



Republic of the Philippines  
Sandiganbayan  
Quezon City

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FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff,

SB-16-CRM-0797  
For: Violation of Section  
3(e) Republic Act (R.A.)  
3019<sup>1</sup>

- versus -

SB-16-CRM-0798  
For: Violation of Section  
7(a) Republic Act (R.A.)  
6713<sup>2</sup>

PROSPERO ARREZA PICHAY, JR. *ET AL.*,  
Accused.

Present:  
Lagos, *L.* Chairperson,  
Mendoza - Arcega and  
Corpus - Mañalac, *II.*

Promulgated:

October 17, 2018 *lal*

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**RESOLUTION**

**CORPUS - MAÑALAC, J.:**

Up at bench for resolution are the following incidents, to wit:

1. Accused Prospero A. Pichay, Wilfredo M. Feleo and Emmanuel B. Malicdem's "*Motion for Partial Reconsideration of the Resolution dated August 23, 2018*" in SB-16-CRM-0797 filed on September 4, 2018<sup>3</sup>, as well as the Comment/Opposition thereto filed by the prosecution on September 12, 2018<sup>4</sup>; and

<sup>1</sup> Anti-Graft and Corrupt Practices Act

<sup>2</sup> Code of Conduct and Ethical Standards for Public Officials and Employees

<sup>3</sup> Record, Volume 2, pp. 357-364

<sup>4</sup> Record, Volume 2, pp. 386-391

2. Accused Prospero A. Pichay's "*Demurrer to the Prosecution's Evidence*" in Crim. Case No. SB-16-CRM-0798 filed on September 10, 2018,<sup>5</sup> as well as the Comment/Opposition thereto filed by the prosecution on September 18, 2018.<sup>6</sup>

### Antecedents

After the prosecution had rested its cases in SB-16-CRM-0797 and SB-16-CRM-0798, the accused filed a Motion for Leave of Court to File a Demurrer to Evidence. Acting thereon, this Court promulgated a Resolution on August 23, 2018, the disposition of which reads:

"WHEREFORE, the Court resolves to:

1. DENY the Motion for Leave of Court to File Demurrer to Evidence in SB-16-CRM-0797 for violation of Section 3(e) of RA 3019, without however precluding the accused from filing their Demurrer to Evidence, without leave of court, within a non-extendible period of ten (10) days from receipt hereof, pursuant to Section 23, Rule 119 of the Rules of Court;
2. GRANT accused Pichay's Leave of Court to demur to evidence in SB-16-CRM-0798 for violation of RA 6713 Section 7(a), which shall be filed within a non-extendible period of ten (10) days from receipt hereof, pursuant to Section 23, Rule 119 of the Rules of Court."

Accused Pichay, Feleo and Malicdem moved to reconsider the denial of leave in SB-16-CRM-0797, whereas accused Pichay filed his Demurrer in SB-16-CRM-0798, which are herein resolved.

### **On the Motion for Partial Reconsideration in SB-16-CRM-0797**

The accused implored the Court to revisit its ruling as regards the *Sworn Statement* of Mr. Manolo Kagahastian,<sup>7</sup> and his "*Brief to the Administrator*"<sup>8</sup> dated November 24, 2010 purportedly suggesting to meet with the Chairman of Local Water Utilities Administration (LWUA) to discuss the implication of the approval of the chess tournament

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<sup>5</sup> Record, Volume 2, pp. 371-385

<sup>6</sup> Record, Volume 2, pp. 401-406

<sup>7</sup> Exhibit "R"

<sup>8</sup> Exhibit "O"

sponsorship which appeared to be contrary to Administrative Order No. 103 and the Administrator's instruction to suspend sports and cultural activities. Allegedly, Mr. Kagahastian was never presented in Court thus, the due execution of his *Sworn Statement* and *Brief* was not established which ought not to be given any evidentiary weight.

The accused likewise took a contrary stand from the Court's appreciation of the circumstances viewed as badges of bad faith or partiality on their part as officers of LWUA in sponsoring the National Chess Federation of the Philippines (NCFP)'s "*Chairman Prospero Pichay, Jr. Cup International Chess Championship.*" Allegedly these do not prove their concerted efforts to favor the NCFP to the government's prejudice, viz:

- 1) Accused Pichay voted for the approval of LWUA's 2010 Operating Budget with a noticeably substantial allocation of Php1.5M for chess events;
- 2) The Sponsorship of National Chess Tournament contravenes the Adoption of Austerity Measures under Administrative Order No. 103 dated August 9, 2010;
- 3) Accused Feleo's act of recommending the approval of the sponsorship request of NCFP dated November 10, 2010;
- 4) Accused Malicdem's affirmation of Feleo's recommendation the very next day on November 11, 2010;
- 5) The disbursement voucher was prepared in four (4) days on November 12, 2010; and
- 6) The check payment was released to NCFP on December 2, 2010.

That as regards accused Pichay's approval of the budget for chess events, the same was not his act alone but was based on the submissions of different offices so that he was entitled to the presumption of regular performance of their duties. Anent the austerity measures referred to in Administrative Order No. 103, the prohibited acts were specifically identified thereunder which did not include the act of sponsoring a national chess tournament. On LWUA's Administrative Memorandum No. 047 dated August 9, 2010 on the "Suspension of Sports and Cultural Activities and Procurement for Capital Outlay," the prosecution allegedly had no evidence pointing to the fact that sponsorship of a national chess tournament was embraced or covered by the said suspension. On the other hand, the NCFP request for sponsorship allegedly was dated August 2, 2010 while the accused's action thereon was not in haste but two (2) months thereafter.



Citing the case of *People vs. Sander Dacuma y Lunsod*<sup>9</sup>, the accused averred that the prosecution shall rest on its own merits in overcoming the presumption of their innocence in which it failed.

Meanwhile, the prosecution asserted that it had presented testimonial and documentary evidence which sufficiently established all the elements of RA 3019, Sec. 3 (e) in LWUA's sponsorship of the subject chess tournament in the amount of P1.5M. That even without the "Brief" issued by Mr. Kagahastian on November 24, 2010 asking for a meeting with accused Pichay to present the consequences of the proposed disbursement, LWUA Disbursement Voucher No. I-2010-11-0251<sup>10</sup> was already signed by accused Feleo and Landingin and journalized on November 15, 2010 or nine (9) days before. Accused Pichay allegedly had an opportunity to stop the issuance of the LWUA check for disbursement but failed to do so.

The prosecution argued that the issue on the sponsorship of the subject chess tournament is covered by the suspension of sports and cultural activities prescribed in LWUA Administrative Order No. 047. Chess, allegedly, has been recognized as a sport by the International Olympic Committee since 2000 and was also an event at the Asian Games in 2006 in Doha and in Guangzhou in 2010, so that the burden to prove that it is not covered now shifts to the accused. Accused's assertions were said to be all evidentiary in nature which are best addressed at a full-blown trial on the merits.

#### **On the Demurrer to the Prosecution's Evidence in SB-16-CRM-0798**

In his demurrer to evidence, accused Pichay alleged that the evidence of the prosecution consisting of the testimonies of (1) **Atty. Donabel D. Atienza**, Associate Graft Investigation Officer II, Field Investigation Office (FIO), Office of the Ombudsman; (2) **Ms. Aileen Maqueda**, Administrative Officer, FIO; (3) **Rosalinda B. De Veyra**, Industrial Relation Management Officer A, Local Water Utilities Administration (LWUA); (4) **Ms. Emma D. Moises**, State Auditor V of the Commission on Audit assigned to LWUA; (5) **Priscilla De Guzman Cruz**, Supervising Auditor of LWUA; as well as the documentary exhibits identified by the aforesaid witnesses marked as Exhibits "A" to "A-16",

<sup>9</sup> People vs. Sander Dacuma y Lunsod, G.R. No. 205889, February 4, 2015

<sup>10</sup> Exhibit "N"

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"B" to "B-1", "C" to "C-2", "D" to "D-3", "E" to "E-3", "F" to "F-1", "G" to "G-8", "H" to "H-3", "I", "J" to "J-3", "M" to "M-3", "N", "O", "P", "Q" to "Q-2", "R" to "R-1", "S", "T", "U" to "U-1", "V" to "V-2", and "W" to "W-1;" were totally inadequate to prove the guilt of the accused for violation of RA 6713, Section 7(a) which should be dismissed.

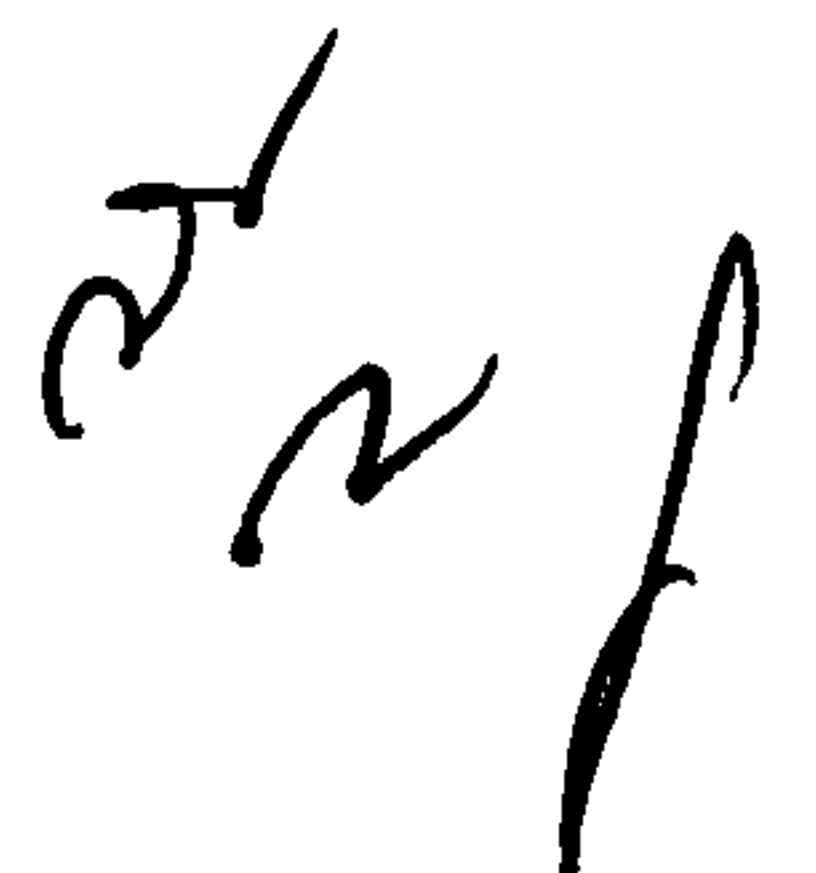
Pichay advanced the argument that while he admits he was President of NCFP and at the same time Chairman of the Board of Trustees of LWUA during the subject sponsorship, his duties with the former were not opposed to or affected by the faithful performance of his official duties with the latter that would show his conflict of interest pursuant to Section 1, Rule IX of the IRR of RA 6713. The sponsorship given by LWUA to the NCFP is not equated to a "financial or material interest" within the context of Section 7 (a) of RA 6713 as there was no evidence that he gained any pecuniary benefit therefrom. He pleaded for judicial notice of the fact that NCFP is a "national sports association and not a business undertaking" owned by him where he will "earn, gain or lose financially," but rather "a non-profit organization and is the governing national chess organization in the Philippines."

On the other hand, the prosecution argued that RA 6713, Section 7(a) prohibits public officials and employees from having "any financial or material interest, whether directly or indirectly, in any transaction requiring the approval of their office," the elements of which were satisfied by its evidence. The Chess tournament was named after Pichay's honor and that the LWUA Board of Trustees of which he was Chairman approved the release of Php1.5M as post-sponsorship for the sports event. He allegedly had pecuniary and proprietary interest in the matter as he "had everything to gain therein" that is why "he had every incentive to make sure that the NCFP request for post-event sponsorship be granted." Allegedly, it is not required that Pichay actually approved or intervened in the approval of the transaction, but his mere possession of pecuniary or proprietary interest is enough.

## RULING

### I.

After taking a second hard look into the arguments earnestly pressed by the accused's Motion for Partial Reconsideration in SB-16-CRM-0797, the Court is not persuaded to reconsider.





The evidence on record shows that the prosecution had presented testimonial and documentary evidence which sufficiently established all elements of RA 3019, Section 3 (e) of the Anti-Graft and Corrupt Practices Act in the "post sponsorship" by the LWUA of the 2<sup>nd</sup> Chairman Prospero A. Pichay, Jr. Cup International Chess Championship in the amount of P1,500,00.00.

As already explained in the assailed Resolution citing the *Soriquez vs. Sandiganbayan*<sup>11</sup>, the determination of the sufficiency or insufficiency of the evidence presented by the prosecution as to establish a *prima case* against an accused is left to the exercise of sound judicial discretion. In the exercise of such discretion, this Court had ruled:

X x x x after a full consideration of the evidence presented by the prosecution, the Court finds that the same appear to be *prima facie* sufficient to warrant the conviction of the accused beyond reasonable doubt for violation of RA 3019, Section 3(e), unless effectively contradicted by the evidence for the accused.

The prosecution successfully pointed to its evidence of conspiracy culled from the accused's respective acts, which apparently were directed in unison towards giving NCFP the unwarranted advantage of sponsorship that costs LWUA an amount of Php1.5M. Attention is drawn to the badge of bad faith or partiality of the accused, considering that the sponsorship appears to be in contravention of Administrative Order No. 103 dated August 31, 2004 and LWUA's own Memorandum 047 Series of 2010 dated August 9, 2010.

The supposed exclusion of the *Brief and Sworn Statement* of Mr. Kagahastian as evidence against the accused is of no significant consequence so as to modify the aforesaid finding given the totality of the prosecution evidence as considered in the assailed Resolution. Again, these evidence were adequate to sustain the charge for violation of RA 3019, Section 3(e), unless rebutted by a contrary evidence.

## II.

In **SB-16-CRM-0798**, the Information for Violation of RA 6713, Section 7 (a) reads:

During the period of August to December 2010, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction; public officer **PROSPERO ARREZA PICHAY, JR.** as Acting Chairman of the Board of Trustees of the LOCAL WATER UTILITIES

<sup>11</sup> Soriquez vs. Sandiganbayan, 474 SCRA 222

ADMINISTRATION (LWUA), a government owned and controlled corporation created by Presidential Decree No. 198, willfully, unlawfully, and criminally possessed financial or material interest in a transaction requiring the approval of his office when he concurrently served as President of the NATIONAL CHESS FEDERATION OF THE PHILIPPINES (NCFP), a private organization, at the time that he was the Acting Chairman of LWUA's Board of Trustees, and during his simultaneous incumbency at NCFP and LWUA, NCFP requested LWUA for financial sponsorship of the chess tournament billeted as the *2<sup>nd</sup> Chairman Prospero Pichay Jr. Cup International Chess Championship* in the amount of **ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000.00)**, which event was named after him and held in his honor.

**CONTRARY TO LAW."**

Section 7(a) of RA 6713 states that:

Prohibited Acts and Transactions - In addition to acts and omissions of public officials and employees now prescribed under the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

- (a) Financial and material interest. - Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.

In the case of *National Electrification Administration vs. Civil Service Commission, et al.*,<sup>12</sup> the Supreme Court held, *viz*:

A reading of the conflict of interest rule reveals that the prohibition against NEA personnel from participating in any question pertaining to a public service entity where he is directly or indirectly interested has the purpose of preventing such personnel from exercising the power of his office for personal pecuniary gain, which may cause grave damage and prejudice to public interest. In the same manner, government officials and employees are prohibited under Section 7 (a) of RA 6713 from having direct or indirect financial or material interest in any transaction requiring the approval of their office, since personal interest would be involved.

Section 1, Rule IX of the Implementing Rules and Regulations (IRR) of RA 6713 enumerates the situations where conflict of interest arises. It provides that:

- (a) An official or employee shall avoid conflict of interest at all times.

<sup>12</sup> *National Electrification Administration vs. Civil Service Commission, et al.*, G.R. No. 149497, January 25, 2010



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(b) Conflict of interest occurs:

- (1) When the official or employee is:
  - a) a substantial stockholder; or
  - b) a member of the Board of Directors; or
  - c) an officer of the corporation; or
  - d) an owner or has substantial interest in a business;  
or
  - e) a partner in a partnership; and
  
- (2) The interest of such corporation or business, or his rights or duties therein, are opposed to or affected by the faithful performance of official duty.

X x x x x

The issue presented before this Court is whether or not accused Pichay possessed financial or material interest in the chess tournament sponsorship of Php1.5M granted by LWUA to NCFP which required the approval of his office.

Rule X, Section 1 of the same IRR of RA 6713 defines “**financial and material interest**” as a *pecuniary or proprietary interest* by which a person will gain or lose something.

*Pecuniary interests* involve an actual or potential financial gain or loss, or other material benefits or costs, while *non-pecuniary* interests do not have a financial or other material component which may arise from personal or family relationships or involvement in sporting, social or cultural activities.<sup>13</sup> *Proprietary interests* are profits, rights, ownership shares or advantages held by the full or partial owner of a tangible or intangible asset or property.<sup>14</sup> The conflict of interests prohibited under RA 6713 Section 7(a) pertains to a public officer’s personal interests that may either be *pecuniary* - one that is “financial,” or *proprietary*- one that may cover “rights” or “advantages” which may not necessarily be financial. This is so since human experience has shown that where private interests collide with that of the duty to uphold public interest, the inclination is to favor one’s personal interest.<sup>15</sup>

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<sup>13</sup> [https://www.integrity.tas.gov.au/\\_\\_data/assets/pdf\\_file/0020/280505/Pecuniary\\_and\\_non-pecuniary\\_-\\_conflict\\_of\\_interest\\_-\\_quiz.pdf](https://www.integrity.tas.gov.au/__data/assets/pdf_file/0020/280505/Pecuniary_and_non-pecuniary_-_conflict_of_interest_-_quiz.pdf)

<sup>14</sup> Proprietary Interests Law and Legal Definition (<https://definitions.uslegal.com/p/proprietary-interests/>)

<sup>15</sup> “Conflict of Interest and Good Governance in the Public Sector -Looking at the Private Interests of Government Officials Within a Spectrum,” Mary Jude Cantorias Marvel, Arellano Law and Policy Review, Vol 13, No. 1 (December 2015) cited in <https://arellanolaw.edu/alpr/v13n1c.pdf>.



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Here, accused Pichay was then the President of the NCFP, whilst the Acting Chair of the LWUA during the subject sponsorship held on August 20-27, 2010. In the interim that he was the Acting Chairperson of LWUA Board of Trustees, approved and released P1,500,000.00 as post-event-sponsorship for the subject sports event. The sponsored tournament was labelled "*Chairman Prospero A. Pichay, Jr. Cup International Chess Championship*" As such, there is more than *prima facie* evidence of Pichay's conflict of interest prohibited under RA 6713, Section 7(a) because NCFP of which he was the President was the recipient of the Php1.5M LWUA sponsorship grant. Verily, the same required his approval. Notably, the sponsored chess tournament was held in his name and honor from which he would logically derive a personal advantage or benefit, gain or lose, materially or otherwise.

Pichay's argument that NCFP is a national sports association and not a business undertaking for profit owned by him from which he did not stand to gain or lose is rather evidentiary. This needs to be established by proofs at the opportune time contrary to his plea that said fact be taken judicial notice of.

In *People of the Philippines vs. Jose C. Go, et al.*,<sup>16</sup> the Supreme Court held:

"The power of courts to grant demurrer in criminal cases should be exercised with great caution, because not only the rights of the accused - but those of the offended party and the public interest as well - are involved. Once granted, the accused is acquitted and the offended party may be left with no recourse. Thus, in the resolution of demurrers, judges must act with utmost circumspection and must engage in intelligent deliberation and reflection, drawing on their experience, the law and jurisprudence, and delicately evaluating the evidence on hand."

Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight, or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.<sup>17</sup> Here, both requisites were adequately satisfied. The record showed sufficient evidence to sustain accused's violation of the conflict of interest rule.

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<sup>16</sup> G.R. No. 191015, August 6, 2014

<sup>17</sup> *Supra*, Note 11

**WHEREFORE**, premises considered, the Court hereby resolves to:


1. **DENY** the **Motion for Partial Reconsideration** in SB-16-CRM-0797 for lack of merit;
2. **DENY** accused Pichay's **Demurrer to Evidence** filed with Leave of Court in SB-16-CRM-0798.

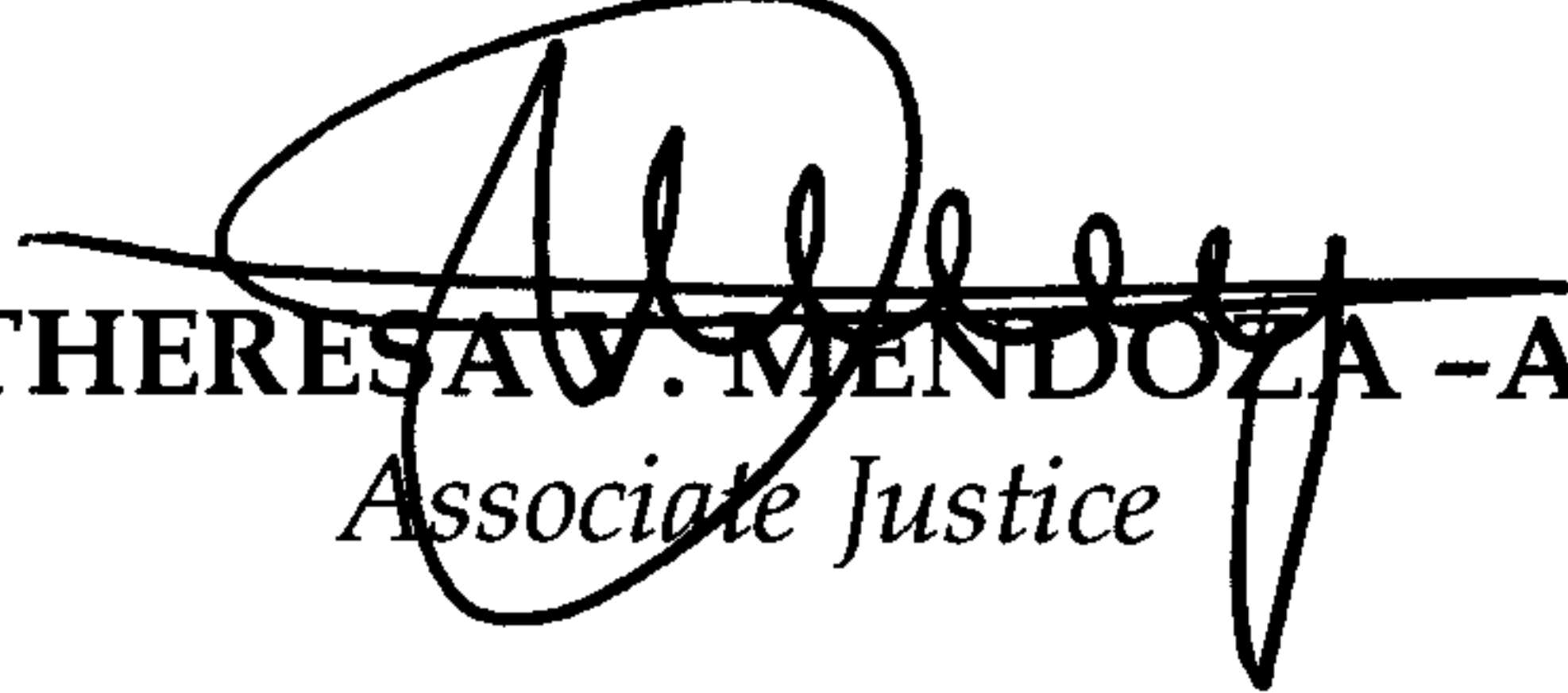
The initial presentation of defense evidence in both cases shall proceed as scheduled on October 23, 2018 at 8:30 in the morning.

SO ORDERED.

  
**MARYANN E. CORPUS - MAÑALAC**  
Associate Justice

**WE CONCUR:**

  
**RAFAEL R. LAGOS**  
Chairperson  
Associate Justice

  
**MARIA THERESA V. MENDOZA -ARCEGA**  
Associate Justice