials- the Vice-Governor of the newly-created Province of Zamboanga, Sibugay. Back then, they did not have yet a capitol building. His office was located at the municipal building of the Municipality of Ipil.²⁴

With respect to the hiring of employees in the Province of Zamboanga, Sibugay, it was allegedly the Vice Governor who signs the appointment papers of the employees of the *Sanggunian*. Thereafter,

²⁴ TSN, 15 June 2016, pp. 8-9.

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the appointment papers are submitted to the PHRMO for the latter to determine whether the appointees are qualified for the positions or have met all other requirements.²⁵

He narrated that being a new province, with no personnel at all to start with, applicants flocked to his office, from morning to evening applying for various positions. He asked them to accomplish their Personnel Data Sheet (PDS) and other needed documents. He said that he first signs the appointment papers, then, asks them to submit the same to the PHRMO for the latter to evaluate their applications. For him, his signature was not an appointment but only meant an endorsement for the PHRMO to process.²⁶

Famor allegedly only came to know Chiong when the latter came to his office and submitted his application. When Chiong went to his office, he "readily" accepted his application because at that time, they were allegedly really in need of personnel. Thus, he signed his appointment paper then asked him to submit it to the PHRMO for validation, that is, for determination whether he was qualified and met the requirements. However, he did not know whether Chiong brought the appointment paper to the PHRMO. He thought that there was no problem when he saw Chiong report for work the following day; also, considering that Chiong's name was included in the Personnel Schedule²⁷ which he said was prepared by PHRMO Officer Yukoya. According to Famor, the Personnel Schedule was the basis for allocation of budget for salaries; thus, if one's name is not included in it, that means that his appointment was not processed and not approved, and he cannot claim his salaries.²⁸

Famor added that when Chiong applied as Board Secretary IV, he did not know the minimum qualification for the position of Board Secretary IV. However, he did not receive any notice or memorandum from the PHRMO that the appointment of Chiong was defective.²⁹

He likewise identified a letter dated 25 March 2009 written by Provincial Board Member, Olimpio R. Mañalac, to the CSC asking for exemption from CSC Memorandum Circular 40 considering that appointed personnel, who were not screened by the Provincial Selection Board and disapproved by the CSC, could not draw their salaries. He said that the province was not able to organize a Personnel Selection Board. Neither did he know when the Personnel Selection Board was created; he learned of it only when Sangguniang Secretary Peña wrote

²⁵ TSN, 15 June 2016, p. 11.

²⁶ TSN, 15 June 2016, pp. 23-24.

²⁷ Exhibit 2.

²⁸ TSN, 15 June 2016, pp. 11-13.

²⁹ TSN, 15 June 2016, pp. 4-5.

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a letter of inquiry to PHRMO Officer Yukoya and the latter replied through letter dated 25 March 2009 that the Personnel Selection Board was first created in year 2007.³⁰

Famor likewise presented a certified true copy of the Decision dated 12 August 2012 of the First Division of this Court acquitting him, Peña and Chiong of the charge of Estafa through Falsification of Public Documents.³¹

On cross-examination, when asked whether he interviewed Chiong, Famor replied that he "just asked [a] few questions," "[s]uch as *taga saan kayo?* From where are you? Are you willing to work? That's all, then I told him, you bring this application with my signature to the Office of the Human Resource, HRMO."³² However, he never knew that Chiong's appointment paper did not reach the PHRMO and the CSC. He also disclosed that when Chiong went to him and submitted his application, there was already a prepared appointment paper, and this appointment paper was just signed by him.³³

He also confirmed that in the OPBS, there were only two (2) personnel- Chiong and Peña. He appointed the latter as Provincial Secretary on a permanent status because the position was vacant and considering that the province was newly-created with no personnel at all.³⁴

2. CAMACHO L. CHIONG

Chiong used to occupy the position of Draftsman III at the Office of the Municipal Engineer, Titay, Zamboanga, Sibugay. When the Province of Zamboanga Sibugay, was created, he went to the Office of the Provincial Vice-Governor to apply for the position of Board Secretary IV. He said he applied considering the bigger salary and since Titay was about twenty (20) kilometers from his residence.³⁵

He claimed that he did not personally know Vice-Governor Famor. He only met him when he went to the latter on July 1 or 2, 2001, and applied for the position. He remembered that after Vice-Governor Famor reviewed his documents, Famor signed his appointment paper. Afterwhich, he forwarded it together with the necessary supporting papers to the PHRMO.³⁶

³⁰ TSN, 15 June 2016, pp. 24-27; Exhibits 3 and 4.

³¹ TSN, 15 June 2016, p. 29.

³² TSN, 15 June 2016, p. 6.

³³ TSN, 15 June 2016, pp. 7-8.

³⁴ TSN, 15 June 2016, pp. 8-9.

³⁵ TSN, 15 June 2016, pp. 13-14.

³⁶ TSN, 15 June 2016, pp. 13-16.

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When asked of his proof that he forwarded his appointment paper to the PHRMO, he referred to the Schedule of Plantilla of Personnel where his name appeared. It was signed by the PHRMO Officer, the Provincial Governor, and the Provincial Budget Officer.³⁷

He also recalled that during that time, because the Province of Zamboanga, Sibugay was newly-created, they do not have the qualification standards. He also claimed that he was "ahead" of the PHRMO Officer. They did not also have the Selection Board.³⁸

He confirmed having received his salaries as such Board Secretary IV adding: "According to the Civil Service Law, once your appointment is signed by the appointing officer, automatically, you will collect your salary, pending the approval of the Civil Service Commission."³⁹ He also asserted that he submitted all the necessary requirements and during the seven (7) months that he was collecting his salaries, the Provincial Auditor, Provincial Budget Officer, Provincial Accountant and Treasurer did not issue any notice of disallowance.⁴⁰

When asked whether he knew that his appointment did not reach the CSC, he replied that he was not informed, further arguing that it was the duty of the PHRMO to submit it. He also claimed that after he submitted the necessary requirements, he became busy, hence, he had no time to follow-up his appointment. It was only after seven (7) months when there was already a complaint at the Office of the Ombudsman when he learned that his appointment was being questioned. He lamented that the PHRMO failed to inform him what was lacking and what were necessary for his appointment.⁴¹

On cross-examination, he repeated that he applied on July 1 or 2, 2001; that he was "ahead" of PHRMO Yukoya. He also said that he was already working with Zamboanga, Sibugay even when he was still a personnel of the Municipality of Titay. However, when asked how come his request for authority to transfer⁴² was dated 1 October 1, 2001, he then stated that he "probably" transferred on October 1 and not July 1, 2001; also, "maybe", he was not "ahead" of PHRMO Officer Yukoya.⁴³

Chiong likewise related that his first government service was with the Office of Municipal Planning Development Office, Municipality of

³⁷ TSN, 15 June 2016, p. 16.

³⁸ TSN, 15 June 2016, p. 19.

³⁹ TSN, 15 June 2016, p. 17.

⁴⁰ TSN, 15 June 2016, p. 19.

⁴¹ TSN, 15 June 2016, p. 20.

⁴² Exhibit B-2.

⁴³ TSN, 15 June 2016, pp. 22-24.

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Cabasalan, way back in 1977. Having been designated there as Personnel Officer, he had training in appointment preparation conducted by the CSC, Zamboanga City. Hence, he knows how to prepare appointments and disbursement vouchers.⁴⁴

At the conclusion of presentation of defense evidence, the defense offered the following documentary exhibits:

EXHIBITS	DESCRIPTION
"1"	Decision dated August 23, 2012 of the First Division of the Sandiganbayan in Criminal Case No. SB-06-CRM-0023 entitled "People of the Philippines versus Eugenio Famor, et.al."
"1-VV-1"	Page 49 of the Decision, which reads: <p>"... Chiong can thus be considered as a <u>de facto officer because he had colourable title or appointment as Board Secretary IV, although such appointment was void, as he was not eligible.</u> To constitute a de facto officer, there must be an office having a de facto existence, or at least one recognized by law and the claimant must be in actual possession of the office under color of title or authority. In cases where there is no de jure officer, a de facto officer who is in good faith, has possession of the office, and has discharged the duties pertaining thereto, is legally entitled to the emolument of the office, and may, in an appropriate action, recover the salary or compensation attached to the office. This doctrine is undoubtedly supported on equitable grounds, since it seems unjust that the public should benefit by the services of an officer de facto and then be freed from all liability to pay any of such services. <u>If Chiong being a de facto officer, can be legally entitled to emoluments, then no injury was suffered by the province of Zamboanga Sibugay.</u> In this case, Gov. Hofer – the private complainant, swore before the provincial prosecutor that Chiong actually rendered services as Board Secretary and that accused Famor and Peña were innocent of the charges..."</p>
"1-xx"	Pages 51-52 of the Decision, which reads: <p><u>"It is the Court's considered view that the lack of PHRMO certification, per se, could not have made Chiong's appointment a nullity, much less illegal.</u> The lack of a duly signed PHRMO certification, if later discovered, could even be cured retroactively. According to the witness, Ester Yukuya – PHRM Officer – had Chiong's appointment been sent to the Civil Service Commission, said agency would have called her attention to it and asked her to affix her signature as remedial measure. There is no evidence that the</p>

⁴⁴ TSN, 15 June 2016, pp.26-17.

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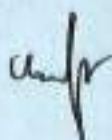
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	<p>PHRMO certification was a condition precedent before Chiong's appointment could have been validly signed by Famar. Also, there is no evidence that there had been a deliberate attempt by the accused to conceal the need to secure the PHRMO certification, nor there was any attempt to forego with one.</p> <p>"Overall, the Court cannot impute bad faith, much less illegal motive, on any party in this case – or even suspect that the PHRMO or its authorized officer had intentionally withheld the required signature because they knew that Chiong was ineligible. The bottom line is there is no evidence that any of the accused, by means of false pretenses or fraudulent acts or affirmative act, had overtly misrepresented that Chiong was a college graduate. Conversely stated, there is no convincing evidence that accused conspired to have Famar intentionally skip or ignore the unsigned PHRMO certification before he signed Chiong's appointment purposely to conceal the latter's lack of qualification..."</p>
"2"	Personnel Schedule of the Office of the Provincial Secretary.
"3"	Letter dated August 15, 2001 of Board Member Olimpio Manalac addressed to Atty. Maycybel Alfaro-Sahi, Regional Director of the Civil Service Commission.
"4"	<p>Letter dated March 25, 2009 of PHRM Officer Ester Yukuya, which reads:</p> <p><u>"This is with reference to your request to provide you the exact date when the PSB was convened to screen applicants under your office."</u></p> <p><u>"After a thorough search, we regret to inform you that our office failed to find any available records as to when the PSB was first convened to screen applicants in your office."</u></p> <p><u>"This may be due to the fact that our office has been transferred thrice already and thus, some of our records may have been inadvertently misplaced or lost. Our available records are only with the most recent PSB screening under Vice Governor Rey Andre C. Olegario."</u></p>

The Resolution dated 19 October 2017 admitted all of the foregoing exhibits of the defense.

Upon the prosecution's manifestation that it will no longer present rebuttal evidence, this case was deemed submitted for decision.



DISCUSSION AND RULING

The charge: Section 3(e) of Republic Act No. 3019, as amended, which says:

Section 3. Corrupt practices of public officers.- In addition to acts or omissions of public officers already Penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The following essential elements must be present:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. His action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

FIRST ELEMENT

Anent the **first element**, there is no issue that all accused were public officers at the time of commission of the crime: accused Eugenio L. Famor was the Vice-Governor of the Province of Zamboanga, Sibugay while Nicasio Peña was the Secretary of the *Sangguniang Panlalawigan*. Camacho L. Chiong, on the other hand, was appointed Board Secretary IV and then, Private Secretary of Vice-Governor Famor.

SECOND ELEMENT and THIRD ELEMENT

"The [second] element of Section 3 (e) of RA 3019 may be committed in three ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of *any* of these three in connection with the prohibited acts mentioned in Section 3(e) of RA 3019 is enough to convict."⁴⁵ Partiality, bad faith and gross negligence mean:

⁴⁵ Sison v. People, G.R. Nos. 170339, 170398-403, 9 March 2010

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Partiality is synonymous with bias which excites a disposition to see and report matters as they are wished for rather than as they are. Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.⁴⁶

Meanwhile, as regards the third element, *Sison v. People* taught that-

... [T]here are two ways by which Section 3(e) of RA 3019 may be violated—the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference." Although neither mode constitutes a distinct offense, an accused may be charged under *either mode or, both.*—The use of the disjunctive "or" connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.

"Unwarranted" was defined as:

"lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.

In other words: "In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions."

In this case, the facts briefly restated thus establish both elements.

It appears that on 7 November 2000, Republic Act No. 8973 entitled "An Act Creating the Province of Zamboanga Sibugay from the Province of Zamboanga del Sur and for Other Purposes" was passed. Among its first elective officials was herein accused Famor as Vice-Governor. In need of personnel to operate, accused Vice-Governor Famor appointed co-accused Peña on 2 July 2001 as Secretary of the *Sangguniang Panlalawigan*, and, upon the latter's recommendation, appointed herein accused Chiong as Board Secretary IV, SG 22, on a

⁴⁶ Ibid.

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permanent status. The latter's appointment paper was dated 1 October 2001.⁴⁷

However, according to the prosecution, Chiong was appointed without passing through the Personnel Selection Board (PSB), the PHRMO and the CSC; and despite this, Chiong was able to collect his salaries. PHRMO Officer Yukoya added violation of pertinent accounting and auditing rules considering that it was only in June 2002 when Chiong allegedly actually submitted his clearance from the Municipality of Titay.

On the contrary, accused Chiong, among others, denied that he never submitted his appointment paper to the PHRMO and his proof was that his name was included in the Personnel Schedule which was co-signed by PHRMO Officer Yukoya. Moreover, he contended that it was not his duty to forward his paper to the CSC but that of the PHRMO. Furthermore, in view of his already-signed appointment paper, he could already collect his salaries.

For Famor's part, he narrated that when Chiong went to his office, he "readily" accepted him, he being in need of personnel at that time. He signed Chiong's appointment paper appointing him as Board Secretary IV, SG 22, on a permanent status; and asked him to submit it to the PHRMO for validation. For him, his signature meant only an endorsement. Whether Chiong brought the appointment to the PHRMO, he did not know. Moreover, at that time, there was no PSB yet. He admitted that he did not also know the minimum qualifications for the position.

Under this factual backdrop, the Court concludes that Peña in recommending Chiong and Famor in appointing Chiong both acted in evident bad faith thereby giving unwarranted benefit and advantage to Chiong. The latter's complicity is likewise manifest as will be discussed below.

The **reckless disregard of long established** rules and regulations on appointment constitutes evident bad faith on the part of all accused.

Both the prosecution and the defense are in agreement that at that time, the PSB was not yet convened; hence, Chiong did not undergo screening by the PSB. Even Famor's own narration discloses that when Chiong went to his office, he "readily" signed the already-prepared appointment paper of Chiong. It was dated 1 October 2001. Notably, unusually typewritten on the appointment paper of Chiong are the

⁴⁷ Exhibit B.

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remarks: "RECOMMENDED by: NICASIO M. PEÑA, AB, LLB, Provincial Secretary."⁴⁸

This is a flagrant violation of the rule on merit system mandated by the 1987 Philippine Constitution and firmly embedded in our statutes:

- Section 2(2), Article IX-B of the 1987 Constitution:

(2) Appointments in the civil service shall be made only according to merit and fitness to be determined, as far as practicable, and, except to positions which are policy-determining, primarily confidential, or highly technical, by competitive examination.

- Section 21(1), Chapter 5, Title I-A, Book V of Executive Order No. 292 (The Administrative Code of 1987):

Section 21. Recruitment and Selection of Employees. –

(1) Opportunity for government employment shall be open to all qualified citizens and positive efforts shall be exerted to attract the best qualified to enter the service. Employees shall be selected on the basis of fitness to perform the duties and assume the responsibilities of the positions.

- Article 165 of Administrative Rule No. 270, or the Rules and Regulations Implementing the Local Government Code of 1991:

ARTICLE 165. Recruitment and Selection. — Opportunity for employment in an LGU shall be open to all qualified candidates. Utmost effort shall be exerted to attract the best qualified to enter the local government service. Employees shall be selected on the basis of merit and fitness.

To this end, Article 166 of Administrative Rule No. 270, or the Rules and Regulations Implementing the Local Government Code of 1991 provides for the establishment of the Personnel Selection Board (PSB) to assist the appointing authority in the judicious and objective selection of personnel for employment and promotion.

CSC Memorandum Circular No. 40, Series of 1998, re: Revised Omnibus Rules on Appointments and Other Personnel Actions, provides

⁴⁸ Exhibit B.

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that all appointees should be screened and evaluated by the PSB, if applicable.⁴⁹ On the other hand, CSC Memorandum Circular No. 3, Series of 2001, re: Revised Policies on Merit Promotion Plan identifies the Provincial Vice-Governor as the chairperson of the PSB for appointments in the Sanggunian; hence, the one, who in this case is accused Famor, who can convene the PSB.

The position of Board Secretary IV belongs to the second level career service considering that it requires at least a Bachelor's degree, 3 years of relevant experience, 16 hours of relevant training, and a Career Service Professional Second Level Eligibility.⁵⁰ Thus, candidates thereto must be screened by the PSB.⁵¹

Consequently, in dispensing with the requirement of PSB screening, Famor and Peña gave unwarranted benefit and advantage to Chiong to the prejudice of the civil service. Famor displayed partisanship and personal favoritism when he readily appointed Chiong who brought with him a prepared appointment paper bearing the unusual remarks: "RECOMMENDED by: NICASIO M. PEÑA, AB, LLB, Provincial Secretary."

That other personnel of the province were also appointed without being screened by the PSB for none was convened yet is irrelevant in the resolution of the present case and does not affect the criminal liability of herein accused. In *Ampil v. The Honorable Office of the*

⁴⁹ Section 1(h), Rule III.

⁵⁰ Exhibit A and A-1.

⁵¹ *Abad v. Dela Cruz*, G.R. No. 207422, 18 March 2015.

The qualifications the appointee must satisfy depend on whether the position belongs to the career service or the non-career service. Entrance in the career service is based on "merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications[.]" On the other hand, entrance in the non-career service is based on criteria other than the "usual tests of merit and fitness[.]"

Positions in the career service are further grouped into three (3) levels. The first level includes positions requiring less than four (4) years of collegiate studies. The second level includes positions with duties requiring at least four (4) years of college work up to the Division Chief level. The third level includes positions in the Career Executive Service.

Candidates for appointment to first and second level positions are generally screened by the Personnel Selection Board. In local government units, the Personnel Selection Board is headed by the local chief executive and is composed of members appointed by the sanggunian concerned. The Personnel Selection Board of each local government unit "assist[s] the local chief executive in the judicious an objective selection of personnel for employment as well as promotion [.]"

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Ombudsman, Et Al.,⁵² the Supreme Court rejected defense's reasoning of the same tenor, thus:

In the instant case, petitioner was grossly negligent in all the purchases that were made under his watch. Petitioner's admission that the canvass sheets sent out by de Jesus to the suppliers already contained his signatures because he pre-signed these forms only proved his utter disregard of the consequences of his actions. Petitioner also admitted that he knew the provisions of RA 7160 on personal canvass **but he did not follow the law because he was merely following the practice of his predecessors. This was an admission of a mindless disregard for the law in a tradition of illegality. This is totally unacceptable, considering that as municipal mayor, petitioner ought to implement the law to the letter. As local chief executive, he should have been the first to follow the law and see to it that it was followed by his constituency. Sadly, however, he was the first to break it.**

Hence, the proper course of action should have been to convene the PSB in accordance with the civil service selection process.

Famor's judicial admission of lack of knowledge of the minimum qualification standard for the position of Board Secretary IV and his false notion that his signature meant only an endorsement do not exculpate him from the present charge. In *Co v. Sandiganbayan*, it was held that accused -

... cannot hide behind the cloak of ignorance or lack of familiarity with the provisions of the law. It is settled in our jurisdiction that ignorance of the law excuses no one from compliance therewith. Corollarly, a mistake of law cannot be used to justify an illegal act because everyone is presumed to know the law and the consequences of its violation.⁵³

On the contrary, the attendant circumstances in this case gives the impression that Famar and Peña purposely chose to ignore the long established rules and regulations on appointment in the civil service in light of the fact that Chiong was disqualified to be appointed Board Secretary IV, much less, on a permanent status. It appears that Chiong is an undergraduate while the position requires at least a Bachelor's degree.⁵⁴

Thus, aside from not following the proper selection process, Famar violated Article 168 of the Rules and Regulations Implementing the Local Government Code of 1991 commanding that-

⁵² G.R. No. 192685, 31 July 2013.

⁵³ *Co v. Sandiganbayan*, G.R. No. 184766, 15 August 2018.

⁵⁴ Exhibits A, A-1, N-1. See also Exhibit 1, 1-VV-1 and 1-xx

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(g) Appointments of those who do not meet the appropriate eligibility and required qualifications shall not be made, except in cases allowed by civil service law, rules and regulations.

and Subtitle A, Title I, Book V of E.O. No. 292, (Administrative Code of 1987) which provides:

Section 27 (1) Permanent status. – A permanent appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof.

Compounding these transgressions is the fact that Chiong did not submit his appointment paper to the PHRMO who had the duty to transmit the same to the CSC for attestation. Given his disqualification, the CSC is bound to disapprove Chiong's appointment. Thus, it stands to reason that Chiong purposely concealed his appointment paper from the PHRMO. He then collected his salaries through disbursement vouchers signed by Vice-Governor Famar and Provincial Secretary Peña, and through payrolls signed by the latter.⁵⁵

Chiong claimed that he submitted his appointment paper to the PHRMO; on the contrary, the prosecution said that the PHRMO did not receive Chiong's appointment paper. As between the two versions, the prosecution's version rings true. Recall that PHRMO Officer Yukoma, exposing herself to possible liability, admitted making a mistake in signing the Personnel Schedule. She said that before signing the Personnel Schedule which apparently lists Chiong as Board Secretary IV,⁵⁶ she was not able to review the same.

Moreover, Chiong could not ascribe ill motive on the part of prosecution witnesses Lazo and Yukoya to falsely testify against him. Thus, "[a]bsent a showing that the prosecution witnesses were actuated by any improper motive, their testimony is entitled to full faith and credit."⁵⁷

Chiong's act of not submitting his appointment paper to the PHRMO evinces his complicity in the present charge. His testimony in open court betrayed his claim of innocence and even displayed his malice when he said that he was once designated as Personnel Officer and that he had training in appointment preparation; hence, he allegedly knows how to prepare appointments and disbursement vouchers.⁵⁸

⁵⁵ Exhibits D, E, F, G, H, H-1, I, J, J-1, K, K-1, L, L-1.

⁵⁶ Exhibit 2.

⁵⁷ Tecson v. Sandiganbayan, G.R. No. 123045, 16 November 1999.

⁵⁸ TSN, 15 June 2016, pp. 26-17.

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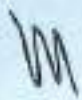

Thus, the evidence adduced may be summed in this wise: Chiong, an undergraduate, was recommended by Provincial Secretary Peña to the position of Board Secretary IV which requires among others, a Bachelor's degree; Vice-Governor Famor then blindly appointed Chiong without complying with the civil service rules on recruitment and selection process, without bothering to know the minimum qualifications for the position, and upon a prepared appointment paper bearing the unusual remarks: "RECOMMENDED by: NICASIO M. PEÑA, AB, LLB, Provincial Secretary"; Chiong then concealed his appointment paper from the PHRMO who had the duty to transmit the same to the CSC for attestation; Chiong then collected salaries through vouchers signed by Vice-Governor Famor and Provincial Secretary Peña, and also via payrolls signed by the latter.

Consequently, the respective actuations of the three accused establish a concerted effort to give Chiong unwarranted benefit and advantage to the damage and prejudice of the government. As to what evidence is required to support a finding of conspiracy, this Court is guided by the pronouncement in *Alvizo v. Sandiganbayan*.⁵⁹

Direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiments, then a conspiracy may be inferred though no actual meeting among them to concert means is proved. Thus, the proof of conspiracy, which is essentially hatched under cover and out of view of others than those directly concerned, is perhaps most frequently made by evidence of a chain of circumstances only.

Meanwhile, there is merit to the contention of the prosecution that the Provincial Government of Zamboanga, Sibugay suffered damage in the amount of One Hundred Sixty-One Thousand Five Hundred Sixty Three Pesos and 30/100 (P161,563.30) representing the seven (7) months salaries and allowances of Chiong. While it is noted that Chiong actually rendered service, his salaries should not have been sourced from the province's treasury but from the appointing authority who willfully and illegally appointed him and whose appointment was not

⁵⁹ G.R. Nos. 98494-98692, 17 July 2003.



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submitted to the CSC, and hence, had become ineffective. Sec. 11, Rule V of the Omnibus Civil Service Rules and Regulations states:

Sec.11. An appointment not submitted to the Commission within thirty (30) days from the date of issuance which shall be the date appearing on the face of the appointment, shall be ineffective. The appointing authority shall be liable for the salaries of the appointee whose appointment became ineffective. The appointing authority shall likewise be liable for the payment of the salary of the appointee if the appointment is disapproved because the appointing authority has issued it in violation of existing laws or rules, making the appointment unlawful. (Underscoring supplied.)

In sum, considering that all the elements of Sec. 3 (e) of R.A. No. 3019 were without doubt proved in this case and conspiracy having been established, a moral certainty is achieved to find the three accused criminally liable.

THE PENALTY

WHEREFORE, this Court finds accused **EUGENIO L. FAMOR, NICASIO M. PEÑA, and CAMACHO L. CHIONG** guilty beyond reasonable doubt of having violated Sec. 3(e), R.A. No. 3019, and are each sentenced to suffer the indeterminate penalty of six (6) years and one (1) month, as minimum to eight (8) years, as maximum; perpetual disqualification from public office; and, to indemnify, jointly and severally, the Government of the Republic of the Philippines in the amount of One Hundred Sixty-One Thousand Five Hundred Sixty Three Pesos and 30/100 (P161, 563.30).


SO ORDERED.


LORIFEL L. PAHIMNA

Associate Justice

WE CONCUR:


OSCAR C. HERRERA, JR.
Chairperson


MICHAEL FREDERICK L. MUSNGI
Associate Justice

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ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

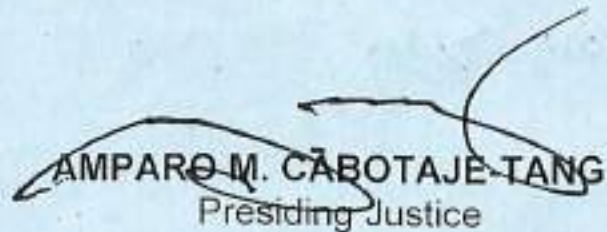


OSCAR C. HERRERA, JR.

Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



AMPARO M. CABOTAJE-TANG
Presiding Justice

