



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-22-CRM-0074 to 0083**  
Plaintiff, For: Violation of Section 3(e)  
of R.A. No. 3019

**SB-22-CRM-0084 to 0093**  
For: Malversation of Public Funds thru  
Falsification of Public Documents

*Present*

- versus -

JERRY E. PACTURAN, ET AL.,  
Accused.

**FERNANDEZ, SJ, J.**,  
Chairperson  
**VIVERO, J.** and  
**HIDALGO,\* J.**

*Promulgated:*

**SEP 14 2022**

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**RESOLUTION**

**FERNANDEZ, SJ, J.**

This resolves the following:

1. *Motion for Reconsideration (Of the Resolution dated August 30, 2022)*<sup>1</sup> filed by accused Janet Lim Napoles;
2. *Motion to for Reconsideration [Re: Resolution dated 30 August 2022]*<sup>2</sup> filed by accused Teresita L. Panlilio;  
and,

\* In view of the inhibition of J. Miranda (Per Administrative Order No. 099-2022 dated May 16, 2022)

<sup>1</sup> Dated September 3, 2022 and filed by electronic mail on September 5, 2022

<sup>2</sup> Dated September 2, 2022 and filed on September 5, 2022

RESOLUTION

People vs. Pacturan, et al.  
SB-22-CRM-0074 to 0093

Page 2 of 12

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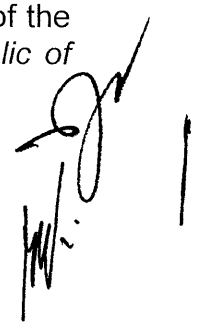
3. The prosecution's *Consolidated Comment/Opposition (Re: Motions for Reconsideration of Accused Janet Lim Napoles and Accused Teresita L. Panlilio)*.<sup>3</sup>

In her *Motion for Reconsideration*, accused Napoles prays (1) that the Court reconsider its Resolutions dated May 17, 2022 and August 30, 2022, and issue a new one suspending her arraignment on the ground of prejudicial question; and (2) that the Informations in these cases be quashed, and these cases be dismissed pursuant to the Supreme Court's ruling in the *Okabe* case. She avers:

1. Her Motion to Produce Complete Records of the Preliminary Investigation supporting the allegations in the Informations is not limited to the purpose of supporting her Motion to Quash, but also to support a motion for reconsideration of the Resolution dated May 17, 2022.
2. The *Okabe* case in relation to Section 8 [sic], Rule 112 squarely applies to her instant motions.
3. It is improper to apply the doctrine of piercing the veil of corporate fiction during preliminary investigation, during judicial determination of probable cause, and during trial, unless the following requirements are complied with:
  - a. That there is an established liability declared in a final and executory decision by a court of competent jurisdiction for the amounts being claimed in the subject Informations; and
  - b. That the court applying the doctrine has jurisdiction over the person of the corporation whose corporate veil shall be pierced.
4. There is nothing in the assailed Resolution nor in the Resolution dated May 17, 2022 that will support the conclusion that the requirements had been complied with.
5. While the Informations recited her alleged specific acts, it is undeniable that such acts are predicated and principally based on the allegation that she owned, controlled, and operated the subject NGOs.
6. The arraignment and proceedings in these cases should be suspended on the ground of prejudicial question in view of the pendency of AMLC Case No. 14-002-02, entitled *Republic of*

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<sup>3</sup> Dated September 12, 2022 and filed by electronic mail on even date



## RESOLUTION

*People vs. Pacturan, et al.*  
SB-22-CRM-0074 to 0093

Page 3 of 12

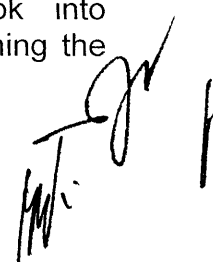
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*the Philippines represented by the Anti-Money Laundering Council v. Janet Lim Napoles, et al.*, before the Regional Trial Court in Manila, Branch 37.

- a. The said case before the RTC is a previously instituted civil action that involves a similar or intimately related issue raised in the subsequent criminal cases.
- b. The resolution of such issue determines whether or not the present cases may proceed.
- c. Based on the Ombudsman's Resolution and supporting evidence, she is allegedly linked to these cases because of prosecution witness Benhur Luy's claim that she owns, controls, and operated the subject NGOs where the public funds were diverted.
- d. All her specific acts alleged in the Informations are based on the claim that she owned the said NGOs.
- e. The issue in AMLC Case No. 14-002-02 is also whether she really owns, controls, and operated the said NGOs.
- f. A simple reading of the Ombudsman's Resolution and supporting evidence which were taken into account in the Resolution dated May 17, 2022, and which are also the bases of the subject Informations and the prosecution's Pre-Trial Brief will show that the issues in the present criminal cases are similar and intimately related to AMLC Case No. 14-002-02, and that a resolution of the issue of whether or not she really owns, controls, and operated the NGOs will determine whether or not the present cases may proceed.

In her *Motion for Reconsideration*, accused Panlilio similarly prays that the Court reconsider the Resolution dated August 30, 2022, and dismiss these cases for blatant violations of her fundamental rights under the Constitution. She avers:

1. The violations of her constitutional rights warrant the grant of her motion and the outright dismissal of the criminal charges against her.
2. Her rights to due process and to speedy disposition of cases were violated.
  - a. In the assailed Resolution, the Court took into consideration the steady stream of cases reaching the



## RESOLUTION

*People vs. Pacturan, et al.*  
SB-22-CRM-0074 to 0093

Page 4 of 12

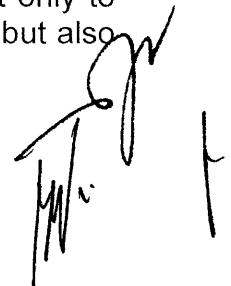
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Office of the Ombudsman, and stated that the ten-day period provided by law was merely directory.

- b. Even if the ten-day period was merely directory, heavy workload is not a sufficient justification for inordinate delay.
- c. The prosecution explained that the conclusion of the preliminary investigation was stalled because the respondents were afforded the right to file their motions for reconsideration.
- d. However, the prosecution's own Rules of Procedure provides that the filing of a motion for reconsideration/reinvestigation shall not bar the filing of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion.
- e. The prosecution could have filed the Informations with the Court as early as May 20, 2019, when there was already a finding of probable cause against her, but despite there being no hamper at all, the Informations were filed only on April 22, 2022.
- f. The Supreme Court, as early as April 3, 2020, had already provided for the manner of electronic filing of complaints and informations, and posting of bail, but the prosecution still failed to file the Informations within a reasonable time.
- g. She timely raised her right to speedy disposition of cases when he filed her motion to quash before arraignment and pre-trial, consistent with the Supreme Court's ruling in *Javier v. Sandiganbayan*.<sup>4</sup>
- h. The transactions occurred more than a decade ago. There is a great probability, if not certainty, that documentary evidence that will exonerate her has already been lost or destroyed, and the witnesses who could corroborate her defense may no longer be available, or if available, their memories may have already failed. Consequently, she would not be able to raise adequate defenses against the charges solely due to the delay caused by the Office of the Ombudsman.
- i. The Office of the Ombudsman has the duty not only to carefully go through the particulars of the case, but also

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<sup>4</sup> G.R. No. 237997, June 10, 2020



## RESOLUTION

*People vs. Pacturan, et al.*  
SB-22-CRM-0074 to 0093

Page 5 of 12

X -----X


- to resolve the same within the proper length of time. There is no justifiable basis as to why the Office of the Ombudsman could not have earlier resolved the case and filed the Informations promptly.
- j. In the case of *Cagang*, it was held that if there is an allegation of delay beyond the periods under the rules, the State must show that the delay was reasonable.
  - k. From the filing of the Complaint on October 11, 2016 until the finding of probable cause on May 20, 2019, a period of 2 years, 7 months, and 9 days had elapsed. This is well beyond the ten-day period provided for by law.
  - l. The prosecution's conduct amounted to unwarranted and vexatious prosecution.
3. Her right to equal protection was violated.
- a. In finding that there was no violation of her right to equal protection, the Court reasoned that she was assailing the Office of the Ombudsman's finding of probable cause against her, and the lack thereof as to the other respondents. The Court then held that it has no jurisdiction on the matter.
  - b. While she was indeed assailing the Office of the Ombudsman's finding of probable cause, she is assailing the Court's jurisdiction based on the unequal application of law and jurisprudence against her but in favor of similarly situated individuals. The Court can act on the matter because it can quash an information for lack of jurisdiction.
  - c. The Court's reliance on *Gatchalian v. Office of the Ombudsman*<sup>5</sup> is misplaced.
  - d. *Tirol, Jr. v. Del Rosario*<sup>6</sup> and *Estrada v. Desierto*,<sup>7</sup> which are cited in *Gatchalian*, are different from the present cases. The said cases do not involve a motion to quash on the ground of lack of jurisdiction, and do not involve the issue of equal protection under the law in connection with discrimination in the exercise of prosecutorial discretion. Furthermore, *Tirol, Jr.* does not require parties who wish to dispute the findings of the Ombudsman to file a petition for certiorari under Rule 65.

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<sup>5</sup> G.R. No. 229288, August 1, 2018

<sup>6</sup> G.R. No. 135913, November 4, 1999

<sup>7</sup> G.R. No. 156160, December 9, 2004



## RESOLUTION

*People vs. Pacturan, et al.*  
SB-22-CRM-0074 to 0093

Page 6 of 12

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The use of the word “may” indicates that it is, at best, merely directory in nature.

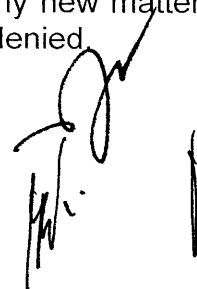
- e. Respondents De los Reyes, Venancio, Estrada, Labayen/Cabico, Talaboc, Oliveros, Tansip, Encarnacion and Galay were exonerated on the basis of a negative finding of overt acts in participation of a conspiracy.
- f. Virgilio R. De los Reyes, then Secretary of the Department of Agrarian Reform (DAR), was exonerated despite being the official with complete control and supervision over his department. The Ombudsman implicitly applied the *Arias* doctrine in his favor. In contrast, she was criminally charged notwithstanding the fact that she also did not sign the MOAs involved in the case.
- g. The Ombudsman held that Ronald J. Venancio, DAR Budget Officer IV, was not liable because his act of signing Box B of the Obligation Requests was merely ministerial.
- h. In *Roque v. Court of Appeals, et al.*,<sup>8</sup> it was held that the authority of the Head of Office to approve the Disbursement Voucher is dependent on the certifications of the Budget Officer, the Accountant and the Treasurer, on the principle that it is improbable for the Head of Office to check all details, and to conduct physical inspection and verification of all papers, considering the voluminous paperwork attendant to his or her office.
- i. If Venancio, the Budget Officer, was absolved from any wrongdoing, she should similarly be freed of any liability. Her alleged approval of the Disbursement Vouchers was a ministerial act based on the signatures of her subordinates.

In its *Consolidated Comment/Opposition*, the prosecution counters:

1. The arguments raised by accused Napoles and Panlilio are mere reiterations or rehashed versions of their arguments in their respective *Omnibus Motion Ad Cautelam* and *Motion to Quash*. Considering that they failed to raise any new matters and/or issues, their present *Motions* should be denied.

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<sup>8</sup> G.R. No. 179245, July 23, 2008



## RESOLUTION

*People vs. Pacturan, et al.*  
SB-22-CRM-0074 to 0093

Page 7 of 12

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### 2. Accused Napoles' *Motion for Reconsideration*

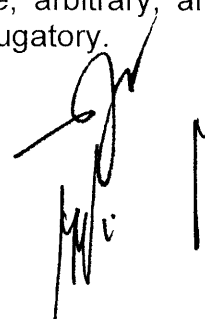
- a. In asserting that the cases must be dismissed on the ground of the insufficiency of the records that must be attached to the Informations, accused Napoles is effectively asking the Court to conduct a judicial determination (or re-determination) of probable cause, which is prohibited under the *Revised Guidelines for Continuous Trial of Criminal Cases*.
- b. Moreover, in *Leviste v. Alameda*,<sup>9</sup> the Supreme Court held that a motion for judicial determination of probable cause is a mere superfluity because with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence.
- c. In determining that sufficient grounds exist for the finding of probable cause for the issuance of warrants of arrest against the accused, the Court considered the resolution of the prosecution, the evidence in support thereof, and the records of the preliminary investigation attached thereto. The Court did not err in ruling that the *Okabe* case does not apply to the present cases.
- d. The Court correctly held that at this point, it is unnecessary to discuss whether the doctrine of piercing the veil of corporate fiction may be applied. The accusations against accused Napoles are not based solely on her alleged control of the named NGOs.
- e. With regard to the suspension of the arraignment and proceedings on the ground of prejudicial question, accused Napoles failed to show how the resolution of the AMLC case determines whether or not the criminal action may proceed. The present cases do not involve the PDAF and are not related to the Pork Barrel Scam, which is the subject matter of the AMLC case, and the subject transactions are not included or mentioned in the petition for civil forfeiture.

### 3. Accused Panlilio's *Motion for Reconsideration*

- a. The concept of speedy disposition is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary, and oppressive delays which render rights nugatory.

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<sup>9</sup> G.R. No. 182677, August 3, 2010

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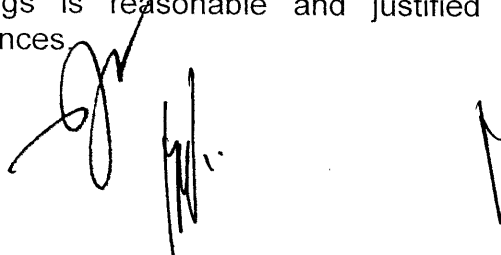
## RESOLUTION

*People vs. Pacturan, et al.*  
SB-22-CRM-0074 to 0093

Page 8 of 12

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- b. The preliminary investigation involved eighteen (18) respondents. There were seven (7) counter-affidavits filed from January 13, 2017 to July 26, 2018, and accused Panlilio filed two (2) motions for extension to file her counter-affidavit. The Ombudsman approved the Resolution on September 23, 2019, and therein respondents Pacturan, Napoles and Panlilio filed their respective motions for reconsideration. Therein respondent Pacturan's motion for the deferment of the filing of Information was granted, while therein Napoles and Panlilio's respective motions for reconsideration were denied.
- c. Orders and resolutions of the Ombudsman go through different levels of review. The number of transactions and respondents involved, the amount of documents to be examined, the complexity of the issues, and the levels of review rendered the delay in terminating the preliminary investigation inevitable.
- d. The respondents were given full opportunity to exhaustively raise their defenses in observance of the due process clause. There is no showing that the prosecution deliberately delayed the proceedings for impermissible reasons. The delay in the termination of the preliminary investigation was not unreasonable and oppressive.
- e. Even if there was already a finding of probable cause against accused Panlilio as early as September 23, 2019, the Office of the Ombudsman could not have filed a separate Information against her because the charges involve conspiracy with the other accused.
- f. While the Supreme Court had provided the manner of electronic filing of complaints as early as April 3, 2020, the Office of the Ombudsman also issued its own rules in light of the pandemic which covered office lockdowns and work suspensions. The measures employed resulted in inevitable delay in the proceedings.
- g. The case did not remain dormant during the height of the pandemic. The Office of the Ombudsman took proper action in the ordinary course of things and in accord with its mandate with respect to the proceedings involving accused Pacturan. Any perceived delay in the proceedings is reasonable and justified under the circumstances.

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## RESOLUTION

*People vs. Pacturan, et al.*  
SB-22-CRM-0074 to 0093

Page 9 of 12

X -----X

- h. There was nothing that prevented accused Panlilio from invoking her right to speedy disposition of cases in her counter-affidavit. She did not even mention it in her motion for reconsideration of the Resolution finding probable cause against her. Instead, she just let the preliminary investigation run its course and invoked such right for the first time in her motion to quash. Accused Panlilio can no longer invoke such right because she acquiesced to the delay.
- i. Accused Panlilio failed to show that her ability to defend herself has been impaired. She did not specify the documents material to her defense that are no longer available. She also did not identify the potential witnesses who could no longer testify.
- j. Generally, the Court will not interfere with the Office of the Ombudsman's determination of probable cause, unless there is a clear and convincing showing of grave abuse of discretion. The Court correctly ruled that the proper remedy to assail the Ombudsman's finding of probable cause is to bring the matter before the Supreme Court through a petition for certiorari under Rule 65 of the Rules of Court.

### THE COURT'S RULING

The Court resolves to deny the respective *Motions for Reconsideration* of accused Napoles and accused Panlilio.

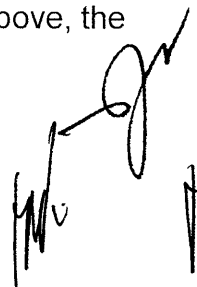
#### *I. Accused Napoles' Motion for Reconsideration*

Accused Napoles insists that her arraignment and the proceedings should be suspended because the resolution of the issue in the AMLC case will determine whether or not the present cases may proceed. This is premised on her contention that the charges against her are all based on her alleged control of the NGOs named in the Amended Informations. This Court had already ruled on the matter in the Resolution dated August 30, 2022.<sup>10</sup> For convenience, the pertinent portion<sup>11</sup> of the said Resolution is hereunder quoted:

Indeed, the Amended Informations allege that accused Napoles controlled the named NGOs. However, as seen above, the

<sup>10</sup> Record, Vol. 4, pp. 321-349

<sup>11</sup> Resolution dated August 30, 2022, p. 17; Record, Vol. 4, p. 337



RESOLUTION

People vs. Pacturan, et al.  
SB-22-CRM-0074 to 0093

Page 10 of 12

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charges against her are not based solely on her alleged control of the said NGOs, but also on her alleged specific acts in furtherance of the conspiracy to commit the crimes charged. The details of how accused Napoles controlled the named NGOs are matters of evidence, which are better raised during the trial. At this point, it is unnecessary to discuss whether the doctrine of piercing the veil of corporate fiction may be applied. It is also unnecessary to discuss the Court's jurisdiction over the person of the named NGOs, considering that they are not even included as accused in these cases.

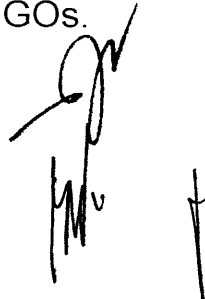
Finally, there is no ground for suspending the arraignment and the proceedings on the basis of prejudicial question. Accused Napoles failed to show (1) how the issue in AMLC Case No. 14-002-02 entitled *Republic of the Philippines represented by the Anti-Money Laundering Council vs. Janet Lim Napoles, et al.* is intimately related to those in the present cases; and (2) how the resolution of such issue determines whether or not the criminal action may proceed. As previously discussed, although the Amended Informations allege that accused Napoles controlled the named NGOs, the charges against her are not solely based on her alleged control of the named NGOs, but also based on other acts.

Next, accused Napoles is now seeking reconsideration of the Resolution dated May 17, 2022,<sup>12</sup> claiming that the *Okabe* case now squarely applies. This appears to be nothing but an afterthought. There was no mention of the said Resolution in her *Omnibus Motion Ad Cautelam*, and she moved for reconsideration of the same only after the Court issued the Resolution dated August 30, 2022, wherein the Court ruled that the *Okabe* case cannot apply because this Court already made its determination of probable cause for the issuance of warrants of arrest against the accused in the said Resolution dated May 17, 2022.

In any event, her Motion for Reconsideration of the May 17, 2022 Resolution is also premised on her insistence that the charges against her are all based on her alleged control of the subject NGOs. At the risk of repetition, this is not the case. Although the Amended Informations, indeed, allege that she controlled the said NGOs, the Amended Informations also allege other specific acts in furtherance of the conspiracy attributable to her. Such alleged specific acts are independent of her alleged control of the NGOs.

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<sup>12</sup> Record, Vol. 3, p. 93

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RESOLUTION

People vs. Pacturan, et al.  
SB-22-CRM-0074 to 0093

Page 11 of 12

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Furthermore, unlike in the *Okabe* case where the judge's finding of probable cause was based solely on the prosecutor's resolution and the affidavit-complaint of the private complainant, this Court, in determining that sufficient grounds exist for the finding of probable cause for the issuance warrants of arrest against the accused, considered the Ombudsman's Resolution, the evidence in support thereof, and the records of the preliminary investigation attached thereto, including accused Napoles' *Counter-Affidavit*,<sup>13</sup> wherein she merely made a general denial of the allegations in the Complaint.

II. *Accused Panlilio's Motion for Reconsideration*

It bears emphasizing that contrary to accused Panlilio's claim that the Court found that there was no violation of her right to equal protection of the law, the Court, in the assailed Resolution, did not make a ruling on the matter because it would necessarily involve looking into the Ombudsman's finding of probable cause, and as discussed in the assailed Resolution, the Court has no jurisdiction to act on such matter.

Accused Panlilio's other arguments in her *Motion for Reconsideration* are a mere reiteration or rehash of those in her *Motion to Quash*. In *Mendoza-Ong v. Sandiganbayan*,<sup>14</sup> it was held:

Concerning the first ground abovesited, the Court notes that the motion contains merely a reiteration or rehash of arguments already submitted to the Court and found to be without merit. Petitioner fails to raise any new and substantial arguments, and no cogent reason exists to warrant a reconsideration of the Court's Resolution. It would be a useless ritual for the Court to reiterate itself.

This Court had already considered accused Panlilio's said arguments and found them to be without merit when it denied her *Motion to Quash* in the assailed Resolution. The Court, in the said Resolution, discussed at length the bases for its finding that there was no violation of accused Panlilio's right to speedy disposition of cases. It is unnecessary to discuss them anew.

In fine, there is nothing in accused Napoles and Panlilio's respective *Motions for Reconsideration* that would warrant the reversal of the Resolutions dated May 17, 2022 and August 30, 2022.

<sup>13</sup> Record, Vol. 1, pp. 210-228

<sup>14</sup> G.R. Nos. 146368-69, October 18, 2004

RESOLUTION

*People vs. Pacturan, et al.*

SB-22-CRM-0074 to 0093

Page 12 of 12

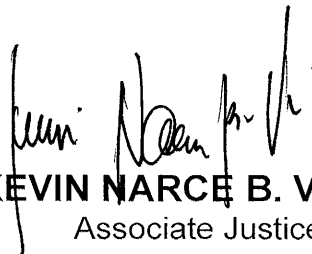
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**WHEREFORE**, the respective *Motions for Reconsideration* of accused Napoles and accused Panlilio are hereby DENIED for lack of merit.

SO ORDERED.

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

**We Concur:**

  
**KEVIN NARCE B. VIVERO**  
Associate Justice

  
**GEORGINA D. HIDALGO**  
Associate Justice