

DISSENT BY ACOBA, J. RE: MOTION FOR
RECONSIDERATION AND ORDER OF AMENDMENT

I would grant the motion with respect to my concurring and dissenting opinion and order that the words "lesser included" in footnote 4 on page 7, be deleted. Therefore,

IT IS HEREBY ORDERED that the concurring and dissenting opinion by Acoba, J., appended to the opinion of the court filed on March 3, 2010, is amended by deleting the words "lesser included" on the second line of footnote no. 4 on page 7.

The Clerk of the Court is directed to incorporate the foregoing change in the original concurring and dissenting opinion and take all necessary steps to notify the publishing agencies of this change.

Associate Justice