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Vote Says SC



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DIVORCE BY RELIGION?

A landmark decision by the Supreme Court now allows couples to live with partners who are not their spouses – as long as their religion permits it.

On June 22, 2006, the Supreme Court issued a landmark ruling on a case that involved a woman court interpreter charged with immorality. In the case of *Estrada v. Escritor* (AM No. P-02-1651), the high tribunal said that freedom of religion "is a fundamental right that enjoys a preferred position in the hierarchy of rights."

The woman, Soledad Escritor, was accused by a certain Alejandro Estrada of "disgraceful and immoral conduct," in violation of the Revised Administrative Code, for living with a man not her husband and bearing a son by him.

Escritor was married twenty years ago in Catholic rites to her husband but the marriage failed very soon after. She and her husband separated ways and eventually found other partners. She met Luciano Quilapa, Jr., a member of the religious sect *Jehovah's Witness* (JW). Quilapa was also married and had marital problems. Despite their status, the couple decided to live together.

In 1991, after ten years of cohabiting with Quilapa, Escritor converted to JW. To make their conjugal arrangement "morally acceptable" to the congregation, Escritor and Quilapa executed a "declaration of pledging faithfulness," a practice sanctioned by the JW for members in countries like the Philippines where divorce is not allowed. The couple, in effect, was bound into a new marital relationship consistent with their religious practice. However, the declaration recognizes that the

couple must still bear the civil consequences of their new relationship and requires them to obtain legal recognition of their partnership once legal impediments are lifted.

In 1998, Escritor's first husband died thereby lifting any legal impediment on her part. Quilapa, however, was impeded by the fact that his wife was still living.

In 1999, while serving as a court interpreter for the Regional Trial Court, Escritor was accused of violating the Revised Administrative Code's provisions against immorality. The case was forwarded to the Office of the Court Administrator (OCA). Escritor, invoking religious freedom, appealed to the Supreme Court. The high tribunal, in 2003, remanded the case to the OCA and tasked the Office of the Solicitor General (OSG) to present evidence of the "state's compelling



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interest" to override Escritor's religious belief and practice.

In its 63-page resolution penned by Senior Associate Justice Reynato Puno, the Supreme Court ruled that the OSG failed to make such a determination and absolved Escritor of any immoral act. The Court thus pronounced:

"... it is not enough to contend that the state's interest is important, because our Constitution itself holds the right to religious freedom sacred. The State must articulate in specific terms the state

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SC Upholds Dual Citizens' Right to Vote

The COMELEC maintained that the petitioners did not satisfy the residency rule required of eligible voters.

The Supreme Court said that "there is no provision in the dual citizenship law (R.A. 9225) ... requiring 'duals' to actually establish residence and physically stay in the Philippines first before they can exercise their right to vote."

On the contrary, the SC pointed out that the dual citizenship law, "in its implicit acknowledgment that 'duals' are most likely non-residents, grants under its section 5 (1) the same right of suffrage as that granted an absentee voter under R.A. 9189 [the Absentee Voting Law]."

The law, the high tribunal emphasized, "aims to enfranchise as much as possible all overseas Filipinos who, save for the residency requirements exacted of an ordinary voter under ordinary conditions, are qualified to vote."

The "expanded thrust" of the Absentee Voting Law, according to the SC, also grants the right of suffrage to "what we may tag as the next generation of duals," or those at least 18

years of age who have never set foot in the Philippines.

Harmonizing the uniform intent of the Constitution and R.A. 9189 and the expansion of the scope of the law with the passage of R.A. 9225, the court pronounced that "the irresistible conclusion is that 'duals' may now exercise their right of suffrage thru the absentee voting scheme and as overseas absentee voters."

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On August 4, 2006, the Supreme Court upheld the right of Filipinos with dual citizenships to vote for President, Vice-President, senators and party-list representatives.

In its unanimous decision, the Supreme Court in the case of *Nicolas-Lewis, et. al v. COMELEC* (G.R. No. 162739), granted the petition of Filipino-American Loida Nicolas-Lewis and ten other US-based dual citizens to compel the Commission on Elections to allow them to exercise their right of suffrage.



During the 2004 Philippine elections, Nicolas-Lewis and her co-petitioners sought to register as overseas absentee voters but were advised by the consular offices that they did not have the right to vote as per advisory from the Commission on Elections (COMELEC).



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interest involved in preventing the exemption, which must be compelling, for only the gravest abuses, endangering paramount interests can limit the fundamental right to religious freedom. To rule otherwise would be to emasculate the Free Exercise Clause as a source of right by itself."

In his dissent to the majority ruling, Justice Antonio Carpio argued that the preservation of marriage and family is the

"compelling interest" of the state that should have outweighed Escritor's claim of religious freedom.

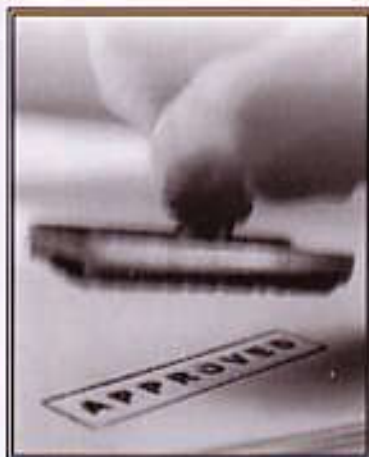
He said that the ruling "will make religion a separate republic... a haven for criminal conduct." From hereon, he warned that the SC "will have to condone acts of concubinage by Catholics who have secured Church annulment even without the final annulment from a civil court."



DID YOU KNOW?

The Philippines ranks 4th in the list of top ten countries in the world with the biggest Catholic populations.

Of the countries on this list — Brazil, Mexico, USA, Italy, France, Spain, Poland, Colombia, Argentina, and Germany — only the Philippines prohibits divorce.



DOLE cuts red tape on issuance of employment permits to foreign nationals

In a bid to attract foreign nationals to invest in the Philippines, the Department of Labor and Employment (DOLE) has revised its rules on the issuance of employment permits to foreign nationals.

Under Department Order No. 75-06, effective last July 1, 2006, the processing time in the application for an alien employment permit (AEP) has been reduced from five days under the old rules to only 24 hours after the application has been filed with the nearest DOLE regional office.

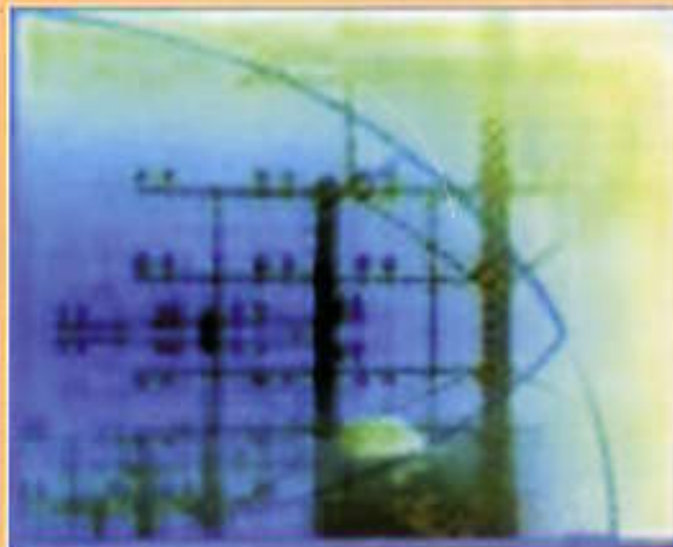
The number of documents required of foreign nationals have also been reduced to only four, namely: duly accomplished application form, machine copy of passport, contract of employment or the board's certification of election, and machine copy of mayor's permit to operate a business. A photocopy of the current AEP shall also be required of foreign nationals applying for a renewal of their work permits.

A fee of PhP 8,000.00 is required and is valid a year. An additional PhP 3,000.00 shall be charged for every additional year or a fraction thereof, in case the employment period is longer than one year.

Insurance brokers ordered to increase capitalization

The Philippine Insurance Commission (PIC) has issued a memorandum imposing minimum capital requirements on insurance and reinsurance brokers. Whereas no such requirements were enforced in the past, the PIC now requires insurance and reinsurance brokers to maintain a minimum net worth of PhP 10 million. Companies operating both as insurance and reinsurance brokers must have a minimum capitalization of PhP 25 million.

Under Insurance Memorandum No. 1-2006, affected companies have until 2010 to meet the requirement but must begin capital build-up immediately and increase capitalization by 20% per annum for the next four years.



ERC issues guidelines on Retail Electricity Licensing

Pursuant to the Electric Power Industry Reform Act of 2001 (EPIRA), the Energy Regulatory Commission recently issued its guidelines on retail electricity licensing.

The EPIRA opened the power generation and supply sectors in the Philippines to competition thereby removing them from the list of public utility operations. Under the law, any electricity generation or supply company which seeks

to enter the electric power industry in the country no longer has to get a congressional franchise and may qualify only under pertinent ERC rules.

Under the new guidelines, only entities with ERC licenses may supply electricity in the Philippines.

The guidelines also impose technical and financial requirements on license applicants as well as restrictions on cross-ownership. Stockholders and employees of applicant entities are not

allowed to hold any interest in the National Transmission Company (TRANSCO) which manages the country's transmission system.

Licensees are also required to comply with the unbundling requirements set for in the EPIRA. A retail license issued by the ERC is valid anywhere in the Philippines for a period of three years and is renewable at the end of each term.

Distribution utilities operating in their respective franchise areas and licensed supplies in economic zones are exempted from the retail licensing requirement.

FNS Now Provides US Visa Services

FNS is pleased to announce that it has recently signed an agreement with the US Law Firm of Sayer Regan Thayer & Flanagan (SRTF) of Newport, Rhode Island, USA for a US Immigration Law correspondent relationship. SRTF is a full-service law firm able to assist clients with all their immigration and business needs. FNS seeks to introduce interested applicants from the Philippines to SRTF to assist in their applications for employment-based visas, family immigration matters and business formation for foreign investors in the US.

Interested applicants may contact FNS at fnslaw@info.com.ph for the range of immigration services that FNS and SRTF offer.



FNS study finds RP Mining Law at par with UK

Philippine mining law is at par with that of the United Kingdom. This was the result of a study conducted by FNS which it recently submitted to the Chamber of Mines of the Philippines.

In its report, the firm found that the country's mining laws on environmental protection measures and corporate social responsibility are detailed and

substantial compared with its counterpart legislation in Britain.

Excerpts of the firm's report were published in the May 25, 2006 edition of the *Malaya*. Apart from FNS, three other top law firms evaluated foreign mining laws: Villoraza for Canada; Gubimberg Torres for Australia and Syco Salazar Hernandez and Gasmaitan for the US.

Milestones

FORTUN
NARVASA
&
SALAZAR



FNS Benguet Office moves to a new address on Session Road

To better serve its growing list of clients in Northern Luzon, FNS' Benguet Office has moved to its new address at B-308, Lopez Building, Session Road, Baguio City.

At the blessing of the new office last August 15, 2006, Atty. Philip Slight A. Fortun thanked Mr. Wilburn Tan for generously providing FNS with rent-free space for the last two years at his Summit office.

The FNS Benguet office is supervised by Atty. Bayani Loke and is ably represented by associates Atty. Wilbert L. Tan and Atty. Mary Ann M. Bayang.



FNS partner Atty. Bayani B. Loke was selected by the Japan Patent Office (JPO) to attend a three-week advanced training program on Intellectual Property Law. The seminar was held at the Asia-Pacific Intellectual Property Center from July 17-August 14.

Jointly organized by the JPO and the Asian Association for Overseas Training Scholarship, the training program was attended by intellectual property professionals from all over Asia including India, China, Thailand, Vietnam, and Indonesia.

The program gave Atty. Loke valuable insights on how to profit from intellectual property management. In addition, he was also exposed to Japanese culture and way of life which he found very efficient.

Atty. Loke also managed to take beautiful photographs while in Japan, including the photo above of Kyoto's famed Golden Temple.



Sometimes all you need is a lot of blind faith and a little help from your friends, as these men learned during the FNS Teambuilding workshop held at the Metalco Development Foundation Center in Anlipolo.

FNS legal and non-legal staff members undertake a series of challenging tasks designed to foster camaraderie, friendship and teamwork. Held last July 29-30, 2006, the Anlipolo activities also doubled as a celebration of the firm's 13th year anniversary.



Atty. Santos accepted to the FNS Partnership

Atty. Gilbert V. Santos has been formally accepted to the FNS partnership effective July 1, 2006.

Atty. Santos was admitted to the Philippine Bar in 2000. He was born in 1972 and holds a bachelor's degree in Political Science from the University of the Philippines. He received his J.D. from the Ateneo de Manila University.

Atty. Santos joined FNS in 2000. He specializes in labor law.

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