



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-16-CRM-0123

For: Nepotism (Section 59
Chapter 8, Subtitle A, Title I,
Book V of E.O. 292 [Administrative
Code of 1987], in relation to Section
67, Chapter 10, Subtitle A, Title I,
Book V thereof)

- versus -

Present

TERESITO P. MARIÑAS,

Accused.

CABOTAJE-TANG, P.J.,

Chairperson

FERNANDEZ, J. and

TRESPESES, J.*

Promulgated:

NOVEMBER 10, 2016

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RESOLUTION

FERNANDEZ, J.

This resolves the prosecution's *Motion for Suspension Pendente Lite of Accused Teresito Paras Mariñas*¹ pursuant to Sec. 13 of Republic Act No. 3019 (R.A. No. 3019), which reads:

Sec. 13. *Suspension and loss of benefits.* – Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. x x x

* As per Administrative Order No. 227-2016 dated July 26, 2016

¹ Dated August 17, 2016; pp. 90-92, Record

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According to the prosecution, all the requisites for suspension *pendent lite* are present. Accused Teresito P. Mariñas, the incumbent Vice Mayor of the Municipality of Barili, Province of Cebu, is charged under a valid Information with Nepotism, and had already entered a plea of not guilty when he was arraigned on May 31, 2016.

In his *Comments/Opposition to the Motion for Suspension Pendente Lite of Accused*,² the accused counters that he should not be suspended *pendent lite* on the following grounds:

- a. He is not charged with any of the offenses stated in Sec. 13 of R.A. No. 3019;
- b. The designation of his brother to the position of Human Resource Management Officer (HRMO) contributed to the efficient and effective management of the Municipality of Barili, which redounded to the benefit of the inhabitants therein;
- c. Suspending him would deprive the people of Barili of his services as their duly elected Vice Mayor; and
- d. He is not in the position to use his office to intimidate witnesses or frustrate the prosecution of the present case.

THE COURT'S RULING

The Court resolves to deny the prosecution's Motion.

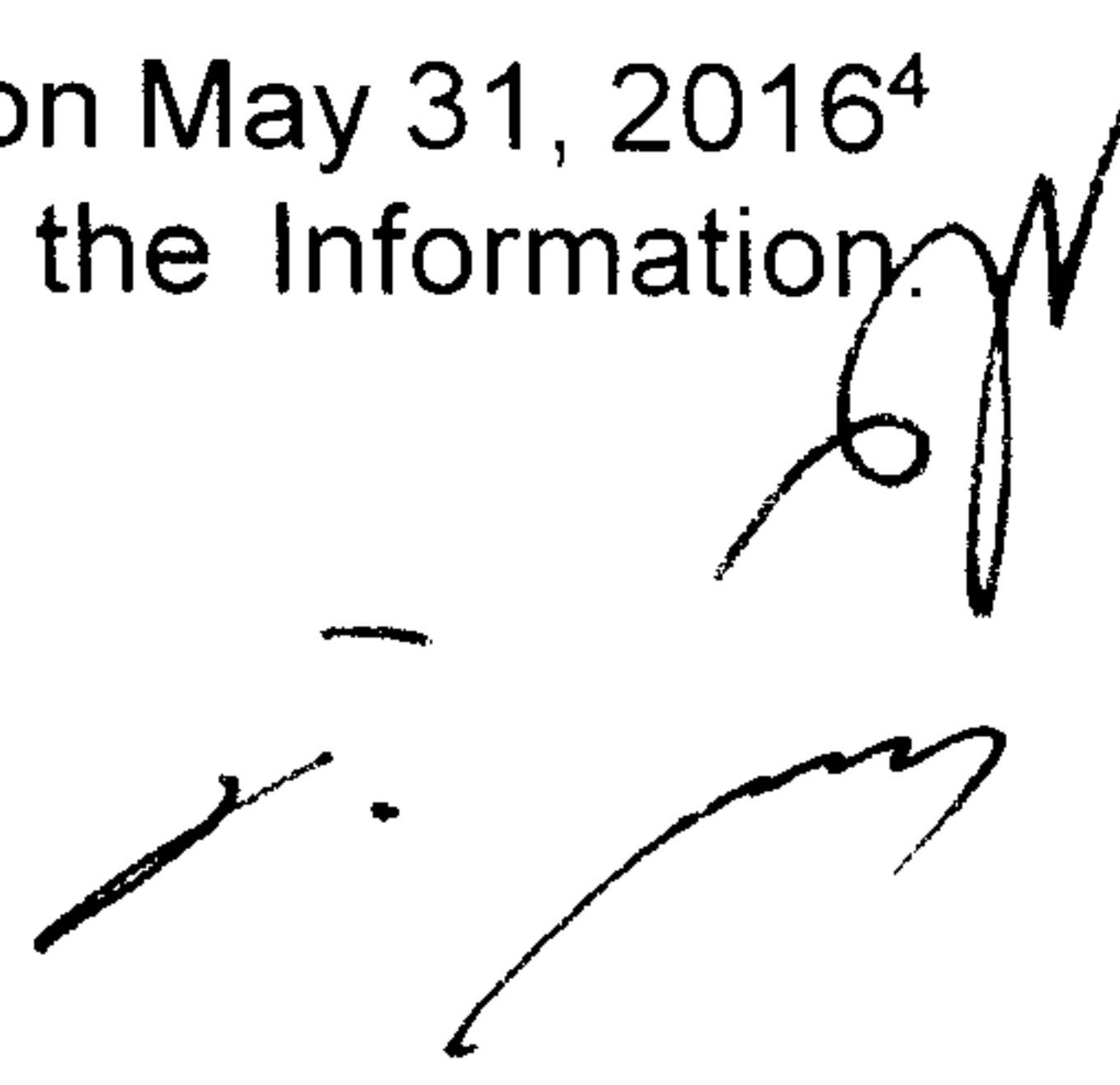
It is settled that once a court determines that the information charging a public officer with an offense under R.A. No. 3019 or Title 7, Book II of the Revised Penal Code, or any other offense involving fraud upon government or public funds or property is valid, it is bound to issue an order of preventive suspension of the accused public officer as a matter of course.³

Here, the accused entered his plea of not guilty on May 31, 2016⁴ and never raised any objection as to the validity of the Information.

² Dated September 14, 2016; pp. 116-135, Record

³ *Flores v. Layosa*, G.R. No. 154714, August 12, 2004

⁴ pp. 69-71, Record



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Hence, he was deemed to have impliedly admitted the validity of the Information filed against him.⁵

The only matter left for determination is whether or not Nepotism falls within the ambit of Sec. 13 of R.A. No. 3019. The Court rules in the negative.

Under Sec. 13 of R.A. No. 3019, suspension *pendente lite* of the accused is mandatory if charged with any of the following offenses: (1) those under R.A. No. 3019, (2) those under Title 7, Book II of the Revised Penal Code, and (3) those not under R.A. No. 3019 or Title 7, Book II of the Revised Penal Code, but which involve fraud upon government or public funds or property.

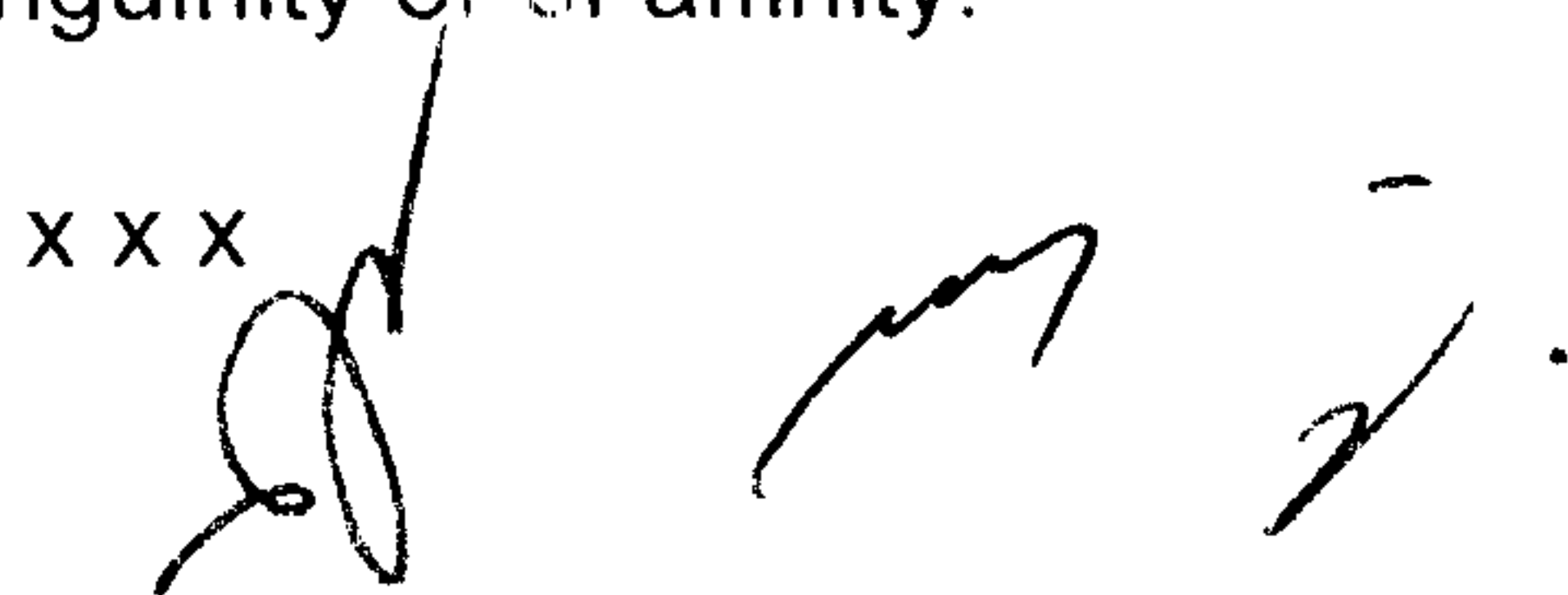
In *Bustillo v. Sandiganbayan*,⁶ the Supreme Court explained that the term “fraud” should be understood in its generic sense. *Viz.:*

As used in Section 13, the term “fraud” is understood in its generic sense, that is, referring to “an instance or an act of trickery or deceit especially when involving misrepresentation.” x x x

The accused in the case at bar is charged with Nepotism, as defined in Sec. 59, Chapter 8, Subtitle A, Title I, Book V of Executive Order No. 292 (E.O. No. 292),⁷ which reads:

Sec. 59. *Nepotism.* – (1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.

As used in this Section the word “relative” and members of the family referred to are those related within the third degree either of consanguinity or of affinity.

x x x


⁵ Please see *Bedruz v. Sandiganbayan*, G.R. No. 161640, December 9, 2005

⁶ G.R. No. 146217 (April 7, 2006)

⁷ Administrative Code of 1987

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In *Civil Service Commission v. Dacoycoy*,⁸ it was held that Nepotism is committed by mere issuance of an appointment in favor of a relative within the third civil degree of consanguinity or affinity. viz.:

Under the definition of nepotism, one is guilty of nepotism if an appointment is issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following:

- a) appointing authority;
- b) recommending authority;
- c) chief of the bureau or office, and
- d) person exercising immediate supervision over the appointee.

Clearly, there are four situations covered. In the last two mentioned situations, it is immaterial who the appointing or recommending authority is. To constitute a violation of the law, it suffices that an appointment is extended or issued in favor of a relative within the third civil degree of consanguinity or affinity of the chief of the bureau or office, or the person exercising immediate supervision over the appointee.

(underscoring supplied)

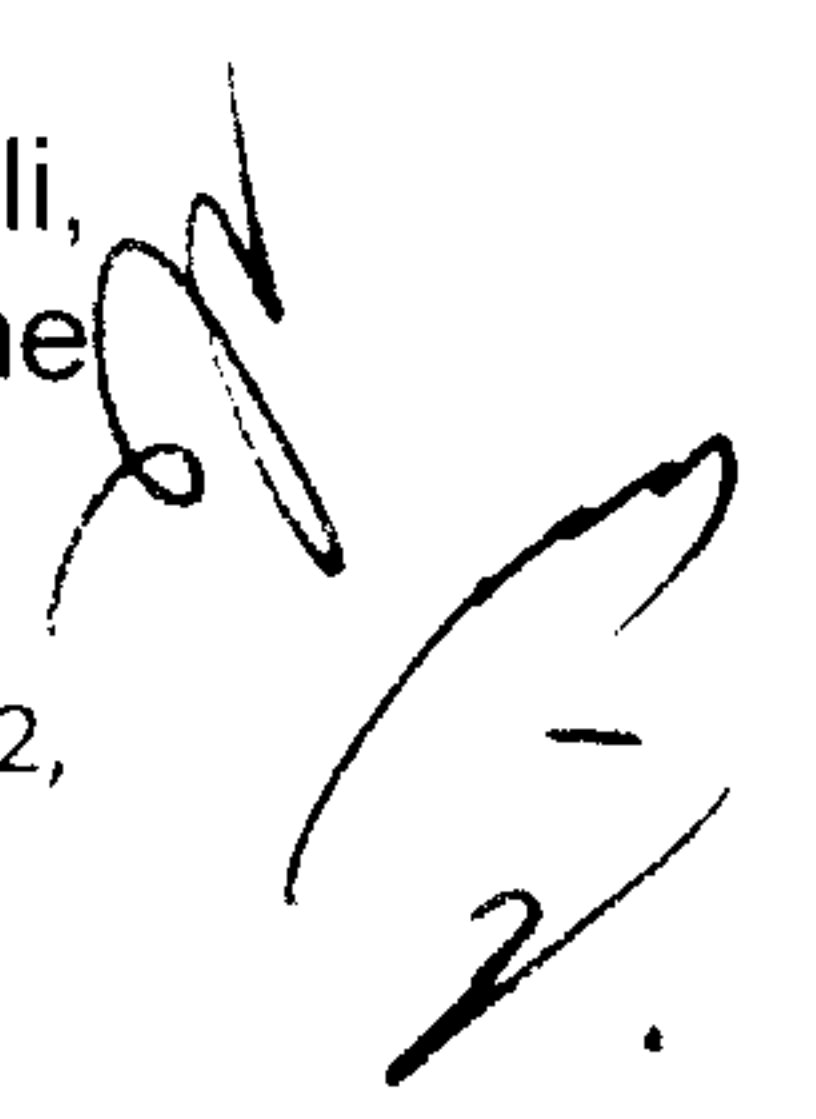
From the foregoing, it can be concluded that fraud is not an essential element of Nepotism. The offense is consummated upon the appointment of a relative within the third civil degree, whether or not there was fraud or misrepresentation on the part of the accused.

Without doubt, Nepotism may be committed with other acts that may constitute fraud upon government or public funds or property. For example, an accused misrepresents in an official document that the appointee is not a relative within the third civil degree, when in truth and in fact, the appointee is a relative. However, such acts must be alleged in the Information. Otherwise, the offense charged is not covered by Sec. 13 of R.A. No. 3019.

The Information in the present case only alleges that the accused appointed or designated his brother as Human Resource Management Officer of the Municipal Government of Barili, Cebu. To wit:

That on or about July 02, 2007, in the Municipality of Barili, Province of Cebu, Philippines, and within the jurisdiction of the

⁸ G.R. No. 135805 (April 29, 1999); cited in *Galeos v. People* (G.R. Nos. 174730-37 and 174845-52, February 9, 2011)



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Honorable Court, accused **TERESITO P. MARIÑAS**, a public officer being the Municipal Mayor of Barili, while in the performance of his official functions, committing the offense in relation to his office, did then and there willfully, unlawfully and criminally appoint or designate his own brother, **ANICETO P. MARIÑAS**, a person related to him within the second degree of consanguinity, as Human Resource Management Officer of the Municipal Government of Barili, an appointment or designation made in favor of a relative of the appointing authority related within the third degree of consanguinity under the prohibition against nepotism in Section 59, Chapter 8, Subtitle A, Title I, Book V of Executive Order No. 292.

Notably, there is no allegation that such appointment or designation was done through, or with, misrepresentation, or any act involving deceit or trickery.

The offense of Nepotism does not fall under R.A. No. 3019 nor Title 7, Book II of the Revised Penal Code. Neither are public funds or property involved in the present case. In the absence of an allegation of acts constituting fraud upon the government, suspension *pendente lite* of the accused is not warranted.

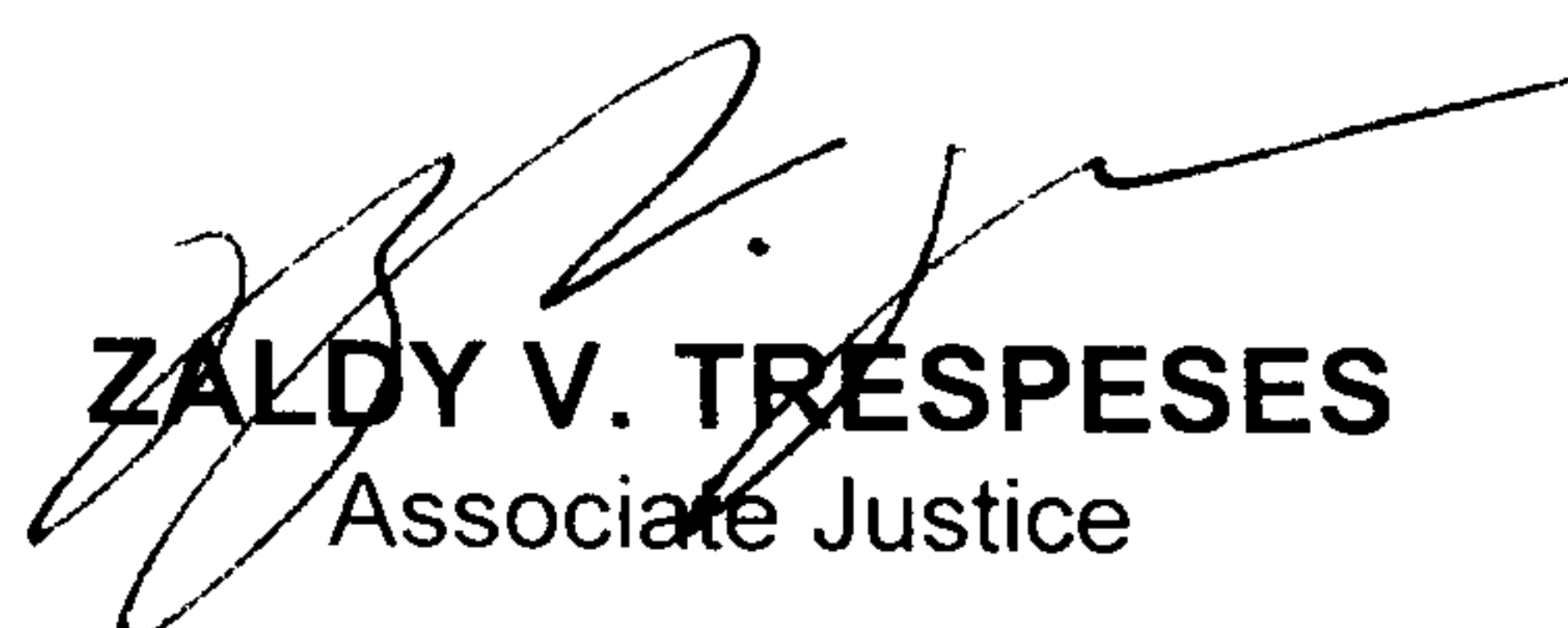
WHEREFORE, the prosecution's Motion for Suspension *Pendente Lite* is hereby **DENIED** for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice

WE CONCUR:


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson


ZALDY V. TRESPESSES
Associate Justice