

Republic of the Philippines
Presidential Electoral Tribunal
Manila

OFFICE OF THE CLERK OF THE TRIBUNAL

FERDINAND 'Bongbong' R.
MARCOS, JR.,

Protestant,

- versus -

P.E.T. Case No. 005

MARIA LEONOR 'Leni Daang
Matuwid' G. ROBREDO,

Protestee.

X ----- X

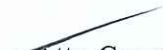
NOTICE OF RESOLUTION

Sirs/Mesdames:

Please take notice that on September 18, 2018, a Resolution, copy attached herewith, was rendered by the Presidential Electoral Tribunal in the above-entitled case, the original of which was received by this Office on September 25, 2018 at 1:55 p.m.

Very truly yours,


EDGAR O. ARICHETA
Clerk of the Tribunal *metre*


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Republic of the Philippines
Presidential Electoral Tribunal
Manila

**FERDINAND “BONGBONG”
R. MARCOS, JR.,**

Protestant,

P.E.T. Case No. 005

Present:

LEONARDO-DE CASTRO, *C.J.*,
CARPIO,*
PERALTA,**
BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
TIJAM,
A. REYES, JR.,
GESMUNDO, and
J. REYES, JR., *JJ.*

- versus -

**MARIA LEONOR “LENI
DAANG MATUWID” G.
ROBREDO,**

Protestee.

Promulgated:

September 18, 2018

X

X

RESOLUTION

CAGUIOA, J.:

The purpose of the revision proceedings is simply to conduct a physical recount of the ballots and thereafter provide both parties the opportunity to register their objections and claims thereon.¹ As already stressed in the Tribunal’s Resolution² dated April 10, 2018, during the revision proceedings, there is yet no final deduction or addition of votes. There is merely a preliminary segregation and classification in order to facilitate the recording of objections or claims, if any. It is only after the Tribunal has deliberated and ruled on the validity of the objections or claims that a deduction or addition of votes will take place.

* On official leave.

** On official business.

¹ *Rollo* (Vol. XXXIV), p. 26368.

² *Id.* at 26366-26370.

For this purpose, the Tribunal relies on how the Vote Counting Machines (VCMs) counted the votes in order to segregate the ballots during the revision stage. The threshold used by the VCMs is not the final determinant of whether a vote will be counted in favor of protestant or protestee. Again, the segregation of ballots resulting from the revision process is not conclusive as the ballots will still undergo appreciation by the Tribunal in order to determine the true will and intent of the voters, taking into consideration as well the respective objections and claims of the parties.

The setting of the threshold for the May 9, 2016 National and Local Elections (2016 elections) is the function of the COMELEC. As further explained below, however, this is a non-issue during the revision process. This clarification is made at the very outset in the Tribunal's herein resolution of protestee's *Urgent Motion for Reconsideration (of the Resolution dated 10 April 2018) with Reiterative Prayer to Immediately Direct the Head Revisors to Use the Twenty-Five (25%) Threshold Percentage in the Revision, Recount and Re-Appreciation of Ballots*³ dated April 18, 2018 (Subject Motion).

In the Subject Motion, protestee seeks the reversal of the Resolution dated April 10, 2018, which denied her *Urgent Ex-Parte Motion to Direct the Head Revisors to Apply the Correct Threshold Percentage as Set by the Commission on Elections in the Revision, Recount and Re-Appreciation of the Ballots, in Order to Expedite the Proceedings* dated April 5, 2018 (Ex-Parte Motion). She likewise prays for the immediate imposition of a twenty-five percent (25%) threshold by the Head Revisors (HRs) in relation to the instant Protest. Protestee mainly bases her plea for reconsideration on Minute Resolution No. 16-0600⁴ dated September 6, 2016 issued by the Commission on Elections (COMELEC) *en banc* (Resolution No. 16-0600), a copy of which she furnished the Tribunal for the first time as an annex to the Subject Motion.

In a Resolution dated April 24, 2018, the Tribunal directed protestant and the COMELEC to file their respective Comments on the Subject Motion.

On May 28, 2018, protestant filed a *Comment/Opposition [to Protestee's Urgent Motion for Reconsideration (of the Resolution dated 10 April 2018) with Reiterative Prayer to Immediately Direct the Head Revisors to use the Twenty-Five (25%) Percent Threshold Percentage in the Revision, Recount and Re-Appreciation of Ballots]*⁵ dated May 22, 2018 (Comment). In his Comment, protestant argues that Resolution No. 16-0600 contained no categorical declaration that the twenty-five percent (25%) threshold was adopted by the COMELEC *en banc* in determining the valid votes in the judicial recount and revision of ballots in an election protest.⁶ Protestant further argues that the Random Manual Audit (RMA) Report of the COMELEC expressly admitted the

³ *Rollo* (Vol. XXXIV), pp. 26483-26496.

⁴ Annex "1" of the Subject Motion, id. at 26497-26498.

⁵ *Rollo* (Vol. XXXV), pp. 27427-27439.

⁶ Id. at 27429.



impossibility of implementing a twenty-five percent (25%) threshold for purposes of manually segregating valid votes as human eyes are less perceptive than the VCMs.⁷ In fact, as observed by protestant, even the Senate Electoral Tribunal (SET), in its Revision and Preliminary Appreciation Guidelines, is implementing a threshold of fifty percent (50%) in the segregation of ballots.⁸ Finally, protestant claims that protestee is guilty of *laches* as she had failed to timely move for the amendment of the 2010 Presidential Electoral Tribunal (PET) Rules⁹ from the time the instant Protest was filed.¹⁰ Protestant thus argues that protestee should be barred from asserting a different threshold considering that she had filed the Subject Motion only *after* the revision proceedings in the instant Protest had already begun.¹¹

On July 6, 2018, the Office of the Solicitor General (OSG), after filing several motions¹² for extension to file the Comment of COMELEC and instead of filing such comment in behalf of COMELEC, filed a *Manifestation and Motion (in Lieu of Comment)*¹³ dated July 4, 2018 (Manifestation and Motion), as the People's Tribune,¹⁴ pursuant to its duty to present to the Tribunal the position which it perceives to be in the best interest of the State notwithstanding the stance of the COMELEC on the issue.¹⁵ In the Manifestation and Motion, the OSG submits that the Tribunal correctly ruled that it has no basis to impose a twenty-five percent (25%) threshold in determining whether a vote is valid or not.¹⁶ According to the OSG, the power of the Tribunal as the sole judge of all contests relating to the election, returns and qualifications of the president or vice president and to promulgate rules and regulations relative to matters within its jurisdiction, including the determination of the threshold to be used in the recount, is beyond dispute.¹⁷ The OSG further claims that the Tribunal need not use the threshold applied in the RMA Guidelines and Report as the RMA is a completely different animal from an election protest¹⁸ and that the COMELEC has no jurisdiction over vice-presidential contests such as this.¹⁹ Likewise, the fifty percent (50%) threshold imposed by the Tribunal is reasonable, considering that the recount of ballots in election protests is done manually²⁰ and the human eye is indeed unable to distinguish a twenty-five percent (25%) threshold.²¹ Finally, the OSG opined that the application of the fifty percent (50%) threshold will not disenfranchise voters who, for the May 9, 2016 National and Local Elections (2016 elections), were consistently reminded by the COMELEC to *fully* shade

⁷ Id. at 27431.

⁸ Id. at 27433.

⁹ The 2010 Rules of the Presidential Electoral Tribunal, A.M. No. 10-4-29-SC, May 4, 2010.

¹⁰ *Rollo* (Vol. XXXV), p. 27434.

¹¹ Id.

¹² Specifically, on May 28, 2018, June 11, 2018 and June 26, 2018.

¹³ *Rollo* (Vol. XXXVI), pp. 28249-28271.

¹⁴ Id. at 28249.

¹⁵ Id. at 28251.

¹⁶ Id.

¹⁷ Id. at 28253.

¹⁸ Id. at 28260.

¹⁹ Id.

²⁰ Id. at 28261.

²¹ Id.



the oval space on the ballots.²² As such, the OSG prays that the Tribunal affirm its Resolution dated April 10, 2018 and grant the COMELEC a fresh period to submit its own comment to the Subject Motion.²³

On July 10, 2018, the Tribunal issued a Resolution directing COMELEC to file its own comment within a non-extendible period of ten (10) days from notice.

On July 23, 2018, the COMELEC, through its Law Department, filed its Comment²⁴ dated July 18, 2018. According to the COMELEC, in the exercise of its constitutional mandate to administer elections and decide all questions relating to elections, it calibrated the automated vote counting system for the 2016 elections to read as valid votes, marks that cover at least about twenty-five percent (25%) (when seen by human eyes) of the oval for each candidate. The chosen technology — optical scanning technology — appreciates votes or non-votes according to this twenty-five percent (25%) configuration and all election results are based on this threshold.²⁵ This is to ensure that all determinable expressions of intent to vote are counted, while at the same time, mere “accidental” or “hesitation” marks, which are not reflective of the voter’s intent, are not considered votes.²⁶ Accordingly, the RMA process wherein visual examination of the paper ballots was done — much like revision of ballots in election protests — uses a diagrammatic guide which is consistent with this twenty-five percent (25%) shading mark.²⁷

Likewise, COMELEC narrated that Atty. Felipa B. Anama (Atty. Anama), then Clerk of the Tribunal, wrote two letters to the COMELEC dated August 12, 2016 and August 23, 2016, requesting for guidelines for the revision and appreciation of ballots used in the 2016 elections. These were referred to the Office of Commissioner Luie Tito F. Guia (Commissioner Guia) as the then supervising Commissioner of the RMA Committee (RMAC). Commissioner Guia responded with a letter dated September 6, 2016 explaining that the shading threshold for the 2016 elections was set at about twenty-five percent (25%) of the oval space. Attached thereto was a copy of the RMA Guide on Appreciation of Markings, a diagram or illustration (not in textual form) of the permutations of possible marks that the VCMs would either read as votes or non-votes.²⁸

The letter and the RMA Guide were eventually submitted to the COMELEC *en banc* which, through Resolution No. 16-0600²⁹ dated September 6, 2016, adopted and confirmed the same. Hence, the COMELEC

²² Id. at 28262-28263.

²³ Id. at 28264.

²⁴ *Rollo* (Vol. XXXVII), pp. 28970-28983.

²⁵ Id. at 28971.

²⁶ Id.

²⁷ Id. at 28972.

²⁸ Id. at 28972-28973.

²⁹ In the Matter of the Request of the Presidential Electoral Tribunal for a Copy of the COMELEC Guidelines used in the Manual Counting of Ballots Specifically on the Type of “Shadings” Read by the Vote Counting Machine (VCM), for the Tribunal’s Reference in relation to PET Case No. 005 (Marcos v. Robredo), Annex “C” of the Comment of COMELEC; id. at 28988-28989.



clarifies that it was not Resolution No. 16-0600 that set the twenty-five percent (25%) threshold as the same merely confirmed the setting of this voting threshold.³⁰ In fact, the RMA Guide was being used by the COMELEC in all its protest cases for the 2016 elections.³¹

COMELEC likewise posits that while it recognizes the power and authority of the Tribunal to promulgate its own rules in connection with it being the sole judge of contests relating to election, returns and qualifications of the President and the Vice-President under the Constitution, the COMELEC is also endowed with a similar constitutional power and authority to administer the country's election and to decide all questions affecting elections.³² Moreover, Republic Act (RA) No. 9369³³ granted COMELEC the power to choose an appropriate technology in elections, which would necessarily include the issue on deciding how votes can be read and appreciated by the said technology.³⁴

Following this, COMELEC discussed the different shading thresholds it had set in the past in various COMELEC Resolutions regarding its Rules of Procedure on Disputes under the Automated Elections System (AES) and subsequent amendments thereto, namely: Resolution No. 8804³⁵ setting the threshold at fifty percent (50%) of the oval for the 2010 elections; Resolution No. 9104,³⁶ Resolution No. 9164,³⁷ and Resolution No. 9720,³⁸ which deleted the provision on the fifty percent (50%) threshold found in Resolution No. 8804. COMELEC likewise discussed its rules in the counting and canvassing of ballots for detainee voters during the 2016 elections as set in Resolution No. 10113³⁹ which, pertinently, provides that hesitation marks — defined as marks where the “shade of the oval fails to meet **at least 20%** of the area of the oval” — shall not be counted as votes; and in Resolution No. 10141⁴⁰ which adopted the rules of counting and canvassing in Resolution No. 10113.

³⁰ Id. at 28979.

³¹ Id. at 28974.

³² Id.

³³ AN ACT AMENDING REPUBLIC ACT NO. 8436, ENTITLED “AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, TO ENCOURAGE TRANSPARENCY, CREDIBILITY, FAIRNESS AND ACCURACY OF ELECTIONS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 881, AS AMENDED, REPUBLIC ACT NO. 7166 AND OTHER RELATED ELECTIONS LAWS, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES”.

³⁴ *Rollo* (Vol. XXXVII), p. 28975.

³⁵ In Re: COMELEC Rules of Procedure on Disputes in an Automated Election System in Connection with the May 10, 2010 Elections, promulgated on March 22, 2010; id. at 28990-29019.

³⁶ In the Matter of Adopting Rules of Procedure for the Recount of Ballots Subject of Election Protest Cases filed with the Commission on Elections in Connection with the May 10, 2010 National and Local Elections, Amending Portions of Section 6, Rule 15 of COMELEC Resolution No. 8804 Promulgated on March 22, 2010, promulgated on November 30, 2010; id. at 29020-29027.

³⁷ In the Matter of Reinstating and Reimplementing COMELEC Resolution No. 8804 with Amendments, promulgated on March 16, 2011; id. at 29028-29035.

³⁸ In the Matter of Amending Rules 2, 6, 8, 13 and 15 of COMELEC Resolution No. 8804 as Amended by COMELEC Resolution No. 9164, promulgated on June 30, 2013; id. at 29036-29042.

³⁹ General Instructions on the Conduct of Counting and Canvassing of Ballots of Detainee Voters with Votes Cast in Favor of Local Candidates in Connection with the May 9, 2016 National and Local Elections, promulgated on May 3, 2016; id. at 29043-29053.

⁴⁰ Supplemental Rules and Regulations in the Conduct of Counting and Canvassing of Ballots of Detainee Voters with Votes Cast for National Positions Only in Connection with the May 9, 2016 National and Local Elections, promulgated on May 18, 2016; id. at 29054-29056.



The COMELEC emphasizes that the fifty percent (50%) threshold in Resolution No. 8804 for the 2010 elections no longer appeared in the subsequent resolutions, which shows the intent of COMELEC to abandon the same.⁴¹ Likewise, the adoption of the hesitation mark rule (twenty percent [20%] threshold) in Resolution Nos. 10113 and 10141 supports the following: (1) the intent of COMELEC to reduce the threshold requirement, and (2) the intent of COMELEC to uphold the *Intent Rule* as the governing rule in the appreciation of ballots.⁴²

Finally, it is COMELEC's position that in deciding election disputes, like an election protest, decisions should be based on the standards and procedures used during the conduct of elections and in ascertainment of election results.⁴³ Hence, the threshold issue is one of fact, specifically, of what was used to appreciate, count votes, and proclaim winners in the 2016 elections — rather than which rule, as between those of COMELEC and the Tribunal, must prevail.⁴⁴

After assiduously going through the parties' comments and arguments, the Court herein resolves to partially grant the Subject Motion insofar as setting aside the use of fifty percent (50%) threshold in the revision proceedings is concerned.

The Tribunal expounds.

The Tribunal was never informed of any official act of the COMELEC adopting the twenty-five percent (25%) shading threshold prior to the Subject Motion; hence, it had no sufficient basis to amend its Rules.

Before directly addressing the issue at hand, the Tribunal sees fit to first clarify that prior to the filing of the Subject Motion, the Tribunal was never informed of any official act of the COMELEC setting the shading threshold at twenty-five percent (25%) of the oval space.

To restate the facts **based on the records**, in a letter dated August 23, 2016, the Tribunal *motu proprio* requested from the COMELEC a copy of the guidelines used in determining the type of shading recognized by the VCMs used in the 2016 elections, for reference of the Tribunal in the present case.

On September 6, 2016, in response to the Tribunal's request, the COMELEC, through the Office of Commissioner Guia, informed the Tribunal of a shading threshold set **"at about 25% of the oval space"** that is "supposed

⁴¹ *Rollo* (Vol. XXXVII), p. 28978.

⁴² *Id.* at 28979.

⁴³ *Id.* at 28975.

⁴⁴ *Id.*



to be considered a vote by the system.”⁴⁵ In the same letter, however, Commissioner Guia qualified that such threshold pertained **only to the RMA of the COMELEC**. Hence, only a copy of the visual guide used by the RMA Committee was attached and furnished the Tribunal. **However, a copy of Resolution No. 16-0600, which appears to be the only official act of COMELEC that referred to the alleged twenty-five percent (25%) threshold, was not attached to the letter to the Tribunal.** As stated above, it was through Resolution No. 16-0600 that the COMELEC *en banc* **adopted the RMA guidelines as “the position of the [COMELEC] specifically on the type of marks or shading that would be read either as votes or non-votes by the optical scan counting system for the May 9, 2016 NLE.”**⁴⁶

For this reason, the Tribunal rejects, for being inaccurate and unsubstantiated, protestee’s and even the COMELEC’s allegations that the Tribunal had been timely informed of Resolution No. 16-0600 and/or the RMA Guide *as adopted and confirmed* by such Resolution. Protestee, in the Subject Motion, states:

2. On even date, COMELEC, *En Banc* adopted the Memorandum of Commissioner Luie Tito F. Guia by way of Minute Resolution No. 16-0600 entitled In the Matter of the Request of the Presidential Electoral Tribunal for a Copy of the COMELEC Guidelines used in the Manual Counting of Ballots Specifically on the Tupe (*sic*) of “Shadings” read by the Vote Counting Machine (VCM), for the Tribunal’s Reference in Relation to PET Case No. 005 (Marcos vs. Robredo).

3. Thus, in response to the query made last 12 August 2016, **COMELEC issued a Resolution informing the Honorable Tribunal** of the application of the twenty five percent (25%) threshold percentage used during the 09 May 2016 National and Local Elections.

x x x x

7. Hence, even before the Revisor’s Guide was adopted and the revision, recount and re-appreciation of ballots commenced, the Honorable Tribunal was aware of the twenty five percent (25%) threshold percentage used by COMELEC during the 09 May 2016 National and Local Elections.

x x x x

13. Finally, as aforestated, the twenty five percent (25%) threshold percentage was used by COMELEC during the 09 May 2016 National and Local Elections.

14. **The use of the twenty five percent (25%) threshold percentage was relayed by COMELEC to the Honorable Tribunal as early as September 2016.**⁴⁷ (Emphasis supplied)

⁴⁵ Id. at 28985.

⁴⁶ *Rollo* (Vol. XXXIV), p. 26498.

⁴⁷ Id. at 26485-26487.



On the other hand, COMELEC claims that it had, *after* its confirmation of the RMA Guide through Resolution 16-0600, submitted the same to the Tribunal.⁴⁸

To finally set the record straight, so to speak, the Tribunal declares anew that it never received any “resolution” from the COMELEC prior to the commencement of the revision proceedings in the instant Protest, which began last April 2, 2018. Prior to the filing of its Comment on the Subject Motion, the COMELEC had never “relayed” to, nor “informed”, the Tribunal, of the existence of a resolution of the COMELEC *en banc* adopting or even remotely mentioning the twenty-five percent (25%) threshold. In fact, **the last page of** Resolution No. 16-0600 itself plainly shows that the Tribunal was not among those furnished a copy of the same.⁴⁹

Indeed, following the COMELEC’s own narration, the RMA Guide was submitted to the Tribunal through a response letter of Commissioner Guia *before* such response letter and the RMA Guide was adopted and confirmed by Resolution No. 16-0600. Remarkably, COMELEC **did not** furnish the Tribunal with a copy of Resolution No. 16-0600, which supposedly was a “response” to the Tribunal’s query, nor did the COMELEC communicate such fact of adoption and confirmation of the RMA Guide by the COMELEC *en banc*.

The Tribunal cannot thus be charged with knowledge of information that it was not made privy to. The Tribunal and the COMELEC are independent constitutional bodies. The Tribunal was not informed of the existence of Resolution No. 16-0600, and to impute knowledge of this to the Tribunal, when the Tribunal was given a copy thereof only when protestee filed the Subject Motion, disregards this elementary legal principle.

The accompanying letter of Commissioner Guia notwithstanding, the RMA Guide that was brought to the Tribunal’s attention was not sufficient basis for the Tribunal to amend its Rules. The COMELEC undeniably has the constitutional and statutory power to administer elections and choose the appropriate technology to be used in such elections.⁵⁰ However, these quasi-legislative or administrative powers must be exercised by the COMELEC through official acts and issuances by it sitting as a body.⁵¹ The RMA Guide, standing alone, is not such an official issuance or act of the COMELEC, and its provisions cannot be sufficient basis to amend the existing rules of the Tribunal.

All told, there was no legal basis for the Tribunal to amend the 2010 PET Rules, particularly on the revision of ballots. The RMA guidelines of the COMELEC, which pertain to an entirely separate and distinct activity as COMELEC itself acknowledges, do not suffice.

⁴⁸ *Rollo* (Vol. XXXVII), p. 28934.

⁴⁹ Those furnished copies were the COMELEC Chairman and Commissioners, the Executive Director, the Deputy Executive Director for Operations, the Deputy Executive Director for Administration, and the Random Manual Audit Committee; *rollo* (Vol. XXXIV), p. 26498.

⁵⁰ *Rollo* (Vol. XXXVII), pp. 28974-28975.

⁵¹ CONSTITUTION, Art. IX-C, Sec. 3; COMELEC RULES OF PROCEDURE, Rule 3, Sec. 1.



There was likewise no basis to impose a new threshold in the 2018 Revisor's Guide, which was furnished to the parties upon its approval by the Tribunal as early as January 16, 2018. At this juncture, it bears stressing that both protestant and protestee were apprised before the start of the revision process of the fifty percent (50%) shading threshold. Representatives of the Tribunal had official meetings with the parties and/or their representatives preliminary to the revision process but neither of them brought to the Tribunal's attention Resolution No. 16-0600. It was only on April 5, 2018 that protestee filed the Ex-Parte Motion questioning this threshold. Even then, she failed to attach or even make the slightest mention of Resolution No. 16-0600 in the Ex-Parte Motion. **As stated earlier, it is only now, through the Subject Motion, that the Tribunal is informed of the existence of Resolution No. 16-0600.** Accordingly, in the Resolution dated April 10, 2018, the Tribunal denied the Ex-Parte Motion as follows:

Protestee's claim that the Commission on Elections (COMELEC), as purportedly confirmed by the Random Manual Audit Guidelines and Report, applies the 25% threshold percentage in determining a valid vote is inaccurate.

The [Tribunal] is not aware of any COMELEC Resolution that states the applicability of a 25% threshold; and the Tribunal cannot treat the Random Manual Audit Guidelines and Report as proof of the threshold used by the COMELEC. In fact, COMELEC Resolution No. 8804, as amended by COMELEC Resolution No. 9164, which is COMELEC's procedure for the recount of ballots in election protests within its jurisdiction, does not mention a 25% threshold. Prior to the amendment in Resolution No. 9164, Rule 15, Section 6 of Resolution No. 8804 states that any shading less than 50% shall not be considered a valid vote. The wording is in fact the same as Section 43(l) of the 2010 PET Rules. COMELEC Resolution No. 9164, however, removed the 50% threshold but did not impose a new threshold.⁵² (Emphasis supplied)

Given that at the time of the drafting and approval of the 2018 PET Revisor's Guide and the commencement of the revision process, COMELEC had not issued any official document setting a new threshold for the 2016 elections, the Tribunal was therefore constrained to follow the fifty percent (50%) threshold under the 2010 PET Rules.

A range of twenty percent (20%) to twenty-five percent (25%) shading threshold was adopted for the 2016 elections.

Despite COMELEC's and protestee's claim that the threshold was twenty-five percent (25%) in lieu of the fifty percent (50%), a careful reading of their allegations and submissions do not clearly establish that a twenty-five percent (25%) shading threshold had been set prior to the 2016 elections. Instead, what the official COMELEC Resolutions and other documentary

⁵² Rollo (Vol. XXXIV), p. 26367.



submissions show is that what was adopted was a range of twenty percent (20%) to twenty-five percent (25%) shading threshold, as shown below:

First, no official document *predating the 2016 elections* was submitted to support the claim that the machines were, in fact, calibrated in this manner of reading the votes on the ballots.

Second, similarly, as disclosed by Commissioner Guia in his letter dated September 6, 2016, the public was not apprised of a twenty-five percent (25%) threshold as the voters were “told through the voter information efforts of the Commission to shade the ballots fully.”⁵³

The only thing clear from the foregoing is that the twenty-five percent (25%) threshold was initially intended for the **exclusive use of the RMA of the COMELEC**. It appears from the COMELEC’s own submissions that, insofar as the voting instructions to the public and election protests within its jurisdiction are concerned, such threshold was not being used, at least not prior to Resolution No. 16-0600. COMELEC, in its Comment, admits that its intention was “to uphold the *Intent Rule* as the governing rule in the appreciation of ballots.”⁵⁴ Indeed, at the time Resolution No. 16-0600 was issued, the Electoral Contests Adjudication Department (ECAD) of the COMELEC did not have guidelines on the proper threshold. These facts were confirmed by the Memorandum of Executive Director Jose M. Tolentino, Jr., which was cited in full in Resolution No. 16-0600:

The Project Management Office for the 2016 Automated Election System has not provided guidelines on manual counting since its focus was on the automated counting of ballots by the VCM. **Neither has the [Electoral Contests] Adjudication Department finalized its guidelines as of the moment.**

The most recent manual counting of the ‘shadings’ in the official ballots for the May 2016 elections was officially conducted by the Random Manual Audit Teams (RMAT) of the Random Manual Audit Committee (RMAC). **The undersigned notes, however, that the RMAC guidelines were intended exclusively for use by the RMAT in the random manual audit activities.**⁵⁵ (Emphasis supplied; italics omitted)

As discussed above, it was only on September 6, 2016, in Resolution No. 16-0600, that the COMELEC *en banc* adopted the alleged twenty-five percent (25%) threshold set in the RMA guidelines as its official position on the shading threshold that would be considered a vote by the VCMs used for the 2016 elections.

Third, officially, no threshold was thereafter adopted in place of the fifty percent (50%) threshold for the 2016 elections prior to Resolution No.

⁵³ *Rollo* (Vol. XXXVII), p. 28985.

⁵⁴ *Id.* at 28979; emphasis omitted.

⁵⁵ *Rollo* (Vol. XXXIV), p. 26497.



16-0600, except only for the twenty percent (20%) shading threshold adopted for the detainee voting in the 2016 elections under Resolution No. 10113 issued on May 3, 2016.⁵⁶

Finally, protestee likewise submitted an RMA Visual Guidelines presentation,⁵⁷ purportedly used in the COMELEC's RMA, which states that a valid mark, to be considered a vote, is a mark whose score is higher than the VCM's mark detection threshold of twenty percent (20%) to twenty-five percent (25%), and an invalid mark is a mark whose score is lower than twenty percent (20%).⁵⁸

From the foregoing, for purposes of the 2016 elections, the fifty percent (50%) shading threshold was no longer applied. It is likewise clear however that a new threshold had been applied. The submissions of COMELEC and protestee show that, during the 2016 elections, instead of a single numerical threshold, what was applied was a threshold that ranged from twenty percent (20%) to twenty-five percent (25%) of the oval spaces in the ballots.

Applying the threshold in the revision process

The objectives of the revision proceedings, as stated in Rule 4 of the PET Revisor's Guide,⁵⁹ are the following:

- a. To verify the physical count of the ballots;
- b. To recount the votes of the parties;
- c. To record the objections or claims of the parties with respect to ballots under revision; and
- d. To mark the ballots objected to or claimed by the parties for purposes of identification, in preparation for their examination by the Tribunal and for the reception of evidence in support of the objections and claims of the parties, when necessary.

Thus, as stated earlier, other than the registration of claims and objections of the parties, the **purpose of the revision process is simply to recount the votes of the parties; and this is implemented by mimicking (or verifying/confirming) how the VCMs read and counted the votes during the elections.**

⁵⁶ See Resolution Nos. 10113 and 10141, attached as Annexes "H" and "I" to the Comment of COMELEC; *rollo* (Vol. XXXVII), pp. 29043-29053, 29054-29056.

⁵⁷ Annex "1" of Ex-Parte Motion; *rollo* (Vol. XXXIV), pp. 26294-26318.

⁵⁸ *Id.* at 26305-26306.

⁵⁹ PET Revisor's Guide for the Revision of Ballots under the Automated Election System, approved by the Tribunal on January 16, 2018.



In light of this, the Tribunal issued a Resolution⁶⁰ dated July 10, 2018, directing the COMELEC to provide it with at least fifty (50) VCMs to enable it to implement Rule 43(l) of the 2010 PET Rules or, in the event that such is not possible, to explain the reason therefor. Rule 43(l) of the 2010 PET Rules mandates the re-feeding of the ballots to the Precinct Count Optical Scan machines (PCOS, now VCMs) in determining whether a shade or mark should be considered as a valid vote:

RULE 43. Conduct of the revision. — The revision of votes shall be done through the use of appropriate PCOS machines or manually and visually, as the Tribunal may determine, and according to the following procedures:

X X X X

(l) In looking at the shades or marks used to register votes, the RC shall bear in mind that the will of the voters reflected as votes in the ballots shall as much as possible be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. However, marks or shades which are less than 50% of the oval shall not be considered as valid votes. **Any issue as to whether a certain mark or shade is within the threshold shall be determined by feeding the ballot on the PCOS machine, and not by human determination.** (Emphasis and underscoring supplied)

Implementing Rule 43(l) would have achieved the objective of mimicking or verifying/confirming how the VCMs read or counted the votes for the 2016 elections.

In its *Manifestation*⁶¹ dated August 7, 2018, the COMELEC stated that the required number of VCMs may be taken from the contingency units stored at its warehouse in Sta. Rosa, Laguna. **However**, according to COMELEC, making said units operational for purposes of determining the actual threshold percentage used in the 2016 elections poses many serious technical challenges,⁶² as follows:

- a. The threshold used in an election is based on the percentage set during the configuration of the SD Cards. **To ensure that the same threshold percentage for the 2016 NLE will be adopted by the PET during the revision of ballots, the exact set of SD cards configured for the 2016 NLE should be used.** This process, however, will require the re-zeroing of the SD cards. Accordingly, the official election data stored in the precinct SD card, such as ballot images, precinct results, and election reports will be lost once the SD card is re-zeroed.

⁶⁰ *Rollo* (Vol. XXXVI), pp. 28453-28459.

⁶¹ *Rollo* (Vol. XXXVIII), pp. 29490-29497.

⁶² *Id.* at 29491; emphasis supplied.



- b. To keep the election data intact, the original precinct SD card may be cloned/copied to a new SD card before the original SD card is re-zeroed x x x.⁶³
- c. Assuming that the SD cards actually used in the 2016 NLE can still be re-zeroed, or the cloned/copied SD cards will be the ones used during the revision, **access to the same set of iButton that was assigned to the specific clustered precinct configuration is needed**; otherwise the VCM cannot be operated, and therefore will be unable to read the ballots. x x x Moreover, the COMELEC will also need **access to the BEI passwords associated with the SD card configuration[,]** **[which] were issued to the BEIs through enclosed paper letters [and] most likely were not returned after the elections.**⁶⁴
- d. The production of a newly configured SD card, including its corresponding set of passwords and iButton, which has a validity period of one (1) year is technically feasible. **However, the use of such SD card will result in unexpected behaviors by the VCM because as part of the security protocol, if the digital certificate associated with a specific precinct SD card already expired, such SD card can no longer be used. Hence, the official ballots that are linked to the original digital certificate will not be read by the VCM.**⁶⁵ (Emphasis supplied)

Based on COMELEC's *Manifestation*, it appears to the Tribunal that Rule 43(1) of the 2010 PET Rules cannot be implemented in the instant revision proceedings.

As such, COMELEC proposed the use, instead, of the digital images of the ballots for Protestant's pilot provinces – all of which were already decrypted, printed and are in the custody of the Tribunal. Again, according to COMELEC, these images would show: (1) squares which indicate that the shades were read as votes by the machines, and (2) a vote summary which indicates in words the same information as said squares. In other words, according to COMELEC, a visual inspection of said ballot images would be sufficient to determine the threshold percentage of partly shaded ovals as it is only those appropriately shaded that are considered by the VCM (as indicated by squares) as valid votes.

⁶³ As further elaborated by COMELEC in its *Manifestation*, the maximum of five (5) re-zeroes has been set during configuration – the *first* re-zero is for use after the conduct of Pre-Election Logic and Accuracy Test; *second*, during random testing of selected VCMs per pallet for purposes of quality control; and *third*, during the Final Testing and Sealing in preparation for the elections. The two other re-zeroes have been included for contingency purposes, such as when the FTS will have to be repeated by the board of election inspectors (BEI), or when the BEI inadvertently re-zeroes the SD card after replacement of a defective VCM. **Since it could not be readily determined how many re-zeroes are still available in the configured SD card, it is possible that SD cards for some clustered precincts will not be able to perform a re-zero.** *Id.*

⁶⁴ COMELEC further said in its *Manifestation* that as part of the security protocol, iButtons, although identifiable through stickers, are mixed together with approximately 297,000 other iButtons. Retrieval of the iButtons, while doable, will take some time to complete. *Id.* at 29492.

⁶⁵ *Rollo* (Vol. XXXVII), pp. 29491-29492.



Use of Decrypted Ballot Images

In connection with the above proposal, it should be noted that the use of decrypted ballot images in the revision process is subject of protestant's *Strong Opposition [On the Use of Decrypted Ballot Images for the Judicial Revision and Recount of Ballots for the Pilot Protested Precincts Subject of this Election Protest]*⁶⁶ dated July 16, 2018 (Strong Opposition) pending before the Tribunal.

Protestant opposes the use of the decrypted ballot images on the following grounds:

- (a) The decrypted ballot images are compromised;⁶⁷
- (b) The integrity of the decrypted ballot images is dubious and highly questionable;⁶⁸ and
- (c) The decrypted ballot images are not faithful images of the paper ballots used during the 2016 elections because of the presence of squares on the oval intended for protestee.⁶⁹

In a Resolution⁷⁰ dated July 24, 2018, the Tribunal directed the COMELEC to file a comment on protestant's Strong Opposition.

In compliance with the Resolution dated July 24, 2018, the COMELEC filed a *Comment (to the Strong Opposition [On the Use of Decrypted Ballot Images for the Judicial Revision and Recount of Ballots for the Pilot Protested Precincts Subject of this Election Protest])*⁷¹ dated August 22, 2018. COMELEC rejects protestant's allegations and claims that the decrypted ballot images are the true and genuine representation and captured images of the official ballots themselves.⁷² The COMELEC explained that such ballot images represent the digital image of the ballot itself and were instantaneously saved and captured by the VCMs when fed by the voter into the said machine during the 2016 elections.⁷³ The COMELEC further explained that the squares found on the images are intended merely to facilitate in the determination by the VCM of the ballot shading, *i.e.*, whether the shade has met the proper threshold.⁷⁴ As well, the integrity of the ballot images is ensured as follows: (i) the images are encrypted to prevent unauthorized alteration or access; (ii) the images cannot be decrypted or in any way accessed without the necessary decryption key; (iii) the images may only be decrypted using a special system

⁶⁶ Id. at 28949-28954.

⁶⁷ Id. at 28950.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Id. at 29057-29061.

⁷¹ *Rollo* (Vol. XL), pp. 32106-32113.

⁷² Id. at 32107.

⁷³ Id. at 32107-32108.

⁷⁴ Id. at 32108.



designed by the COMELEC and not by any ordinary operating system; and (iv) the SD cards storing the digital images are kept in a secured facility within the COMELEC premises.⁷⁵

In any case, the COMELEC explains that any question regarding the authenticity of the ballot images may be resolved by simply comparing them to the actual ballots themselves, by using their respective serial numbers in the form of barcodes.⁷⁶ In the same vein, the COMELEC argues that the evidentiary value of digital ballot images has already been upheld in the case of *Maliksi v. COMELEC*.⁷⁷

Protestee also filed a *Counter-Manifestation with Comment and Opposition (to the Strong Manifestation with Motion [Re: Use of Decrypted Ballot Images for Revision] dated 05 July 2018)*⁷⁸ dated August 10, 2018 (Counter-Manifestation). Protestee rejects protestant's claims for being misleading and unsubstantiated by evidence.⁷⁹ Protestee further argues that protestant cannot assail the integrity of his own evidence, considering that he is the party that requested for the decryption of the SD cards and the printing of the ballot images to "aid the Honorable Tribunal in the prompt disposition" of the instant Protest.⁸⁰

The Tribunal denies protestant's Strong Opposition.

Based on the submission of the COMELEC, the decrypted ballot images represent the digital images of the paper ballots as captured by the VCM when the paper ballots were fed by the voters into the VCM during the 2016 elections.⁸¹ In fact, the digital images were instantaneously saved in the SD cards the moment they were fed, read, and counted by the VCM.⁸² The COMELEC further explained that the integrity of the ballot images was preserved through a secure process of encryption, decryption, and storage.⁸³

The Tribunal observes that, other than protestant's allegation that the decrypted ballot images are not faithful images of the paper ballots, he has not submitted any proof or evidence to show that the decrypted ballot images are compromised or that they are dubious or questionable. Mere allegations are not proof.⁸⁴

On the other hand, the COMELEC was able to sufficiently explain that the presence of squares on the ballot images does not diminish the evidentiary

⁷⁵ Id. at 32108-32109.

⁷⁶ Id. at 32108.

⁷⁷ 706 Phil. 214, 257-260 (2013). See also *Vinzons-Chato v. House of Representatives Electoral Tribunal*, 702 Phil. 40 (2013).

⁷⁸ *Rollo* (Vol. XXXVIII), pp. 29560-29581.

⁷⁹ Id. at 29571.

⁸⁰ Id. at 29571-29573.

⁸¹ *Rollo* (Vol. XL), p. 32107.

⁸² Id. at 32108.

⁸³ Id. at 32108-32109.

⁸⁴ See *Bustos v. Millians Shoe, Inc.*, G.R. No. 185024, April 24, 2017, 824 SCRA 67, 74, citing *De Jesus v. Guerrero III*, 614 Phil. 520, 529 (2009).



value of the ballot images; nor does it show that the ballot images were compromised or that their integrity is dubious and highly questionable. In fact, the COMELEC explains that the squares are intended to facilitate in the determination by the VCMs of the ballot shading, whether or not the same met the threshold.⁸⁵

Finally, the Tribunal finds it inconsistent that protestant would now oppose the use of the ballot images when he himself moved for the decryption and printing of the ballot images. More importantly, protestant was represented in the entire process of decryption, from the COMELEC's decryption of the SD cards to its printing of the decrypted ballot images. **Protestant's representatives were allowed to observe the COMELEC's process of decryption and were even required by the COMELEC to authenticate the printed ballot images by signing each and every page thereof, together with representatives of protestee, the COMELEC, and the Tribunal.** At the very least, protestant's participation in the foregoing activities shows a reliance on the integrity and security of the COMELEC's processes.

It should likewise be stressed that jurisprudence has already definitively settled the use of the printed ballot images. As defined, the official ballots, in the context of an automated election system, "refers to the paper ballot, whether printed or generated by the technology applied, that faithfully captures or represents the votes cast by a voter recorded or to be recorded in electronic form."⁸⁶ As the Court ruled in *Vinzons-Chato v. House of Representatives Electoral Tribunal*,⁸⁷ given this definition of the official ballots, the printouts of the electronic form of the ballots are the functional equivalent of the paper ballots, thus:

We agree, therefore, with both the HRET and Panotes that the picture images of the ballots, as scanned and recorded by the PCOS, are likewise "official ballots" that faithfully captures in electronic form the votes cast by the voter, as defined by Section 2 (3) of R.A. No. 9369. As such, the printouts thereof are the functional equivalent of the paper ballots filled out by the voters and, thus, may be used for purposes of revision of votes in an electoral protest.⁸⁸

The ruling in *Vinzons-Chato* was affirmed in *Maliksi v. Commission on Elections*,⁸⁹ where the Court held that: "That the two documents — the official ballot and its picture image — are considered 'original documents' [which] simply means that both of them are given equal probative weight. In short, when either is presented as evidence, one is not considered as weightier than the other."⁹⁰

⁸⁵ *Rollo* (Vol. XL), p. 32108.

⁸⁶ RA 8436, Sec. 2(3), as amended by RA 9369.

⁸⁷ *Supra* note 77.

⁸⁸ *Id.* at 59-60.

⁸⁹ 709 Phil. 265 (2013).

⁹⁰ *Id.* at 282.



Moreover, for purposes of the revision process, the decrypted ballot images may be used during limited instances as listed in Rule 74 of the 2018 Revisor's Guide. And even as early as the 2010 PET Rules, the use of the printed ballot images had been allowed in instances where the integrity of the ballots and the ballot box was not preserved.⁹¹

As earlier stated, protestant has failed to prove the impairment of the integrity of the decrypted ballot images. Thus, following the foregoing rules and jurisprudence, the Tribunal, therefore, retains the option to resort to the use of the decrypted ballot images should the instances to warrant such use under the aforementioned rules arise.

To put the use of the decrypted ballot images in the proper context: as a rule, during the revision process, the official paper ballots must be used whenever available and upon proper authentication by the HR. In the instant Protest, the previous instances when the Tribunal directed the use of decrypted images have been limited to those where the paper ballots were wet, damaged, or are otherwise unreadable. Thus, it is in the interest of protestant that the Tribunal be allowed to resort to the decrypted ballot images, whenever necessary. Without the decrypted ballot images, protestant will be deprived of the opportunity to revise the votes for the precincts where the paper ballots are unavailable.

Going back to COMELEC's proposal to use the decrypted and printed digital ballot images to determine if a particular shade was read by the VCM as a valid vote or not, the Tribunal has thoroughly considered this and finds it to be a promising solution to this threshold predicament. However, this is an extremely tedious process and would unduly delay the revision proceedings. Such process would entail going through all the printed ballot images to find the one that matches the ballot in issue, and then inspecting such printed ballot image to determine if there is a square that indicates that the shade in the ballot in question was read by the machine. To conduct this process on each and every ballot with a shading issue during the revision stage would simply result in needless delay, considering the magnitude of the present Protest and the sheer number of ballots involved.

Nevertheless, as earlier stated, the Tribunal reserves the right to consult the decrypted ballot images, if it finds the same necessary in ruling on the parties' objections and claims during the appreciation stage.

⁹¹ Rule 43(q) In the event that the RC determines that the integrity of the ballots and the ballot box was not preserved, as when there is proof of tampering or substitution, it shall proceed to instruct the printing of the picture image of the ballots of the subject precinct stored in the data storage device for the same precinct. The Tribunal may avail itself of the assistance of the COMELEC for the service of a non-partisan technical person who shall conduct the necessary authentication process to ensure that the data or images stored are genuine and not merely substitutes. It is only upon such determination that the printed picture image can be used for the revision of votes.



Reference to the Election Returns

Despite the aforementioned constraints, however, the Tribunal finds that the objective of the revision process of mimicking or verifying/confirming how the VCMs read or counted the votes can be achieved by referring to the Election Returns (ERs) generated by the VCMs used in the 2016 elections. The ER is a document in electronic and printed form directly produced by the VCM showing the date of the election, the province, municipality and the precinct in which it was held, and the votes in figures for each candidate in a clustered precinct where the said VCM was utilized.⁹² Thus, in the segregation of the ballots of the parties, the PET HRs shall be guided by the number of votes indicated in the ERs. In this way, the reading of the VCM is mimicked and verified/confirmed. Also, in using the ERs generated by the VCMs used in the 2016 elections and not merely adopting a specific shading threshold, the Tribunal's revision procedure will be more flexible and adaptive to calibrations of the voting or counting machines in the future.

To illustrate, after an initial segregation of all ballots by the HR, a physical count for Party A yields 398 ballots, but the votes for the said party as reflected in the ER are only 395. In this scenario, the HR shall reflect in the Revision Report that the total number of ballots segregated for Party A is 395, following the ER, and shall treat three ballots with the least shading as "Ballots with Stray Votes". The three ballots in question may thereafter be claimed by Party A and Party B may, in turn, object to the 395 ballots initially segregated in favor of Party A.

After the revision process, all objections and claims raised by both Party A and Party B shall be resolved by the Tribunal during the appreciation stage, taking into consideration the intent of the voters. Thus, based on the above illustration, the 395 votes initially counted in favor of Party A may either: (i) increase, if the Tribunal finds his claims meritorious; (ii) decrease, if the Tribunal sustains any or all of the objections of Party B; or (iii) remain the same, if the Tribunal rejects all claims and objections of both Party A and Party B. As such, the votes of the parties counted during the revision stage are only preliminary figures as the Tribunal may reject or admit votes, taking into consideration the objections and claims of the parties.

The Tribunal understands that there are instances where the ERs are not included in the documents inside the ballot boxes. Thus, in the absence of the ERs inside the ballot boxes, the HRs shall use the certified true copies of the ERs which the Tribunal is already in the process of obtaining from the COMELEC.

Finally, as to the ballots already revised, the procedure of verifying votes with the ERs shall be strictly enforced during the appreciation of ballots by the Tribunal.

⁹² RA 9369, Sec. 2(4), January 23, 2007.



In ending, the Tribunal again addresses protestee's claim of a "systematic decrease" in her votes.⁹³ As already mentioned, during the revision proceedings, there is yet no final deduction or addition of votes. The purpose of revision is simply to conduct a physical recount of the ballots and thereafter record the objections or claims of the parties with respect to the ballots under revision.⁹⁴ At this stage, and as illustrated above, it is highly premature for protestee to claim a deduction of votes as the Tribunal has yet to rule on the objections and claims of the parties in the appreciation stage. In fact, the very purpose of ballot appreciation by the Tribunal is to avoid disenfranchisement of the electorate by ascertaining their true will and intent.

IN VIEW OF THE FOREGOING, the Head Revisors are hereby **DIRECTED to REFER TO THE ELECTION RETURNS to verify the total number of votes as read and counted by the Vote Counting Machines, and accordingly**, Rule 62 of the PET Revisor's Guide pursuant to Rule 88, is hereby **AMENDED** as follows:

RULE 62. *Votes of the Parties.* – The segregation and classification of ballots shall be done by referring to the Election Return (ER) generated by the machine used in the elections. The Head Revisor shall count the total number of ballots for the Protestant, Protestee, Other Candidates, and with Stray Votes and record said matter on the appropriate spaces of the Revision Report.

In examining the shades or marks used to register the votes, the Head Revisor shall bear in mind that the will of the voters reflected as votes in the ballots shall, as much as possible, be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. **Any issue on the segregation and classification of ballots by the Head Revisor shall be resolved by the assigned Revision Supervisor, based on the guidelines set by the Tribunal.** Any objection to the ruling of the Revision Supervisor shall not suspend the revision of a particular ballot box. The ballot in question may be claimed or objected to, as the case may be, by the revisor of the party concerned.

This amendment shall be **EFFECTIVE IMMEDIATELY**. All issuances of the Tribunal insofar as it maintains the use of a numerical threshold are hereby modified accordingly.

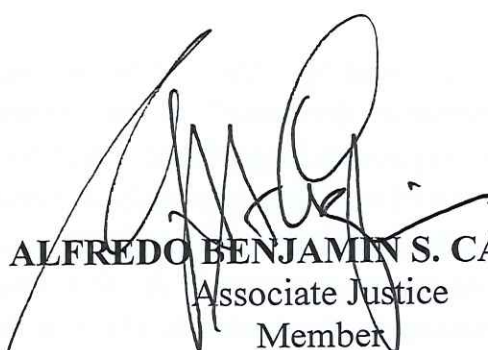
The Tribunal further resolves to **DENY** protestant's *Strong Opposition [On the Use of Decrypted Ballot Images for the Judicial Revision and Recount of Ballots for the Pilot Protested Precincts Subject of this Election Protest]* dated July 16, 2018.

⁹³ *Rollo* (Vol. XXXIV), p. 26488.

⁹⁴ *Id.* at 26368-26369.




SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Member

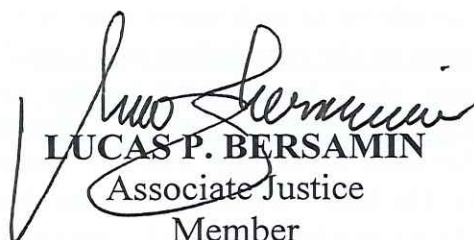
WE CONCUR:



TERESITA J. LEONARDO-DE CASTRO
Chief Justice
Chairperson

(On official leave)
ANTONIO T. CARPIO
Senior Associate Justice
Member

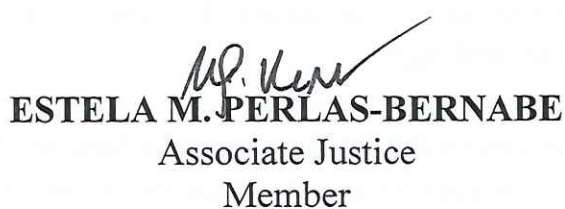
(On official business)
DIOSDADO M. PERALTA
Associate Justice
Member



LUCAS P. BERSAMIN
Associate Justice
Member



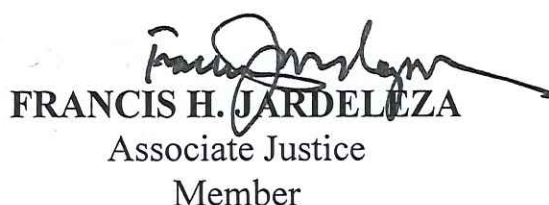
MARIANO C. DEL CASTILLO
Associate Justice
Member



ESTELA M. PERLAS-BERNABE
Associate Justice
Member



MARVIC M.V.F. LEONEN
Associate Justice
Member



FRANCIS H. JARDELEZA
Associate Justice
Member



NOEL GIMENEZ TIJAM
Associate Justice
Member

Reyes
ANDRES B. REYES, JR.
Associate Justice
Member

Gesmundo
ALEXANDER G. GESMUNDO
Associate Justice
Member

J. C. Reyes
JOSE C. REYES, JR.
Associate Justice
Member

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Tribunal.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Chief Justice
Chairperson

CERTIFIED TRUE COPY

Edgar O. Aricheta
EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court

[Signature]

