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SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

P/INSP. II GILBERT C. SAN DIEGO,

Petitioner,

- versus -

FACT-FINDING INVESTIGATION COMMITTEE* (Under the Office of the DEPUTY OMBUDSMAN for Military and Other Law Enforcement Officers), Represented by AGIO DON. A ESQUIVEL,

Respondent.

G.R. No. 214081

Present:

PERALTA, J., Chairperson,
LEONEN,
REYES, A.B., JR.,
HERNANDO, and
CARANDANG,** JJ.

Promulgated:

April 10, 2019

[Signature]

X-----X

DECISION

PERALTA, J.:

This is a Petition for Review on *Certiorari* seeking to reverse and set aside the Court of Appeals (CA) Decision¹ dated October 31, 2013 and its Resolution² dated August 28, 2014 in CA-G.R. SP No. 125147. The CA denied the petition for review of the Decision dated June 30, 2011 and the Order dated January 2, 2012 of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Officers (*OMB-MOLEO*) in OMB-P-A-09-0920-J. The OMB-MOLEO found petitioner P/Insp. II Gilbert C. San Diego guilty of sixteen (16) counts of Grave Misconduct and six (6) counts of Serious Dishonesty, and imposed upon him the penalty of dismissal from the service, including the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for re-employment in the government service.

* Fact-Finding and Investigating Bureau (FFIB) in some parts of the rollo.
** Designated Additional Member per Special Order No. 2624 dated November 28, 2018.
¹ Penned by Associate Justice Pedro B. Corales, with Associate Justices Sesinando E. Villon and Florito S. Macalino, concurring; *rollo*, pp. 39-52.
² *Id.* at 54-55.

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The factual antecedents are as follows:

On June 2, 2008, a formal request was filed before the Office of the Ombudsman for a lifestyle check upon Gilbert C. San Diego, Special Investigator of the National Police Commission (*NAPOLCOM*), who was allegedly living a lifestyle not commensurate to his salary.

San Diego has supposedly exhibited extravagant spending by giving out large parties and shopping without limits in high-end establishments, and frequently traveled abroad with the use of several passports, bearing different middle names, *i.e.*, “Carlos” and “Careon.” He also owns two (2) vehicles, *i.e.*, a 2004-2005 Toyota Vios Sedan and a Nissan Safari Sports Utility Vehicle (SUV) worth ₱2,000,000.00, as well as shares of stocks of A. Francisco Realty and Development Corporation worth ₱5,000,000.00.

On July 20, 2009, the OMB-MOLEO rendered a Fact-Finding Report,³ recommending that criminal and administrative charges be filed against San Diego, and referring the case to the Criminal Investigation, Prosecution and Administrative Adjudication Bureau (*CIPAAB*), for the conduct of preliminary investigation and administrative investigation.

On September 29, 2009, the Fact-Finding Investigation Bureau (*FFIB*) of OMB-MOLEO filed separate Affidavit-Complaints⁴ dated September 29, 2009, administratively charging San Diego with several counts of Grave Misconduct, Serious Dishonesty and Gross Neglect of Duty, thus:

1. One (1) count for Grave Misconduct and Serious Dishonesty for falsely declaring in his 2006 Statement of Assets, Liabilities, and Net Worth [SALN] that he owns a Nissan Patrol SUV worth ₱2.4 million when in fact the registered owner thereof is A. Francisco Realty and Development Corporation;⁵

2. One (1) count for Grave Misconduct and Serious Dishonesty for intentional failure to declare in his 2006 SALN his wife, the business interest and financial connection of his wife and his own business interest and financial connection in A. Francisco Realty and Development Corporation in the amount of ₱5 million pesos worth of stocks;⁶

³ Penned by Associate Graft Investigation Officer III, with approval of Fact-Finding and Investigation Bureau Officer-in-Charge Director Francisco P. Felizmenio and Deputy Ombudsman for MOLEO Emilio A. Gonzalez III.

⁴ Signed by Associate Graft Investigation Officer III Don A. Esquivel.

⁵ *CA rollo*, p. 356.

⁶ *Id.* at 361-362.

3. One (1) count for Grave Misconduct and Dishonesty when he intentionally failed to declare a condominium unit he declared in 2005 and his licensed firearms in his 2007 SALN;⁷

4. One (1) count for Grave Misconduct and Serious Dishonesty for falsely declaring in the Application for Marriage License dated April 25, 2005 that Adalia B. Francisco is Adela Gloria B. Francisco and that her civil status is "Widow," the truth of the matter being that both San Diego and Adalia B. Francisco knew that the latter's name is not Adalia Gloria B. Francisco and that her civil status is not a widow;⁸

5. One (1) count for Grave Misconduct and Serious Dishonesty for not declaring in his 2005 SALN his wife, the business interest and financial connection of his wife and his own business interest and financial connection in A. Francisco Realty and Development Corporation in the amount of ₱5 million pesos worth of stocks;⁹

6. Two (2) counts for Grave Misconduct and Serious Dishonesty for misrepresenting and falsely declaring that his middle name is Careon in his passport application, hence, the Department of Foreign Affairs (DFA) issued to him Passport QQ0270116 dated April 9, 2005 and TT0400798 dated July 7, 2006, when, in fact, he knew fully well that his middle name is Carlos and not Careon;¹⁰

7. Ten (10) counts for Gross Neglect of Duty for not filing the requisite applications for leave relative to his foreign travels, and ten (10) counts for Serious Dishonesty for his failure to comply with Memorandum Circular No. 304 dated November 19, 1969, as amended by Executive Order No. 6 dated March 12, 1986, for not securing the necessary Authority to Travel in his foreign trips while in government service, considering that out of the 14 trips abroad, he was given only 5 travel authorities, thus:¹¹

Date	Destination	Approved Travel Authority
		September 1-5, 2003 (USA)
1. March 19-21, 2004	Bangkok	
2. July 15-18, 2004	Singapore	
		October 12 – November 18, 2004 (USA)
3. August 6-17, 2005	Bangkok	
4. August 26-29, 2005	Hongkong	
5. September 1, 2005	Hongkong	

⁷ *Id.* at 371-372.

⁸ *Id.* at 379-381.

⁹ *Id.* at 389-391.

¹⁰ *Id.* at 399-400.

¹¹ *Id.* at 410-412 and 422-423.

6. October 26-29, 2005	Tokyo	
7. February 8-15, 2006	Dubai	
8. March 3-6, 2006	Hong Kong	
9. May 11-13, 2007	Hongkong	
10. June 26-July 15, 2007	Dubai	June 27-July 15, 2007 (England and United Kingdom)
11. October 6-23, 2007	Doha	
12. January 10-21, 2008	Not reflected	January 16 – 31, 2008 (Australia) - Extension
13. February 29-March 3, 2008	Not reflected	February 29 – March 4, 2008 (Vietnam)
14. May 10-12, 2008	Not reflected	

The FFIB of OMB-MOLEO also filed the corresponding Affidavit-Complaints dated September 29, 2009, criminally charging San Diego with six (6) counts of Falsification under Article 171 of the Revised Penal Code and violation of Republic Act (R.A.) No. 1379 (*Act Declaring Forfeiture In Favor of the State Any Property Found To Have Been Unlawfully Acquired By Any Public Officer or Employee and Providing the Proceedings Therefor*).

Attached to the Affidavit-Complaints are the following pieces of documentary evidence: (a) San Diego's SALNs for the years 2002, 2003, 2004, 2005, 2006 and 2007; (b) Certification from the Land Transportation Office on the Nissan Patrol registered under the name of A. Francisco Realty and Development Corporation; (c) the General Information Sheet of the said corporation for the year 2006; (d) the Certification of the Philippine National Police Firearms and Explosive Division on the guns registered under San Diego's name; (e) the Certificate of Marriage and the Application for Marriage License of San Diego and Atty. Francisco; (f) the Marriage Contract dated October 28, 1955 between Noe Cangco Zarate and [Atty.] Adalia B. Francisco; (g) the Certificate of Death of one Enrique A. Agana, the supposed late husband of Atty. Francisco; (h) Certification from the National Statistics Office that it does not have a record of Agana's death certificate; (i) the Certificate of Death of Atty. Francisco; (j) the photocopies of the Passports and Passport Applications of San Diego; (k) the Certification of the Bureau of Immigration on his foreign travels; and (l) his travel authorities from the National Police Commission.

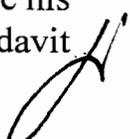
In a Consolidated Counter-Affidavit,¹² San Diego denied all the administrative and criminal charges against him, and raised the following defenses:

1. Anent his failure to declare his and his wife's business interests in A. Francisco Realty and Development Corporation in his SALNs for 2005 and 2006, San Diego claimed that he was merely a nominal stockholder in the corporation owned and controlled by his late wife, Atty. Francisco, and that he had very little participation in its

¹² Rollo, pp. 56-67.

business, as all the decisions were made by her. He insisted that he was of the mistaken belief, in good faith, that there was no need to disclose his being stockholder, thinking that such disclosure was limited to that of his personal business interests, exclusive of that of his wife and family.

2. Regarding the misdeclaration of the Nissan Patrol SUV in his 2006 SALN, San Diego explained that he was of the mistaken impression that he should declare it in his SALN because he, together with Atty. Francisco, used it for work and personal reasons.
3. As for the non-disclosure in his 2007 SALN of the condominium unit in Libis, Quezon City, which was previously disclosed in the 2005 and 2006 SALNs, San Diego claimed that he was of the mistaken impression that he and his wife already owned it as a conjugal property, but no longer declared it in his SALN upon being advised that title over the property had not yet been transferred because it was purchased through a Contract to Sell, and had not yet been fully paid on installment basis.
4. As for his failure to disclose his firearms (Machine Pistol Uzi, Caliber 9mm and the Pistol Flag Caliber .38), San Diego explained that he had already sold the former to his brother in 1999, while he was of the mistaken impression that the latter need no longer be disclosed, considering that there was a change of format of the 2008 SALN form, and that firearms are not similar to or the same category as that of cash on hand in banks, mutual funds, bonds, etc.
5. On his failure to secure the necessary leave to travel abroad, San Diego explained that he always applied for such leave, but during the periods in question (2003-2007), requests for leave were always processed at a relatively slow pace that results to leaves being granted only after the targeted period to travel has already lapsed or expired. At any rate, he claimed to have informed his immediate supervisors of his trip prior to leaving abroad, and filed the requisite application for such leave. He also stressed that none of his responsibilities as police investigator was compromised or neglected, and that all his personal trips were funded by his personal finances.
6. On the alleged falsification of his passports, San Diego claimed that as early as 1995 when he initially applied for a passport, an error not of his own making was already committed when, despite stating that his middle name was "Carlos," it was erroneously stated as "Careon." Upon seeking advice from the DFA and from several travel agencies on how to go about correcting such error, he was told to go to court to have it corrected, but he could not afford the services of a lawyer. Eventually, upon being advised that he need not go to court to have his middle name corrected, he executed on January 10, 2007 an Affidavit



of Discrepancy, for which the DFA issued him a passport bearing his correct middle name, "Carlos."

7. On the alleged falsification of his application for marriage license, San Diego stressed that he and Atty. Francisco personally filled up their respective personal information in their application. He claimed that it is absurd to fault him for entries made personally by his wife, and that he did not coerce or mislead his wife when she filled up her application. He insisted that there was merely an honest discrepancy on the part of his wife's official records. As explained by his late wife, her name as appearing in the Certificate of Live Birth and Marriage License is ADELIA GLORIA BLAS FRANCISCO, but when she became of discerning age, she decided to use ADALIA BLAS FRANCISCO. With respect to her birth date, the date October 7, 1932 as appearing in her Certificate of Live Birth, and the date October 7, 1946 stated in their marriage contract was a typographical error, as shown by Atty. Francisco's Sworn Affidavit of Discrepancy dated July 3, 2009. As for her stating in the marriage license application that her civil status is "Widow", this was a result of the fact that her previous husband, Mr. Enrique A. Agana, had died in 1996.

On June 30, 2011, the OMB-MOLEO rendered a Decision,¹³ the dispositive portion of which reads:

WHEREFORE, premises considered, respondent **P/INSP. II GILBERT C. SAN DIEGO** is hereby found **GUILTY of GRAVE MISCONDUCT on SIXTEEN (16) COUNTS** and **SERIOUS DISHONESTY on SIX (6) COUNTS** for which the penalty of **DISMISSAL** from the service is hereby imposed, including the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service, pursuant to Paragraph A(3), Sections 52 and 58(a), Rule IV of the Civil Service Commission Resolution No. 991936 otherwise known as the Uniform Rules on Administrative Cases in the Civil Service.

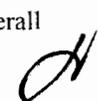
ACCORDINGLY, the Secretary, DILG and the Director General of the Philippine National Police are hereby directed to implement the subject Decision in accordance with law, with the request to promptly submit to this Office a Compliance Report thereof, indicating the subject OMB Case Number.

Compliance is respectfully enjoined consistent with Section 15(3) of R.A. 6770, otherwise known as the Ombudsman Act of 1989.

SO ORDERED.¹⁴

¹³ Penned by Graft Investigation and Prosecution Officer Myra T. Zipagan, with the concurrence of Director Dennis L. Garcia, and with approval of Assistant Ombudsman Eulogio S. Cecilio and Overall Deputy Ombudsman Orlando S. Casimiro; CA *rollo*, pp. 112-120.

¹⁴ *Id.* at 120.



On January 2, 2012, the OMB-MOLEO found no convincing reason to disturb the findings of the investigating prosecutor, and ruled that the other grounds raised in San Diego's motion for reconsideration had been passed upon in its June 30, 2011 Decision.

Aggrieved, San Diego filed before the CA a petition for review under Rule 43 of the Rules of Court, raising two issues: (1) *Whether or not the Office of the Ombudsman's Decision dated June 30, 2011 and Order dated January 2, 2012 violated petitioner's right to be informed of the charges against him;* and (2) *Whether or not the Office of the Ombudsman's findings of guilt against petitioner is supported by substantial evidence.*

In a Decision dated October 31, 2013, the CA denied San Diego's petition for review. In a Resolution dated August 28, 2014, the CA also denied his motion for reconsideration. Hence, this petition for review on *certiorari*.

San Diego argues that “[t]he assailed Decision and Resolution issued by the Court of Appeals run counter to the Constitutional mandate of one's Right to be Informed of the charges made against him and of the principle of substantial evidence must support a finding of guilty by the Ombudsman.”¹⁵

The petition is partly meritorious, but a modification of the designation of the administrative offenses and the corresponding penalties imposed, is in order.

San Diego argues that he was found guilty of numerous offenses that were not even charged against him, in violation of the right to be informed of the accusations against him and his right to due process. Contrary to the findings of the CA, he submits that he cannot be held guilty of grave misconduct for sixteen (16) counts when, in fact, he was only charged with six (6) counts thereof. He insists that his being found guilty of Serious Dishonesty on 6 counts has no basis, as the acts constituting each count were neither described in the assailed CA Decision and Resolution, nor the reasons relied upon clearly explained.

San Diego's arguments have been raised and correctly passed upon by the CA. The Court finds no compelling reasons to disturb the exhaustive ruling of the CA, to wit:

The variance in the number and nature of charges filed against San Diego and in the offenses for which he was found guilty neither violates his right to due process nor warrants his exoneration from the said offenses.

The Supreme Court already ruled in *Dadubo v. Civil Service Commission* that the designation of the offense or offenses with which a person is charged in an administrative case is not controlling and one may be found guilty of another offense, where the substance of the allegations and evidence presented sufficiently proves one's guilt:

X X X X

The ruling in the *Dadubo* case was reiterated in the recent case of *PAGCOR v. Marquez*, where the Supreme Court stressed that the failure to designate the offense specifically and with precision is of no moment in an administrative case. The essence of due process in administrative proceedings is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense. The law simply requires that the civil servant is informed of the nature and cause of accusation against him in a clear and concise manner to give the person a chance to answer the allegations intelligently.

In this case, the records reveal that San Diego was more than informed of the charges against him and he was given all the opportunities to controvert each and every accusation through the filing of his consolidated counter-affidavit. He was also given the chance to be heard on his motion for reconsideration; hence, he cannot rightfully assert violation of his right to due process.

It also bears stressing that the nature and cause of accusations against San Diego were presented in a clear and concise manner in the seven (7) affidavit-complaints filed against him. It gave us a clear picture of how San Diego violated R.A. No. 6713 and Memorandum Circular No. 304. These allegations should be the controlling factors in determining his liabilities and not the designation given by the FFIB to each offense.¹⁶

San Diego contends that he cannot be found guilty of misconduct in relation to the misrepresentations in his SALNs for 2005, 2006 and 2007, because the alleged misrepresentations do not relate to his official function or performance as a police investigator. He asserts that to be considered misconduct under the purview of the law, such transgression must affect the performance of his duties as an officer, and not only his character as a private individual. He points out that although required by law, the accomplishment of SALNs by every government employee does not affect, nor has any relation to, the specific and divergent functions of each government employee in their respective offices.

San Diego's argument is similar to that which was rejected by the Court in *Remolona v. Civil Service Commission*¹⁷ where the petitioner insisted that his dismissal was a violation of his right to due process. Although the offense of Dishonesty is punishable under the Civil Service Law, Remolona argued that such act must have been committed in the performance of his function and duty as Postmaster. Considering that the charge of dishonesty involves

¹⁶ *Id.* at 259-260. (Citations omitted).

¹⁷ 414 Phil. 590 (2001).

the falsification of the certificate of rating of his wife, the same has no bearing on his office and, hence, he is deemed not to have been dismissed for cause. Rejecting the foregoing argument, however, the Court ruled in *Remolona*, thus:

It cannot be denied that dishonesty is considered a grave offense punishable by dismissal for the first offense under Section 23, Rule XIV of the Rules Implementing Book V of Executive Order No. 292. And the rule is that dishonesty, in order to warrant dismissal, need not be committed in the course of the performance of duty by the person charged. The rationale for the rule is that **if a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office.** The Government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations. **The private life of an employee cannot be segregated from his public life. Dishonesty inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service.**¹⁸

Contrary to San Diego's argument, the Court holds that if a government officer or employee is guilty of Dishonesty or Grave Misconduct, even if such defect of character was not connected with his office, it affects his right to continue in office. Be it stressed that when an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.

San Diego further insists that he had satisfactorily explained in his Consolidated Counter-Affidavit that the omissions in his SALNs for 2005, 2006 and 2007 were caused by mere confusion and honest mistake, thus:

- a) He failed to declare his and his wife's interest in A. Francisco Realty because he believed that it was no longer necessary since he has only a nominal interest in the corporation, and that he thought that the SALN is limited only to his personal business interest.
- b) He included, in good faith, in his 2006 SALN a Nissan Patrol SUV due to the fact that he was of the mistaken impression that he should declare it because he uses it for work and personal purposes;



¹⁸

Id. at 600-601. (Emphasis added).

- c) He did not disclose in his 2007 SALN a condominium unit in Libis, Quezon City, because the property has not yet been fully paid, and he cannot be considered to possess ownership thereof.
- d) He did not fail to disclose certain firearms in his 2007 SALN because the Pistol Flag Caliber .38 has already been sold to his brother in 1999, and he was of the wrong impression that the Machine Pistol Uzi need not be included since it was similar with the items indicated in the SALN like bonds, mutual funds, etc.

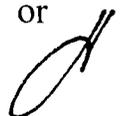
San Diego asserts that while his educational attainment goes beyond the average, he is still susceptible to committing mistakes, such as confusion as to the nature, ownership or benefits derived from the items he omitted to declare in good faith. He also faults the Ombudsman for failing to take into consideration his evidence when it concluded that he could not have committed such mistake in accomplishing his SALN. He submits that it does not follow that if a government employee is well educated, he can accomplish all government forms with utmost accuracy because, even the simplest act of filling up a form may be complicated by confusion, ambiguity, and lack of focus or simply a mistake.

San Diego's assertion fails to persuade.

San Diego is not just an ordinary rank-and-file employee. He is a Police Inspector II of the Inspection, Monitoring and Investigation Service of the NAPOLCOM. He is not just an average college degree holder in Political Science; he also has post graduate degrees in Public Administration and Law. San Diego cannot claim that he has just a nominal interest in A. Francisco Realty and Development Corporation, because the General Information Sheet shows that he is the Vice-President thereof with 50,000 common shares worth ₱5,000,000.00 in a corporation with a total subscribed shares of 56,500,000.00 and paid-up capital of ₱56,500,000.00. His shares are even equal to those of Atty. Francisco's four (4) children who are merely Directors of the corporation. Nevertheless, the Court does not find substantial evidence to prove that San Diego is guilty for Grave Misconduct and Serious Dishonesty for non-disclosure of his shares in A. Francisco Realty Corp. There being no proof of intent to commit a wrong on his part, and considering that the source of the "undisclosed wealth" is evidently his wife Atty. Francisco, San Diego cannot be adjudged guilty of the charge of Grave Misconduct and Serious Dishonesty, but is liable for Simple Negligence for failure to disclose his business interest in the SALN.

In *Daplas v. Department of Finance*,¹⁹ the Court held that the failure to file a truthful SALN puts in doubt the integrity of the public officer or

¹⁹ G.R. No. 221153, April 17, 2017, 823 SCRA 44.



employee, and would normally amount to dishonesty. However, mere non-declaration of the required data in the SALN does not automatically amount to such an offense. "Dishonesty requires malicious intent to conceal the truth or to make false statements. In addition, a public officer or a public officer or employee becomes susceptible to dishonesty only when such non-declaration results in the accumulated wealth becoming manifestly disproportionate to his/her income, and income from other sources, and he/she fails to properly account or explain these sources of acquisitions."²⁰

The Court stressed in *Daplas* that the laws on SALN aim to curtail the acquisition of unexplained wealth. In several cases where the source of the undisclosed wealth was properly accounted for, the Court deemed the undisclosed wealth as properly accounted for, and deemed the same as an "explained wealth" which the law does not penalize. Consequently, absent any intent to commit a wrong, and having accounted for the source of the "undisclosed wealth," one cannot be adjudged guilty of the charge of Dishonesty; but at the most, of mere negligence for having failed to accomplish one's SALN properly and accurately.

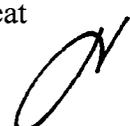
The Court further discussed in *Daplas* the distinction between simple and gross negligence. Negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time, and of the place. In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation, and there is gross negligence when a breach of duty is flagrant and palpable. An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or constitutes only an error of judgment and for no ulterior motives and/or purposes, is merely simple negligence.

In *Casimiro v. Rigor*,²¹ the Court explained the concept of Dishonesty and the rationale for filing SALN, in this wise:

Dishonesty, as juridically understood, implies the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty or probity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. It is a malevolent act that puts serious doubt on one's ability to perform duties with the integrity and uprightness demanded of a public officer or employee. The requirement of filing a SALN is enshrined in the Constitution to promote transparency in the civil service and serves as a deterrent against government officials bent on enriching themselves through unlawful means. By mandate of law, every government official or employee must make a complete disclosure of his assets, liabilities and net worth in order to avoid any issue regarding questionable accumulation of wealth. The importance of requiring the submission of a complete, truthful, and sworn SALN as a measure to defeat

²⁰ *Id.* at 54-55.

²¹ 749 Phil. 917, 929-930 (2014).



corruption in the bureaucracy cannot be gainsaid. Full disclosure of wealth in the SALN is necessary to particularly minimize, if not altogether eradicate, the opportunities for official corruption, and maintain a standard of honesty in the public service. Through the SALN, the public can monitor movement in the fortune of a public official; it serves as a valid check and balance mechanism to verify undisclosed properties and wealth. The failure to file a truthful SALN reasonably puts in doubts the integrity of the officer and normally amounts to dishonesty.

With respect to the non-disclosure of his ownership of common shares and his being a Vice-President in A. Francisco Realty Corp., San Diego explained in his Consolidated Counter-Affidavit²² that he had very little participation and was merely a nominal stockholder of the corporation which was owned and controlled by his wife, Atty. Adalia Francisco, who was in a better position to make all business decisions. After a careful perusal of the Deed of Extra-Judicial Settlement of the Estate of Adalia Blas Francisco²³ and the Agreement²⁴ dated December 20, 2013 attached to his Supplemental Petition for Review²⁵ dated May 11, 2015, the Court is convinced that the provenance of the means to acquire the 50,000 common shares worth ₱5,000,000.00 under his name in the eponymous corporation is no less than San Diego's wife, Atty. Francisco, who, at the time of her demise, left wealth so substantial in terms of prime real estate and valuable personal properties, that would make the value of his common shares look like a paltry sum. Malicious intent to conceal the truth on the part of San Diego is also absent because he disclosed in his 2007 SALN that Atty. Francisco is his wife and is the President of A. Francisco Realty. With the source of his undisclosed wealth having been traced to the generosity of his wife, the Court rules that San Diego cannot be held liable for Serious Dishonesty or Grave Misconduct, but only for Simple Negligence due to his failure to disclose his financial interest in the corporation of his wife.

As to the false declaration in his 2006 SALN of the Nissan Patrol SUV with plate number GNA-88, registered under the name of A. Francisco Realty Corp., San Diego cannot be held liable with Grave Misconduct and Serious Dishonesty, but only for Simple Negligence. There is no substantial evidence of an intent to commit a wrong, to deceive the authorities, and to conceal the properties under the name of San Diego. What San Diego did was to erroneously declare in his 2006 SALN the Nissan Patrol SUV registered under the name of A. Francisco Realty Corp., for the simple reason that he uses it for work and other personal purposes. Such disclosure in his 2006 SALN is not a sufficient badge of dishonesty in the absence of bad faith, or any malicious intent to conceal the truth or make false statements. Bad faith does not simply connote bad judgment or negligence, but contemplates a state of mind affirmatively operating with furtive design or some motive of self-

²² *Rollo*, pp. 56-67, 164-175.

²³ *Id.* at 101-108.

²⁴ *Id.* at 111-112.

²⁵ *Id.* at 87-94.

interest or ill-will for ulterior purposes.²⁶ What would constitute Serious Dishonesty on the part of San Diego would be if a luxury vehicle were found to be registered under his name, but he failed to declare it in his SALN and to explain how he acquired such wealth.

San Diego cannot also be faulted with Serious Dishonesty or Gross Misconduct for the non-disclosure in his 2007 SALN of a condominium unit in Libis, Quezon City. As noted by the OMB-MOLEO, he has been consistently declaring the same property in his 2005 and 2006 SALNs, and had admitted in his counter-affidavit that it was purchased through a Contract to Sell and was then being paid on installment basis. The OMB-MOLEO, nonetheless, correctly pointed out that the fact that the property was conjugal and purchased on installment basis, does not preclude its non-disclosure in his 2007 SALN. The proper recourse under the circumstances, which San Diego failed to take, is to make the necessary correction and explanation as to the nature of his acquisition of the real property. For this, San Diego can only be held liable for Simple Negligence.

San Diego asserts that he cannot be held liable with Serious Dishonesty or Gross Misconduct for failure to disclose certain firearms in his 2007 SALN. He states that the Pistol Flag Caliber .38 (issued/approved on October 16, 1998) has already been sold to his brother in 1999. He also claims of having the mistaken impression that his Machine Pistol Uzi need not be included, considering that a firearm is not similar to, or of the same category as that of, cash on hand/in banks, mutual funds, bonds, etc. According to him, the forms of the SALN at that time were changed, and that said forms listed down in detail the list of "Investments, other personal properties, and liabilities of Declarant/Spouse/Declarant's Children Below 18 years of Age x x x" which included the cash on hand in banks, bonds, mutual funds, trust funds, time deposits, pre-need plans, etc.

San Diego's explanations are untenable. Aside from his bare and self-serving claim, there is nothing in the records to substantiate that he sold his Pistol Flag Caliber .38 to his brother in 1999. Against the Certification²⁷ dated March 12, 2009 issued by the Philippine National Police Firearms and Explosives Division, stating that he is the registered owner of said firearm, San Diego failed to present proof of sale or registration of the said firearm under the name of his brother. Meanwhile, the omission of the Machine Pistol Uzi in San Diego's 2007 SALN is also unacceptable, because there are spaces in the said SALN form where details about "Other Personal Property" and "Acquisition Cost" thereof may be provided, but he hardly filled them up without justifiable reason. For such non-declaration of personal properties in his SALN, he can be held liable for Simple Negligence, but not for Dishonesty, because there is no showing that such omission resulted in the

²⁶ *Daplas v. Department of Finance*, *supra* note 19, at 55.

²⁷ *CA rollo*, p. 375.

accumulated wealth becoming manifestly disproportionate to his income as a police investigator, or that he failed to properly account or explain the sources of acquiring the said firearms.

For the omissions in his SALNs, San Diego seeks relief from administrative liabilities by invoking *Pleyto v. PNP-CIDG*²⁸ where it was held that “the petitioner’s candid admission of his shortcomings in properly and completely filling out his SALN, his endeavor to clarify the entries therein and provide all other necessary information, and submission of supporting documents as to the acquisition of properties in his and his wife’s names, negate any intention on his part to conceal his properties.” San Diego’s reliance in *Pleyto* is misplaced. He cannot claim good faith for his failure to properly declare personal and real properties in his SALNs because the defenses raised in his Consolidated Counter-Affidavit are merely uncorroborated and self-serving denial, and his lame excuses for non-compliance only show lack of regard for the importance of filing SALNs. To recall, it was only when he filed his Supplemental Petition for Review dated May 11, 2015, together with the Deed of Extra-Judicial Settlement of the Estate of Adalia Blas Francisco and the Agreement dated December 20, 2013, that the Court gathered that the source of his undisclosed financial interest in A. Francisco Realty Corp. is none other than his wife.

With respect to the alleged falsification of his passport applications, San Diego claimed that, as early as 1995 when he initially applied for a Philippine Passport, it was erroneously stated that his middle name was “Careon” despite the fact that he used “Carlos” in his passport application. When he sought advice from the DFA and from several travel agencies on how to correct such error, San Diego deferred the correction of such error because he was told to go to court, and he cannot afford the services of a lawyer. Upon learning that he need not go to court to effect such correction, San Diego executed an Affidavit of Discrepancy²⁹ on January 10, 2007 and was able to secure from the DFA a passport stating his correct middle name “Carlos.”

The CA upheld the findings of the OMB-MOLEO that San Diego was guilty of Serious Dishonesty when he made false declarations in his passport applications by using “Careon” as his middle name instead of his real middle name “Carlos.” Having given the same erroneous information twice and belatedly taking action to correct said errors, the CA held that San Diego really intended to make it appear that his middle name is “Careon.” The CA further noted that the presumption of authenticity enjoyed by his Affidavit of Discrepancy was destroyed by the Certification issued by Clerk of Court Perlita Vitan-Ele, stating that the document number appearing on the said affidavit allegedly notarized by Atty. Donato C. Manguiat refers to an Extrajudicial Settlement of Estate of a certain individual.

²⁸ 563 Phil. 842, 909 (2007).

²⁹ *Rollo*, p. 71.

The Court disagrees with the ruling of the CA. In *Del Rosario v. Pascua*,³⁰ it was held that dishonesty means “*the concealment of truth in a matter of fact relevant to one's office or connected with the performance of his duties. It is an absence of integrity, a disposition to betray, cheat, deceive or defraud, bad faith.*” The Rules on Administrative Offense of Dishonesty considers dishonesty as serious when it “causes serious damage and grave prejudice to the government.”³¹ After a careful review of the passport applications³² attached to the Affidavit-Complaint, the Court finds no substantial evidence to prove deliberate intent to mislead, deceive or defraud which causes such serious damage or grave prejudice to the government.

Included in the passport application dated April 26, 2005 is a checklist of documents that may be submitted to establish the identity of the applicant and to comply with the requirements for securing passport. The same passport application reveals that San Diego secured and submitted an authenticated birth certificate, which shows that “Gilbert Carlos San Diego” was born on November 1, 1973 to spouses Melencio del Rosario San Diego and Corazon Alarilla Carlos.³³ While it was wrong for San Diego to indicate in his passport applications that his middle name is “Careon,” such act alone does not constitute Dishonesty, because the veracity of such information ought to have been verified by the DFA from his birth certificate before issuing him a new passport. If it were really the intention of San Diego to conceal his real middle name, he would have submitted a fake birth certificate, and he would not indicate in both his passport applications his correct date of birth [November 1, 1973], his exact office address [Napolcom, Makati] and the true names of his parents [Melencio and Corazon San Diego].

Besides, San Diego’s erroneous statement of his middle name in his passport application is not a fact directly relevant to his functions and qualifications to office, or connected with the performance of his duties as police investigator. Even if San Diego’s Affidavit of Discrepancy was not entered in the notarial register, such circumstance may give rise to a different administrative or criminal liability, but does negate the fact that he was able to correct his middle name in his passport in 2007, even prior to the filing of a string of affidavit-complaints against him by the OMB-MOLEO in September 29, 2009.

Anent the charge of falsification of application for marriage license, San Diego was accused of falsely declaring in the Application for Marriage License³⁴ dated April 25, 2005 that “Adalia B. Francisco” is “Adela Gloria B. Francisco,” and that her civil status is “Widow.” San Diego explained that

³⁰ 683 Phil. 1, 6 (2012).

³¹ Civil Service Resolution No. 06-0538 dated April 4, 2006, Sec. 3.

³² CA rollo, pp. 402-403, 408.

³³ *Id.* at 400.

³⁴ *Id.* at 462.

both he and his wife personally filled up their respective personal information in their application; thus, it is absurd that he should be faulted for entries made personally by his wife. As supposedly explained to San Diego by his wife, her name as appearing in the Certificate of Live Birth and Marriage License is ADELIA GLORIA BLAS FRANCISCO, but when she became of discerning age, she decided to use ADALIA BLAS FRANCISCO. Citing the Affidavit of Discrepancy executed by Atty. Francisco, San Diego further claimed that her date of birth is “October 7, 1932” as appearing in her Certificate of Live Birth, and that the date “October 7, 1946” stated in the marriage contract was a mere typographical error. As for her stating in the application of marriage license that her civil status was “Widow,” such was the result of the fact that her previous husband, Mr. Enrique A. Agana, had died in 1996.

The Court finds no substantial evidence that San Diego was the one who gave false information on the personal circumstances of Atty. Francisco in their application for marriage license. It is disputably presumed that a person is innocent of a wrong, and intends the ordinary consequences of her voluntary act, as well as takes ordinary care of her concerns.³⁵ Presumption of regularity dictates that Atty. Francisco herself provided her complete name, birth date and civil status in the said application, because such matters may be based on her personal knowledge or based on authentic records at her disposal. The OMB-MOLEO failed to present clear and convincing evidence to overturn the foregoing disputable presumptions, let alone controvert the Affidavit of Discrepancy³⁶ dated July 3, 2009 executed by Atty. Francisco. Hence, San Diego cannot be held responsible for the incorrect entries in the personal information of Atty. Francisco in their application for marriage license dated April 25, 2005, even if it was unclear who between the him — who was just thirty-one (31) years old — and her — who was then seventy-two (72) — was in a rush to solemnize their union before a Municipal Trial Court of Meycauayan, Bulacan, on May 5, 2005.

Regarding the ten (10) counts of Serious Dishonesty for failure to secure authority for his foreign travels charged in the Affidavit-Complaint³⁷ dated September 29, 2009, San Diego insists that he always applied for leave to travel abroad, but points out that during the periods in question (2003-2007), requests for leave to travel abroad were always processed at a relatively slow pace that results to leaves being granted only after the target period to travel has already lapsed or expired. Constrained to travel without leave, San Diego insists that he informed his immediate supervisors about his trips, which were all funded by his personal finances, and that none of his responsibilities as police investigator was neglected or compromised while he was on official leave.

³⁵ Rules of Court, Rule 131, Sec. 3.

³⁶ *Rollo*, pp. 181, 190.

³⁷ *CA rollo*, pp. 422-424.

In affirming the finding of the OMB-MOLEO, the CA gave credence to the certification issued by the Bureau of Immigration that San Diego had fourteen (14) foreign trips between 2003 to 2007, and copies of his purported authorities to travel do not pertain to any of these 14 trips. The CA noted that San Diego admitted that he left the country without securing the required authority to travel because its processing would take time. The CA ruled that such excuse clearly shows his willful intent to violate the mandate of Memorandum Circular No. 304, series of 1969 that every public employee must secure authority to travel for his foreign trips while in government service, and that his repeated violation constitutes Gross Misconduct.

The Court agrees with the finding of the CA that San Diego travelled abroad without proper approval as required by the said Circular, but holds that he can only be held liable for as many counts of Simple Misconduct, but not for Serious Dishonesty.

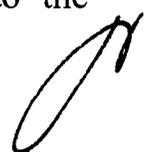
In *Civil Service Commission v. Ledesma*,³⁸ the Court held that “misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence. Otherwise, the misconduct is only simple. A person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave.”

No substantial evidence was presented by the OMB-MOLEO to show that elements of corruption, willful intent to violate the law or to disregard established rules were present on the part of San Diego. While the OMB-MOLEO does not deny the fact that approval of foreign travel authority takes a snail’s pace, and admits that there were at least five (5) instances when he secured such travel authority,³⁹ the Court considers that such attempts to comply with the Circular negates willful intent to violate established rules on the part of San Diego.

Meanwhile, San Diego cannot be held liable for Serious Dishonesty, which means the concealment of truth in a matter of fact relevant to one’s office or connected with the performance of his duties, that causes serious damage and grave prejudice to the government. This is because the OMB-MOLEO failed to present proof that he failed to file the required leave of absences during the times that he undertook his questioned foreign travels, and that his said absences caused serious damage or prejudice to the government.

³⁸ 508 Phil. 569, 579 (2005); *Santos v. Rasalan*, 544 Phil. 35, 43 (2007).

³⁹ *CA rollo*, pp. 429-433.



Be that as it may, San Diego cannot be excused from seeking such prior approval despite being then granted belatedly, because such requirement is still provided for by reasonable rules and regulations. Issued in view of the need to pursue more vigorous efforts at conserving foreign exchange and the imperativeness of redoubling efforts in the public service towards national progress, Memorandum Circular No. 304⁴⁰ is explicit that even those who intended to travel abroad while on leave of absence must secure prior approval, inasmuch as vacation leave must be contingent upon the exigencies of the service. Since he does not deny the allegation of having travelled abroad eleven (11) times⁴¹ without such prior approval, the Court holds San Diego for 11 counts of Simple Misconduct.

In sum, the Court finds that the CA erred in denying the petition for review under Rule 43 of the Rules of Court, and in effect upholding the Decision of the OMB-MOLEO, finding San Diego liable for sixteen (16) counts of Serious Dishonesty and seven (7) counts of Grave Misconduct, with the corresponding penalty of dismissal from service, plus the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service.

Instead, the Court holds that San Diego is liable for four (4) counts of Simple Negligence for violation of the law on the filing of Statement of Assets, Liabilities and Net Worth (SALN) with regard to the non-disclosure of (a) his financial interest in A. Francisco Realty, Corp.; (b) of his ownership of two firearms; (c) his conjugal ownership of a condominium unit; and (d) for misdeclaration in his SALN of the Nissan Patrol SUV registered under the

⁴⁰ Signed on November 19, 1969, Entitled: Reminding All Concerned of the Need For Prior Approval by the Office of the President of Trips Abroad of Government Personnel.

⁴¹ See CA *rollo*, pp. 422-423:

Date	Destination	Approved Travel Authority
		September 1 – 5, 2003 (USA)
1. March 19-21, 2004	Bangkok	None
2. July 15-18, 2004	Singapore	None
		October 12 – November 18, 2004 (USA)
3. August 6-17, 2005	Bangkok	None
4. August 26-29, 2005	Hongkong	None
5. September 1, 2005	Hongkong	None
6. October 26-29, 2005	Tokyo	None
7. February 8-15, 2006	Dubai	None
8. March 3-6, 2006	Hong Kong	None
9. May 11-13, 2007	Hongkong	None
10. June 26-July 15, 2007	Dubai	June 27- July 15, 2007 (England and United Kingdom)
11. October 6-23, 2007	Doha	None
12. January 10-21, 2008	Not reflected	January 16 – 31, 2008 (Australia) - Extension
13. February 29-March 3, 2008	Not reflected	February 29 – March 4, 2008 (Vietnam)
14. May 10-12, 2008	Not reflected	None

name of said corporation. Moreover, San Diego is liable for eleven (11) counts of Simple Misconduct for admittedly failing to secure prior approval to travel abroad pursuant to Memorandum Circular No. 304, series of 1969.

Section 55 of the Uniform Rules on Administrative Cases in the Civil Service⁴² (URACCS) states that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count, and the rest shall be considered as aggravating circumstances.

In *Daplas*,⁴³ the Court held that omission to include the subject properties in petitioner's SALNs, by itself, does not amount to Grave Misconduct, in the absence of showing that such omission had, in some way, hindered the rendition of sound public service for there is no direct relation or connection between the two. The Court found no reason to hold petitioner liable for the charges of Dishonesty and Grave Misconduct, but declared her guilty, instead of Simple Negligence, which is akin to Simple Neglect of Duty — a less grave offense punishable with suspension without pay for one (1) month and one (1) day to six (6) months, for the first offense.⁴⁴

In this case, while there are four (4) counts for violation of the laws on filing SALN⁴⁵ which arose from separate Affidavit-Complaints⁴⁶ dated September 29, 2009 filed by the OMB-MOLEO, this is the first time that San Diego is being held to account for Simple Negligence. Considering the quadruple count of his violation of the SALN Law, and the fact that he is just a first-time offender, the Court finds the penalty of suspension for four (4) months without pay to be reasonable. Meanwhile, considering that there are actually 11 counts for which San Diego was charged in the Affidavit-Complaint dated September 29, 2009 for admittedly travelling abroad without prior approval, and since this is, likewise, the first time that he is being held liable for Simple Misconduct — a less grave offense under the URACCS punishable with suspension without pay for 1 month and 1 day to 6 months for the first offense — the Court finds it proper to sentence San Diego to a penalty of suspension for three (3) months without pay.

Considering further that the penalty imposed upon San Diego is reduced from dismissal from service to a mere suspension of a total period of seven (7) months without pay, the Court finds it reasonable to rule as follows: (1) to deem the period during which his case is pending appeal as service of his penalty of suspension, (2) to immediately reinstate him to his original position without loss of seniority rights, and (3) to restore all of his rights and benefits under the laws without payment of back salaries.

⁴² Memorandum Circular No. 19, Series of 1999.

⁴³ *Supra* note 19.

⁴⁴ *Daplas v. Department of Finance, id.*

⁴⁵ Section 8, R.A. No. 6713, or the *Code of Conduct and Ethical Standards for Public Officials and Employees* and Section 7, R.A. No. 3019, or the *Anti-Graft and Corrupt Practices Act*.

⁴⁶ *CA rollo*, pp. 356-357, 361-362 and 371-372.



Records show that San Diego has already been preventively suspended for six (6) months without pay in an Order of Preventive Suspension⁴⁷ dated March 8, 2010, which was immediately executory pursuant to Section 27, paragraph 1 of R.A. No. 6770, or the *Ombudsman Act of 1989*. Aggrieved, San Diego elevated the OMB-MOLEO's Decision and Resolution on a petition for review under Rule 43 before the CA. Dissatisfied with the denial of his petition by the CA, San Diego filed before the Court a petition for review on *certiorari* under Rule 45. It is well settled under jurisprudence⁴⁸ that the Ombudsman's decision, even if the penalty imposed is dismissal from the service, is immediately executory despite the pendency of a motion for reconsideration or an appeal and cannot be stayed by mere filing of such motion or appeal.

Section 7, Rule III of the OMB Rules of Procedure, as amended by Administrative Order No. 17 dated September 15, 2003, explicitly provides:

Section 7. Finality and execution of decision. - Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.

Also, Memorandum Circular (MC) No. 01, Series of 2006, of the OMB states:

Section 7, Rule III of Administrative Order No. 07, otherwise known as, the "Ombudsman Rules of Procedure" provides that: "A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course."

⁴⁷ *Id.* at 525-530.

⁴⁸ *Cobarde-Gamallo v. Escandor*, G.R. No. 184464, June 21, 2017

In order that the foregoing rule may be strictly observed, all concerned are hereby enjoined to implement all Ombudsman decisions, orders or resolutions in administrative disciplinary cases, immediately upon receipt thereof by their respective offices.

The filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not operate to stay the immediate implementation of the foregoing Ombudsman decisions, orders or resolutions.

Since San Diego was dismissed from service by the OMB-MOLEO, and his petition for review under Rule 43 was later denied by the CA, the filing of his petition for review on *certiorari* before the Court did not stay the immediate implementation of the Ombudsman's order of dismissal. Because a decision of the Ombudsman in administrative cases shall be executed as a matter of course under the afore-quoted Section 7, and inasmuch as he also prays for reinstatement and restoration of his rights and benefits under the law, it is safe to state that San Diego has been out of government service from the time the Ombudsman ordered his dismissal until the pendency of his appeal. Thus, the Court rules that San Diego should be immediately reinstated to his original position without loss of seniority rights, and be, henceforth, restored of all his rights and benefits under the law without payment of back salaries. Be it stressed that San Diego did not prevail in his appeal, and the Court hardly exonerated him, but only corrected the designation of the administrative offenses he committed, and reduced the corresponding penalties. This is in light of his ready admission that he travelled abroad without prior approval because of the delay in securing the same, and in view of the Deed of Extra-Judicial Settlement of the Estate of Adalia Blas Francisco⁴⁹ and the Agreement⁵⁰ dated December 20, 2013 submitted for the first time before the Court, which traced the origin of his undeclared wealth to that of his wife.

WHEREFORE, the Petition for Review on *Certiorari* is **PARTLY GRANTED**. The assailed Court of Appeals Decision dated October 31, 2013 and its Resolution dated August 28, 2014 in CA-G.R. SP No. 125147 are **MODIFIED** in that petitioner P/Insp. II Gilbert C. San Diego is found guilty of the following:

1. Four (4) counts of Simple Negligence for violation of the law on the filing of Statement of Assets, Liabilities and Net Worth (SALN) with regard to the non-disclosure of his financial interest in A. Francisco Realty, Corp., of his ownership of a Pistol Flag .38 caliber and a Machine Pistol Uzi caliber 9mm, and of his conjugal ownership of a condominium unit in Libis, Quezon City, and for the misdeclaration in his SALN of the Nissan Patrol SUV with Plate No. GNA-88 registered under the name of said Corporation; and

⁴⁹ *Rollo*, pp. 101-108.

⁵⁰ *Id.* at 111-112.

2. Eleven (11) counts of Simple Misconduct for failure to secure the prior approval to travel abroad, pursuant to Memorandum Circular No. 304, series of 1969.

Appellant San Diego is hereby sentenced to suffer the penalty of suspension of four (4) months for all four (4) counts of Simple Negligence, and suspension of three (3) months for all eleven (11) counts of Simple Misconduct, or a total of seven (7) months suspension without pay, and with a warning that a repetition of the same or similar offenses would be dealt with more severely.

Considering that appellant San Diego is deemed to have served the foregoing period of suspension during the time that his petition for review is pending before the Court of Appeals and this Court, he is hereby immediately reinstated to his original position without loss of seniority rights, and is, henceforth, restored of all of his rights and benefits under the law without payment of back salaries.

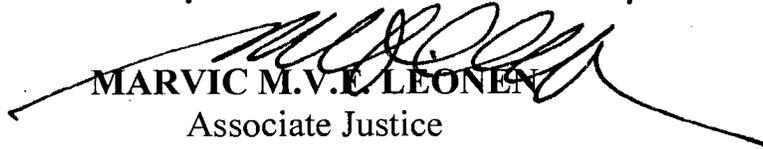
SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

separate concurring opinion


MARVIC M.V.L. LEONEN
Associate Justice

Reyes
ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


ROSMARID D. CARANDANG
Associate Justice

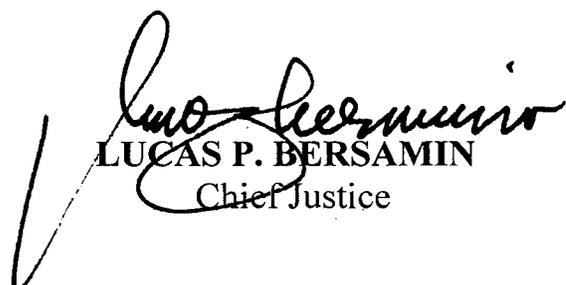
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LUCAS P. BERSAMIN
Chief Justice