

Republic of the Philippines  
Sandiganbayan  
Quezon City

**FIFTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**      **SB-19-CRM-0149 to 0152**  
*Plaintiff,*

*-versus-*

**MARIA JOSEFINA M. DELA**  
**CRUZ,**  
*Accused.*

**Present:**

**LAGOS, J., Chairperson,**  
**MENDOZA-ARCEGA, and**  
**CORPUS-MAÑALAC, JJ.**

**Promulgated:**

July 18, 2023

x ----- *Guert of the Court* ----- x

**RESOLUTION**

**CORPUS-MAÑALAC, J.:**

This resolution considers: (1) the *Motion for Leave (a) to File Demurrer to Evidence and (b) to Admit this Demurrer*<sup>1</sup> dated June 13, 2023 of accused Maria Josefina M. Dela Cruz; (2) the *Comment/Opposition (Re: Motion for Leave to File Demurrer to Evidence dated 13 June 2023)*<sup>2</sup> dated June 16, 2023 of the prosecution; (3) the *Reply with Motion for Leave to Admit*<sup>3</sup> dated June 21, 2023 of the accused; and (4) the *Manifestation (Re: Reply with Motion to Admit dated 19 June 2023)* dated June 29, 2023 of the prosecution.

In 2019, the Office of the Ombudsman indicted the accused on two (2) counts of violation of Section 3(e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, and another two (2) counts of unlawful appointment under Article 244 of the Revised Penal Code.<sup>4</sup> The charges concerned the appointments the accused made in 2011 and 2013 when she was still the Postmaster General of the Philippine Postal Corporation (PhilPost). According to the Ombudsman, the accused violated Section-3(e) of the anti-graft law (SB-19-CRM-0149) and committed

<sup>1</sup> Records, Vol. 4, pp. 159-204.

<sup>2</sup> Id. at 218-228.

<sup>3</sup> Id. at 231-238.

<sup>4</sup> Records, Vol. 2, pp. 177 to 188 (Amended *Informations*).

*JN*

unlawful appointment (SB-19-CRM-0150) by appointing Esther V. Cabigao on September 1, 2011 as Director III of the PhilPost, despite “knowing fully well that [the appointee] did not possess” all the qualifications for that position. Also, the Ombudsman charged the accused of committing Section-3(e) violation (SB-19-CRM-0151) and unlawful appointment (SB-19-CRM-0152) when she again appointed Cabigao on November 29, 2013 as Department Manager III of the PhilPost HRMD, despite “knowing fully well that [the appointee] did not” have a master’s degree required for that position.

On November 8, 2019, the accused pleaded not guilty to all four charges.<sup>5</sup> Thereafter, preliminary conference and pre-trial ensued, and trial began. After presenting evidence, the prosecution formally offered its exhibits.<sup>6</sup> The accused interposed an opposition thereto.<sup>7</sup> On June 5, 2023, the Court resolved to admit into evidence the exhibits the prosecution had formally offered.<sup>8</sup>

On June 13, 2023, the accused filed the *Motion for Leave (a) to File Demurrer to Evidence and (b) to Admit this Demurrer*.<sup>9</sup> Through its *Comment/Opposition (Re: Motion for Leave to File Demurrer to Evidence dated 13 June 2023)*,<sup>10</sup> the prosecution interposed an opposition to the motion. On June 21, 2023, the accused filed the *Reply with Motion for Leave to Admit*.<sup>11</sup> Then, on June 30, 2023, the prosecution filed the *Manifestation (Re: Reply with Motion to Admit dated 19 June 2023)*.

**Accused Dela Cruz’s Motion for  
Leave of Court to File Demurrer to Evidence  
and to Admit Demurrer**

In her motion, the accused invokes three grounds in seeking leave of court to file demurrer to evidence.<sup>12</sup> First, she claims that the prosecution failed to prove beyond a reasonable doubt the 2<sup>nd</sup> and 3<sup>rd</sup> elements<sup>13</sup> of violation of Section 3(e) of the anti-graft law as well as the 4<sup>th</sup> element<sup>14</sup> of unlawful appointment under Article 244 of the RPC. Second, she contends

<sup>5</sup> Id. at 195 (Certificate of Arraignment).

<sup>6</sup> Id. at 68-76 (Prosecution’s *Formal Offer of Evidence* dated May 25, 2023).

<sup>7</sup> Id. at 90-98 (Accused Dela Cruz’s *Comment to Plaintiff’s Formal Offer of Exhibits* dated June 2, 2023).

<sup>8</sup> Minutes of the proceedings held on June 5, 2023.

<sup>9</sup> Records, Vol. 4, pp. 159-204.

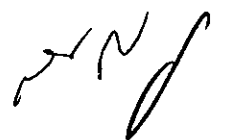
<sup>10</sup> Id. at 218-228.

<sup>11</sup> Id. at 231-238.

<sup>12</sup> Id. at pp. 186-187; lifted verbatim from accused Dela Cruz’s Motion dated June 13, 2023.

<sup>13</sup> Section 3 (e) of RA 3019 has three elements: (1) xxx; (2) he or she must have acted with manifest partiality, evident bad faith, or gross and inexcusable negligence; and (3) his or her action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions (*Fainsan v. Field Investigation Office (Office of the Ombudsman)*, G.R. No. 233446, February 22, 2023, citing *Jaca v. People*, G.R. Nos. 166967, 166974 & 167167, January 28, 2013).

<sup>14</sup> The elements of the crime of unlawful appointments under Article 244 of the RPC are: (1) xxx; (2) xxxx; (3) xxx; and (4) The offender knows that his or her nominee or appointee lacks the qualifications at the time he or she made the nomination or appointment (*Anacta, Jr. v. Sandiganbayan (Fifth Division)*, G.R. No. 219352, November 14, 2018).



that the prosecution failed to show criminal intent in relation to the unlawful appointment charges. Finally, she invokes the Arias Doctrine, arguing that she merely relied on her subordinates.

On the claim that the prosecution failed to prove the 2<sup>nd</sup> and 3<sup>rd</sup> elements of violation of Section 3(e) and the 4<sup>th</sup> element of unlawful appointment

Citing *Posadas v. Sandiganbayan*,<sup>15</sup> the accused argues that “the prosecution failed to prove unwarranted benefit, advantage and preference since the salaries received by [the appointee], and subject of the COA notice of disallowances, were all received in consideration of services rendered, as ruled by the Ombudsman in the January 8, 2018 Resolution to OMB-C-C-16-0396.”<sup>16</sup> She further claims that there was no undue favor given to the appointee because the “qualified next-in-line” to the position of Director III, Rosemarie N. Tubal, executed on November 13, 2012 an affidavit expressing her lack of interest in the position.<sup>17</sup> Moreover, she points out that the position of Department Manager III had no “qualified next-in-line” being a newly created position pursuant to a rationalization program.<sup>18</sup> “At any rate,” the accused adds, the appointee was a “public party,” not “a private party to whom unwarranted benefits, advantage, or preference could have been given.”<sup>19</sup>

On another point, the accused contends that the evidence is insufficient to establish evident bad faith. She argues that the Director III appointment comports with *CSC Memorandum Circular No. 40, s. 1998* insofar as it allows the appointment of one who is not next in line whenever the “qualified next-in-line” is not interested in the position nor available and public interest demands the appointment.<sup>20</sup> She reiterates that the “qualified next-in-line” expressed lack of interest in the position of Director III.<sup>21</sup> As regards the Department Manager III appointment, the accused points out that such position was created by virtue of the October 29, 2012 rationalization plan and, therefore, has no “next-in-line.”<sup>22</sup> The accused points out that *CSC Decision No. 12-0715* mentioned the necessity of filling the Director III vacancy. Citing the same decision, she also argues that the Postal Service Act authorizes the PhilPost to establish its own merit system; hence, she contends, the PhilPost Board of Directors has its own qualification standards for its plantilla, including the Director III position.<sup>23</sup> That PhilPost submitted a Report on Appointments to the CSC, she claims, shows good faith on her

<sup>15</sup> G.R. Nos. 168951 & 169000 (Resolution), November 27, 2013.

<sup>16</sup> Records, Vol. 4, p. 186 (accused Dela Cruz’s Motion dated June 13, 2023, p. 28).

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id. at 188.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id. at 189.

part.<sup>24</sup> The accused also avers that she merely relied on the screening conducted by and the findings of the members of the Personnel Selection Board (PSB).<sup>25</sup>

According to the accused, “in the absence of proof of other qualified interested or next-in-line applicant to the position of Director III, and the absence of qualified next-in-line to the position of Department Manager III, the prosecution failed to establish manifest partiality.”<sup>26</sup>

Making reference to the minutes of deliberation of the Special Personnel Selection Board (SPSB) for executive managerial positions dated August 26, 2011 and certifications of the PSB heads, the accused avers that the PSB screened and found the appointee qualified for the position.<sup>27</sup> Her reliance on the results of the PSB’s screening, the accused postulates, negates gross inexcusable negligence.<sup>28</sup>

On the claim that the prosecution failed to prove the 4<sup>th</sup> element of unlawful appointment (*i.e.*, that she knew that the appointee lacks the qualification at the time she made the appointment), the accused reiterates that she merely relied on the results of the PSB’s screening.<sup>29</sup> She emphasizes that, with regard to the Director III appointment, she came to know of the appointee’s lack of qualifications—only after the appointment.<sup>30</sup> As to the Department Manager III appointment, the accused states that during the implementation of the rationalization plan, PhilPost was “moribund and suffering from serious business reverses which [she] had to prioritize and address.”<sup>31</sup> She avers that the Department Manager III position “was key to the rationalization plan and, without a qualified next-in-line and given the dire circumstances, [the appointee’s] educational background was found to have substantially complied with the requirement for the temporary re-appointment/re-employment as recommended by the PSB.”<sup>32</sup>

*On the failure to show criminal intent to commit unlawful appointment*

Reiterating the circumstances under which the Director III and the Department Manager III appointments were made, the accused argues that she had no criminal intention when she made them.<sup>33</sup>

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<sup>24</sup> Id. at 190.

<sup>25</sup> Id.

<sup>26</sup> Id. at 191.

<sup>27</sup> Id. at 193 (accused Dela Cruz’s Motion dated June 13, 2023, p. 35).

<sup>28</sup> Id.

<sup>29</sup> Id. at 194 (accused Dela Cruz’s Motion dated June 13, 2023, p. 36).

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Id. at 194-195 (accused Dela Cruz’s Motion dated June 13, 2023, pp. 36-37).

<sup>33</sup> Id. at 195-199 (accused Dela Cruz’s Motion dated June 13, 2023, pp. 37-41).

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On the application of Arias Doctrine

Finally, the accused invokes the Arias Doctrine. She argues that, in making the appointments, she relied on the screening the PSB had conducted.<sup>34</sup>

**The prosecution's Opposition  
to accused Dela Cruz's motion**

On June 16, 2023, the prosecution opposed the motion for leave of court to file demurrer to evidence and to admit the demurrer.<sup>35</sup> In opposing the motion, the prosecution insists that the evidence presented sufficiently established all the elements of the crimes charged.<sup>36</sup>

Regarding the charges of violation of Section 3(e) of the anti-graft law, the prosecution asserts that "the acts of the accused all tend toward the accomplishment of the same felonious object, *i.e.*, to give unwarranted benefit, advantage or preference thru the injudicious appointment of one Esther V. Cabigao."<sup>37</sup> The prosecution points out that the accused appointed Cabigao four (4) times, all of which were ultimately invalidated by the CSC. In its opposition, the prosecution summarized those instances as follows:<sup>38</sup>

Date of Appointment of Cabigao in PhilPost	Position	Date of Invalidation by the CSC	Grounds for Invalidation
01 September 2011 "transfer"	Director III, Human Resource Management Department (HRMD)	09 January 2012	"no authority to sign certification of publication and no signature of PSB Chairman"
01 September 2012 "renewal"	Director III, HRMD	02 October 2012	Does not meet the education, experience and training requirements pursuant to CSC-MC No. 13, S. 2011
28 December 2012 "reappointment"	Department Manager III, HRMD	11 July 2013	"Violation of Sec. 2(b), Rule 111 of CSC MC No. 40,

<sup>34</sup> Id. at 199 (accused Dela Cruz's Motion dated June 13, 2023, p. 41).

<sup>35</sup> Id. at 207-217 (Prosecution's COMMENT/OPPOSITION (Re: Motion For Leave To File Demurrer To Evidence dated 13 June 2023) dated June 16, 2023).

<sup>36</sup> Id. at 207 (Prosecution's COMMENT/OPPOSITION (Re: Motion For Leave To File Demurrer To Evidence dated 13 June 2023) dated June 16, 2023, p. 1).

<sup>37</sup> Id. at 208 (Prosecution's COMMENT/OPPOSITION (Re: Motion For Leave To File Demurrer To Evidence dated 13 June 2023) dated June 16, 2023, p. 2).

<sup>38</sup> Id. at 210 (Prosecution's COMMENT/OPPOSITION (Re: Motion For Leave To File Demurrer To Evidence dated 13 June 2023) dated June 16, 2023, p. 4).

			<i>s. 1998[deficient in education, experience and training and not eligibility (sic)]”</i>
29 November 2013 “reemployment”	Department Manager III, HRMD	26 May 2014	“lacks education pursuant to CSC-MC No. 13, S. 2011” and “no publication”

According to the prosecution, the act of repeatedly making the appointments “despite the CSC [stating] ... several times that [the appointee was] not qualified for the position of either Director III or Department Manager III” of the PhilPost evinces manifest partiality and evident bad faith.<sup>39</sup>

Moreover, the prosecution asserts that the COA’s Notices of Disallowance (Exhibits “Q”, “S”, “T”, and “U”) would show that [the accused] was made aware of the appointee’s disqualification on the grounds, among others, that she “*does not meet the education, experience and training requirements pursuant to CSC MC No. 13, S. 2011*”; “*Deficient in education, experience and training*”; and “*lacks education pursuant to CSC MC No. 13, S. 2011.*”<sup>40</sup> The appointments, the prosecution posits, shows that the accused gave the appointee unwarranted benefit, advantage, or preference.<sup>41</sup>

About the unlawful appointment charges, the prosecution quotes *Galero vs Court of Appeals*<sup>42</sup> to argue that “*a government official or officer is presumed to have knowledge of the commission of any irregularity or offense, when the irregularities or illegal acts have been repeatedly or regularly committed within [the accused’s] official area of jurisdiction.*”<sup>43</sup> This presumption, the prosecution asserts, was not overturned.<sup>44</sup> The letters, decisions, and resolutions of the CSC, as well as the notices of disallowances of the COA, the prosecution adds, prove that the accused was aware that the appointee lacked the qualifications for the positions.<sup>45</sup>

On the accused’s invocation of the Arias Doctrine, the prosecution counters that the doctrine is inapplicable here because the accused “was part ... of the selection process, as head of the PhilPost”<sup>46</sup> in making the

<sup>39</sup> Id.

<sup>40</sup> Id. at 211 (Prosecution’s COMMENT/OPPOSITION (*Re: Motion For Leave To File Demurrer To Evidence dated 13 June 2023*) dated June 16, 2023, p. 5).

<sup>41</sup> Id. at 212 (Prosecution’s COMMENT/OPPOSITION (*Re: Motion For Leave To File Demurrer To Evidence dated 13 June 2023*) dated June 16, 2023, p. 6).

<sup>42</sup> G.R. No. 141121, July 21, 2008.

<sup>43</sup> Records, Vol. 4, p. 213 (Prosecution’s COMMENT/OPPOSITION (*Re: Motion For Leave To File Demurrer To Evidence dated 13 June 2023*) dated June 16, 2023, p. 7).

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Id.

appointment. The prosecution further avers that the accused “should have been more cautious and circumspect in appointing and re-appointing ... considering the consistent invalidations of the CSC thereof and the COA’s disallowances.”<sup>47</sup>

Finally, the prosecution observes that the “defenses are all evidentiary in nature which is best addressed at a full-blown trial on the merits.”<sup>48</sup>

**Accused Dela Cruz’s Reply with Motion for Leave to Admit  
to the Prosecution’s Opposition**

On June 16, 2023, the accused filed a *Reply with Motion for Leave to Admit* dated June 21, 2023.<sup>49</sup> In her *Reply*, the accused insists that the prosecution failed to prove manifest partiality; evident bad faith; unwarranted benefit, advantage, or preference; and knowledge of lack of legal qualification at the time the appointment was made.<sup>50</sup> In support thereof, she reproduced her arguments in her motion for leave to file demurrer to evidence and to admit demurrer.

**Prosecution’s Manifestation regarding  
accused Dela Cruz’s Reply with Motion for Leave to Admit**

By way of manifestation, the prosecution points out that the *Reply with Motion for Leave to Admit* filed by the accused merely reiterates the arguments made in the motion for leave of court to file demurrer to evidence and to admit demurrer and should therefore be considered a mere scrap of paper. The prosecution adds that such pleading is prohibited because Rule 119, Section 23 of the Revised Rules of Criminal Procedure does not provide for its filing.

**RULING**

After considering the parties’ arguments, the Court is inclined to partly grant the June 13, 2023 Motion of the accused insofar as it seeks leave of court to file a demurrer to evidence. However, considering how the motion was framed as well as the limited period the prosecution had to comment on/oppose the motion, the Court, as will be discussed below, deems it appropriate to require the accused to file a demurrer to evidence, to give the prosecution a new period within which to oppose/comment on the demurrer to evidence.

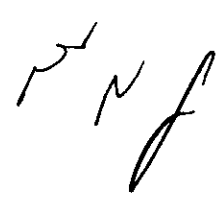
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<sup>47</sup> Id. at 214 (Prosecution’s COMMENT/OPPOSITION (*Re: Motion For Leave To File Demurrer To Evidence dated 13 June 2023*) dated June 16, 2023, p. 8).

<sup>48</sup> Id. at 215 (Prosecution’s COMMENT/OPPOSITION (*Re: Motion For Leave To File Demurrer To Evidence dated 13 June 2023*) dated June 16, 2023, p. 9).

<sup>49</sup> Id. at 231-238.

<sup>50</sup> Id.



The accused filed the June 13, 2023 Motion under Rule 119, Section 23 of the Revised Rules of Criminal Procedure to ask for leave of court to challenge the sufficiency of the prosecution's evidence and to admit demurrer to evidence.<sup>51</sup> That rule provides:

**SEC. 23. Demurrer to evidence.** — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment.

The rule is clear that a motion for leave to file demurrer to evidence is distinct from a demurrer to evidence. To cite a distinction, the two (2) are subject to different filing periods. A motion for leave of court to file demurrer to evidence should be “filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.” On the other hand, a demurrer to evidence, “[i]f leave of court is granted,” should be filed “within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.” The separate and longer periods for the accused to file a demurrer to evidence and for the prosecution to oppose give the parties time to extend their arguments regarding the sufficiency/insufficiency of the prosecution's evidence.

By the rule's design, an accused who intends to file a demurrer to evidence *with* leave of court ordinarily files a motion for leave to file demurrer to evidence first, separately from the demurrer to evidence, and

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<sup>51</sup> Id. at 159, 161, and 203 (See the Caption, the Nature, and the Prayer of the June 13, 2023 Motion; accused Dela Cruz's Motion dated June 13, 2023, pp. 1, 3, and 45).



then, if leave of court is granted, files within a fresh period the demurrer to evidence. Although there are times when the motion for leave to file a demurrer to evidence is already accompanied by the demurrer to evidence, in those instances however the two submissions are distinguishable from each other, that is, the demurrer to evidence is merely an attachment to, and need not be considered in resolving, the motion for leave.

Here, the June 13, 2023 Motion fused the motion for leave to file demurrer to evidence and the demurrer to evidence, forming a single submission. Notably, the motion's caption reflects the intention of the accused to seek leave of court to file a demurrer to evidence.<sup>52</sup> Also, and more significantly, among the reliefs prayed for is “[t]o *admit and grant* this Motion for Leave to File Demurrer to Evidence under Sec. 23, Rule 119, Revised Rules of Criminal Procedure.”<sup>53</sup> But, in the same motion, the caption also indicates, and the reliefs also include, a prayer to “*admit and grant* this Demurrer.”<sup>54</sup> Such filing does not comport with the rule on demurrer to evidence. What were designed to be separate and distinct things were lumped together indistinguishably in one submission.

Nevertheless, the procedural misstep should not result in the perfunctory denial of the motion. As earlier stated, the accused intended to seek leave of court to file a demurrer to evidence. Significantly, the motion complied with the requirements on filing a motion for leave of court to file demurrer to evidence under Rule 119, Section 23 of the Revised Rules of Criminal Prosecution; it recites specific grounds and was filed on time. Under the circumstances obtaining, the Court deems it appropriate to treat the motion as a motion that seeks only leave of court to file demurrer to evidence. In this manner, the parties will be given new periods to sufficiently present their respective arguments.

As to the *Reply with Motion for Leave to Admit* filed by the accused, the Court deems it unnecessary to pass upon the motion for leave to admit the reply in view of the resolution above.

**WHEREFORE**, premises considered, accused Maria Josefina M. Dela Cruz's motion for leave of court to file demurrer to evidence is **GRANTED**. However, the prayer to admit demurrer to evidence, as well as the other reliefs prayed for are **DENIED**.

Accordingly, the accused is given a non-extendible period of ten (10) days from receipt of this resolution to file a demurrer to evidence. The prosecution is likewise given a non-extendible period of ten (10) days to file its comment/opposition from receipt of the demurrer to evidence.

<sup>52</sup> The June 13, 2023 motion is captioned “MOTION FOR LEAVE (*Under Sec. 23, Rule 119, Revised Rules of Criminal Procedure*) a) TO FILE DEMURRER TO EVIDENCE AND b) TO ADMIT THIS DEMURRER.”

<sup>53</sup> Records, Vol. 4, p. 203 (accused Dela Cruz's Motion dated June 13, 2023, p. 45).

<sup>54</sup> Id.


Thereafter, no additional submission in relation to this matter shall be entertained, and the demurrer to evidence shall be deemed submitted for decision/resolution.

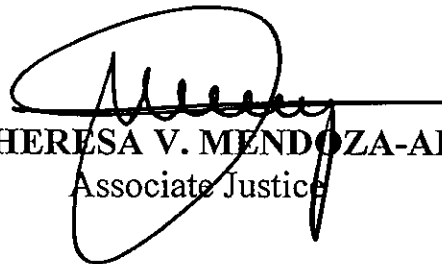
The *Reply with Motion for Leave to Admit* filed by the accused is merely **NOTED**.

**SO ORDERED.**

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

**WE CONCUR:**

  
**RAFAEL R. LAGOS**  
Associate Justice  
Chairperson

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