

EN BANC

[A.M. No. 08-8-11-CA. September 9, 2008.]

RE: LETTER OF PRESIDING JUSTICE CONRADO M. VASQUEZ, JR. ON CA-G.R. SP NO. 103692 [Antonio Rosete, et al. v. Securities and Exchange Commission, et al.]

DECISION

PER CURIAM :

The Judiciary, which is acclaimed as the firmest pillar of our democratic institutions, is vested by the Constitution with the power to settle disputes between parties and to determine their rights and obligations under the law. For judicial decisions, which form part of the law of the land, to be credible instruments in the peaceful and democratic resolution of conflicts, our courts must be perceived to be and, in fact be, impartial, independent, competent and just. To accomplish this end, it is imperative that members of the Judiciary from its highest magistrates to its humblest employees adhere to the strictest code of ethics and the highest standards of propriety and decorum. Indeed, it is unfortunate that one of the country's second highest courts, the Court of Appeals, should be presently embroiled in scandal and controversy. It is this Court's bounden duty to determine the culpability or innocence of the members of the Judiciary involved in the said controversy and to discipline any one whose conduct has failed to conform to the canons of judicial ethics, which uphold integrity, independence, impartiality, competence and propriety in the performance of official functions.

The present administrative matter arose from the Letter dated August 1, 2008 of Court of Appeals Presiding Justice Conrado M. Vasquez, Jr. (Presiding Justice Vasquez), referring to this Court for appropriate action the much publicized dispute and charges of impropriety among the justices of the Court of Appeals (CA) involved in CA-G.R. SP No. 103692 entitled "*Antonio Rosete, et al. v. Securities and Exchange Commission, et al.*"

To assist in its investigation of this sensitive matter, the Court in its Resolution dated August 4, 2008 constituted a three-person panel (the "Panel of Investigators") composed of retired Justices of the Court; namely, Mme. Justice Carolina Griño-Aquino as Chairperson, Mme. Justice Florida Ruth P. Romero and Mr. Justice Romeo J. Callejo, Sr. as Members. The Panel of Investigators was tasked to investigate the (a) alleged improprieties of the actions of the Justices of the Court of Appeals in CA-G.R. SP No. 103692 (*Antonio V. Rosete, et al. v. SEC, et al.*); and (b) alleged rejected offer or solicitation of bribe disclosed respectively by Mr. Justice Jose Sabio and Mr. Francis de Borja.

A narration of relevant events and facts, as found by the Investigating Panel, follows:

On April 15, 2008, Justice Bienvenido L. Reyes (Justice Reyes), then Chairperson of the Ninth Division of the CA, filed an application for leave from May 15,

2008 to June 5, 2008. ¹

In Office Order No. 149-08-CMV dated May 14, 2008 issued by Presiding Justice Vasquez, Justice Jose C. Mendoza (Justice Mendoza) was designated by the Raffle Committee as Acting Chairman of the Ninth Division during the absence of Justice Reyes. Apart from his duties as regular senior member of the Fifth Division, Justice Mendoza was authorized "to act on all cases submitted to the Ninth Division for final resolution and/or appropriate action, except ponencia, from May 15, 2008 to June 5, 2008 or until Justice Reyes reports back for duty." The said office order likewise applied to the other Division(s) where Justice Reyes had "participated or took part as regular member or in an acting capacity." ²

On May 29, 2008, Antonio V. Rosete, Manuel M. Lopez, Felipe B. Alfonso, Jesus P. Francisco, Christian S. Monsod, Elpidio L. Ibañez, and Francis Giles B. Puno, as officers, directors and/or representatives of the Manila Electric Company (hereinafter to be collectively referred to as "Meralco"), filed with the Court of Appeals a petition for *certiorari* and prohibition with prayer for the issuance of a writ of preliminary injunction and temporary restraining order (TRO) against the Securities and Exchange Commission (SEC), Commissioner Jesus Enrique G. Martinez, Commissioner Hubert B. Guevarra, and the Government Service Insurance System (GSIS). ³ Aside from the application for immediate issuance of a TRO, petitioners prayed for the issuance of a preliminary injunction that should thereafter be declared permanent, as well as a declaration of nullity of the cease and desist and show cause orders issued by the SEC through Commissioner Martinez. The petition was received by the CA at 10:49 a.m. on May 29, 2008 and docketed as CA-G.R. SP No. 103692.

On the same day, petitioners simultaneously filed at 10:48 a.m. an urgent motion for a special raffle. Presiding Justice Vasquez granted the motion in a handwritten note on the face of the urgent motion, ⁴ and CA-G.R. No. 103692 was raffled to Justice Vicente Q. Roxas (Justice Roxas). ⁵ At 3:10 p.m., the Office of Presiding Justice Vasquez received a letter from Atty. Estrella C. Elamparo (Atty. Elamparo), Chief Legal Counsel of the GSIS, requesting the re-raffling of the case "in the presence of the parties in the interest of transparency and fairness." ⁶ At 4:10 p.m. on that day, the GSIS filed an *ex-parte* motion to defer action on any incident in the petition pending the resolution of their motion for the re-raffle of the case. ⁷

Atty. Elamparo, accompanied by Atty. Orlando P. Polinar, also of the GSIS Law Office, personally filed the urgent motion to defer action on the petition pending the resolution of their motion to re-raffle the case. Since the receiving clerk of the Court of Appeals could not assure them that the motion would be transmitted to the Court of Appeals Division, Attys. Elamparo and Polinar allegedly went to the office of Justice Roxas "for the sole purpose of personally furnishing him a copy" of the motion. ⁸ They initially talked to a male clerk who referred them to one of the lawyers, who, however, told them that it was not possible for them to personally hand a copy of the motion to Justice Roxas. Thus, Attys. Elamparo and Polinar left a copy of the motion to the staff but no one wanted to sign and acknowledge receipt of the copy. ⁹

On May 30, 2008, Justice Reyes filed an application for the extension of his leave until June 6, 2008. ¹⁰ In the meantime, Justice Mendoza, who had been designated to replace Justice Reyes during the latter's absence, informed Justice Roxas through a letter that he (Justice Mendoza) was inhibiting from the case on the ground that he used to be a lawyer of the Meralco. ¹¹ Hence, in an "Emergency Request for Raffle", Justice Roxas informed the Raffle Committee about the inhibition. ¹²

Justice Jose L. Sabio, Jr. (Justice Sabio) was assigned as Acting Chairman of the Ninth Division by raffle, "in lieu of Justice Mendoza". ¹³ At 11:30 a.m., the office of Justice Myrna Dimaranan-Vidal (Justice Dimaranan-Vidal) received a notice of emergency deliberation with the new Acting Chairman of the Special Ninth Division, apparently sent by Justice Roxas, stating that her presence and that of Justice Sabio, Jr. were "indispensable" on account of the "national interest" involved in CA-G.R. SP No. 103692. ¹⁴

Meanwhile, Atty. Elamparo "received a telephone call from somebody who did not identify herself but (who) said that she had important information regarding the Meralco case". The unidentified caller told Atty. Elamparo that "a TRO was already being prepared and that certain Meralco lawyers had in fact been talking to Justice Roxas". The caller warned Atty. Elamparo against Justice Roxas who had "administrative cases and was 'very notorious'", but when prodded, the caller would not disclose more details. ¹⁵

At about 1:30 p.m. also on May 30, 2008, Justice Sabio received a telephone call in his chambers from his older brother, Chairman Camilo Sabio (Chairman Sabio) of the Presidential Commission on Good Government (PCGG). ¹⁶ Chairman Sabio informed his brother that he (Justice Sabio) had been named the "third member" of the division to which the MERALCO-GSIS case had been raffled. Justice Sabio was surprised as he had not yet been "officially informed" about the matter. Chairman Sabio likewise informed him that a TRO had been prepared. Chairman Sabio then tried to convince Justice Sabio "of the rightness of the stand of the GSIS and the SEC", and asked his brother to help the GSIS, which "represents the interest of the poor people". Justice Sabio told his brother that he would "vote according to [his] conscience" and that the most that he could do was "to have the issuance of the TRO and the injunctive relief scheduled for oral arguments", at which the respondents "must be able to convince" him that the TRO indeed had no legal basis.

In his signed testimony, ¹⁷ which he read before the Panel of Investigators, Chairman Sabio narrated the circumstances of this call to his brother on May 30, 2008. It appears to have been prompted by a call from a member of the Board of Trustees of GSIS. To quote from Chairman Sabio's testimony:

Last May 30, 2008 I was in Davao City Airport with my wife, Marlene, waiting for our 1:25 P.M. PAL flight to Manila. . . .

As we were boarding, I received a call from Atty. Jesus I. Santos, a Member of the Board of Trustees of GSIS. We had known each other and had become friends since before Martial Law because as Chief Counsel of the Federation of Free Farmers (FFF) we were opposing counsel in various cases in Bulacan.

Attorney Santos informed me that the dispute between the GSIS and MERALCO was now in the Court of Appeals; and, that as a matter of fact, my brother, Justice Sabio, was chair of the Division to which the case had been assigned. Being a Trustee, Attorney Santos requested me to help. I readily welcomed the request for help and thanked him. There was no mystery about his having known of the results of the raffle because the lawyers are notified thereof and are present thereat. As a Trustee, Attorney Santos should be concerned and involved. As such it is his duty to seek assistance for the GSIS where he could legitimately find it. He was right in seeking my assistance.

I was aware of the controversy between the GSIS and MERALCO. In essence this was in fact a controversy between the long suffering public and

the mighty — financially and politically — controlling owners of MERALCO. MERALCO is not only a public utility but also a monopoly. Fortunately, GSIS had taken up the cudgels for the long suffering public, who are at the mercy of MERALCO.

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Immediately, I tried to contact Justice Sabio. But due to the noise I could not hear him. So I waited until we would arrive in Manila.

As we were leaving the Airport, I again got in touch with Justice Sabio. After, he confirmed that he was in fact in the Division to which the petition of MERALCO had been raffled. I impressed upon him the character and essence of the controversy. I asked him to help GSIS if the legal situation permitted. He said he would decide according to his conscience. I said: of course.

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On the same day, May 30, 2008, GSIS filed an urgent ex-parte motion to inhibit Justice Roxas from CA-G.R. No. SP 103692. **18** The Special Cases Section of the Court of Appeals received a copy of the motion at 11:58 a.m. **19**

Claiming that the TRO was issued "to pre-empt the hearing" scheduled in the afternoon of that day before the SEC, the GSIS Law Office, through Atty. Marcial C. Pimentel, Jr., set forth its reason for the motion for inhibition as follows:

3. Unfortunately, reports have reached respondent GSIS that the Honorable ponente has been in contact with certain lawyers of MERALCO and has in fact already prepared a draft resolution granting the TRO without affording respondents even a summary hearing. The records of this case was (*sic*), per information, immediately transmitted to the Honorable ponente upon his instructions. The worries of the respondent were exacerbated when it learned that there are supposedly two administrative cases pending against the Honorable ponente, both of which involve allegations of bias and prejudice.

It turned out, however, that at that time, Justice Roxas had not yet been officially notified by the Raffle Committee that the case was raffled to him. **20** Moreover, contrary to the allegation of Atty. Elamparo that the raffle was rigged, Justice Roxas had no hand in the raffle proceeding, which was handled by the Division chaired by Justice Mariano del Castillo with the use of a "fool-proof Las Vegas tambiola, like the lotto machine." **21**

Justice Roxas brought to the office of Justice Sabio, for the latter's signature, the TRO which he had prepared, already signed by himself and Justice Dimaranan-Vidal. Convinced of the urgency of the TRO, Justice Sabio signed it on condition that the case will be set for oral arguments.

Thus, at 2:08 p.m. on May 30, 2008, **22** the Special Ninth Division composed of Justices Sabio, Roxas, and Dimaranan-Vidal, issued the Resolution granting the TRO prayed for by the petitioners and directing the respondents to file their respective comments (not a motion to dismiss) to the petition within ten days from notice, with the petitioners given five days from receipt of that comment within which to file their reply. The Special Ninth Division also set the hearing on the application for the issuance of a writ of preliminary injunction for 10:00 a.m. on June 23 and 24, 2008. In the same Resolution, parties were directed to file their respective memorandum of authorities in connection with the application for a writ of preliminary injunction together with their comments/reply. After the parties had filed their memorandum of authorities relative to the application for a writ of preliminary injunction, the prayer for the said writ would be

considered submitted for resolution "forty five (45) days from promulgation of this Resolution". The SEC received a copy of the Resolution at 4:03 p.m. on that day. ²³

For Justice Roxas, the issuance of the TRO was an implied denial of the motion for inhibition filed against him. There was no need to put in writing the action on the motion for inhibition. ²⁴

At 3:00 p.m., the Special Cases Section of the Court of Appeals received the Urgent Motion to Lift Temporary Restraining Order and To Hold Its Enforcement in Abeyance filed by the GSIS. ²⁵ Justice Roxas did not act on the Urgent Motion because he did not consider it meritorious. ²⁶

On May 31, 2008, Justice Sabio received a cellular phone call from Mr. Francis De Borja (Mr. De Borja), a person he had lost contact with for almost a year already. ²⁷ Mr. De Borja greeted him with: "*Mabuhay ka, Justice*". When Justice Sabio, Jr. asked Mr. De Borja why he said that, Mr. De Borja told him that the Makati Business Club was happy with his having signed the TRO, to which Justice Sabio retorted, "I voted according to my conscience".

On June 5, 2008, the GSIS Law Office received a letter dated June 2, 2008 of Presiding Justice Vasquez, Jr. informing GSIS Chief Legal Counsel, Atty. Elamparo, that the Court of Appeals could not grant her request for the re-raffling of CA-G.R. SP No. 103692 "in the presence of the parties in the interest of transparency and fairness", as the case had been raffled in accordance with the procedure under the IRCA. ²⁸

On June 10, 2008, Justice B. L. Reyes reported back to work. ²⁹

On June 11, 2008, at 3:50 p.m., ³⁰ the Office of the Solicitor General (OSG), appearing for the SEC, filed a manifestation and motion praying for the admission of the comment (to the petition) attached thereto, as well as the advance and additional copies of the memorandum of authorities.

On June 12, 2008, at 4:53 p.m., the GSIS filed its comment/opposition to the petition in CA-G.R. SP No. 103692, ³¹ as well as its memorandum of authorities.

On June 16, 2008, the Division Clerk of Court, Atty. Teresita Custodio (Atty. Custodio), delivered to Justice Reyes the *cartilla* of the Meralco case, and informed him that a hearing on the prayer for the issuance of a preliminary injunction had been scheduled at 10:00 a.m. on June 23 and 24, 2008. ³² However, on the same day, the Division Clerk of Court came back to retrieve the *cartilla* upon instructions of Justice Sabio. Justice Reyes instructed his staff to return the *cartilla* and when he asked the Division Clerk of Court why she was retrieving it, she said that Justice Sabio "demanded" that it be returned back to him. "Personally affronted" by the "domineering and superior stance" of Justice Sabio, Justice Reyes "read and re-read Secs. 1, 2 (d) & 5, Rule VI (Process of Adjudication)" until he was satisfied that he should sit as Division Chairman in the Meralco case. ³³

On either June 17 or 18, 2008, Justice Sabio requested the *rollo* of CA-G.R. SP No. 103692 from Justice Roxas so that he could study the case before the hearing. ³⁴ Justice Roxas asked him whether Justice Reyes would preside over the hearing. Justice Sabio explained the reason why he, not Justice Reyes, should preside. Justice Roxas promised to instruct the Division Clerk of Court to send the *rollo* over to Justice Sabio. The next day, the Division Clerk of Court told Justice Sabio that the *rollo* was with Justice Reyes. When the *rollo* was eventually transmitted to Justice Sabio, the Division Clerk of Court asked him whether the *rollo* should be with Justice Reyes.

Justice Sabio explained why the *rollo* should be with him.

On June 18, 2008, petitioners filed a motion for an extension of five days or until June 23, 2008 within which to file their consolidated memoranda of authorities and reply to the comment of the SEC. ³⁵

On June 19, 2008, MERALCO filed an *ex-parte* manifestation together with their reply to the comment of the GSIS. ³⁶ Meanwhile, Justice B. L. Reyes asked Atty. Custodio to report on "what transpired between her and Justice Sabio" when she returned the *cartilla*. "Teary-eyed", Atty. Custodio begged off from making a report. ³⁷

Justice Reyes decided to consult the Presiding Justice "to avoid an ugly confrontation" with the Justices on the "highly politicized case involving giants of the Philippine society". He explained to the Presiding Justice his understanding of the relevant IRCA rules and "the actual practice in similar situations in the past". The Presiding Justice promised to talk with Justice Sabio and, "for the sake of transparency and future reference", Justice Reyes requested permission to write an inquiry on the matter. ³⁸

On the same day, Justice Reyes wrote Presiding Justice Vasquez a letter ³⁹ calling the attention of Justice Edgardo P. Cruz ("Justice Cruz"), Chairperson of the Committee on Rules, to the "dilemma" as to who between him and Justice Sabio should "receive" CA-G.R. SP No. 103692. Justice Reyes posed these questions before the Presiding Justice:

Will the case remain with Justice Jose Sabio, Jr. as Acting Chairman of the Special 9th Division and who participated in the initial Resolution of the case?

Will the case revert to the regular 9th Division with the undersigned as Chairman?

For Justice Reyes, the "dilemma" was engendered by this provision of Section 2 of Rule VI of the IRCA:

(2) When, in an original action or petition for review, any of these actions or proceedings, namely: (1) giving due course; (2) granting writ of preliminary injunction; (3) granting new trial; and (4) granting execution pending appeal have been taken, the case shall remain with the Justice to whom the case is assigned for study and report and the Justices who participated therein, regardless of their transfer to other Divisions in the same station.

The hearing on the application for preliminary injunction having been scheduled for June 23 and 24, 2008, Justice Reyes considered it "necessary" that the issues be resolved before that date. Moreover, the referral of the controversy to the Presiding Justice would give him sufficient time to seriously study the case before the hearing. ⁴⁰

On June 20, 2008, Presiding Justice Vasquez referred the letter of Justice Reyes to Justice Cruz, Chairperson of the Committee on Rules, noting "some urgency involved as the hearing of the case is on Monday, June 23, 2008". ⁴¹

On that same day, Justice Cruz wrote Justice Reyes a letter ⁴² quoting Section 2 (d), Rule VI of the IRCA and stating that the "[i]ssuance of a TRO is not among the instances where 'the Justices who participated' in the case shall 'remain' therein". Hence, Justice Cruz opined that "[n]otwithstanding the issuance of the TRO (not writ of preliminary injunction), the case reverted to the regular Chairman (Justice Reyes) of the Ninth Division upon his return." Justice Reyes received a copy of the letter of Justice

Cruz in the afternoon of that day. 43

During the hearings of this case, Justice Cruz explained his opinion before the Panel. He opined that the motion to lift the TRO is not a motion for reconsideration because Rule 52 of the Rules of Court states that a motion for reconsideration may be filed with respect to a decision or a final resolution. A TRO is not a final resolution but an interlocutory order. Moreover, since the subject of the hearing on June 23, 2008 was on the application for preliminary injunction, Justice Sabio had no right to participate in the hearing because as an Acting Chairman, his authority was only to act on the motion to lift the TRO. Under the IRCA, the position of Justice Sabio invoked the exception to the general rule in the IRCA. However, the settled principle is to construe a rule strictly against the exception. The participation of Justice Sabio in the hearing on June 23, 2008 was a "passport" to participation in the decision-making process, in violation of the IRCA. 44

Justice Reyes having consulted with him, the Presiding Justice referred the matter to Justice Sabio who in turn, opined that "a temporary restraining order is part of the injunctive relief or at least its initial action such that he should be the one to chair the Division". 45 In his office after that consultation with the Presiding Justice, Justice Reyes found that the Division Clerk of Court had given him a copy of the *cartilla* just in case he would preside over the hearing. In the evening, the Presiding Justice called up Justice Reyes to inform him that Justice Sabio "insisted that he would preside over the hearing of the case", and that the opinion of Justice Cruz, who was "junior" to Justice Sabio "was no better than his own opinion". 46

It turned out that, upon receipt of a copy of the letter of Justice Cruz, Justice Sabio told the Presiding Justice by telephone that he disagreed with the opinion of Justice Cruz "because he did not sign in an official capacity as Chairman of the Rules Committee, but in his personal capacity" and hence, the opinion of Justice Sabio "was as good as his, as in fact I (Justice Sabio, Jr.) am even more senior than he". 47 Justice Sabio told the Presiding Justice that he "smelled something fishy" about the move to transfer the case to the Ninth Division especially because Justice Reyes did not inform him about it despite the fact that they were seated together on three occasions.

Justice Sabio "smelled something fishy" because a couple or so weeks ago, he attended a Chairpersons' meeting regarding the leakage of the *ponencia* of Justice Bato, with Justice Reyes as Chairperson and Justice Jose Mendoza as senior member. The meeting was called because prior to the promulgation of the decision of Justice Bato, the losing party already filed a motion for the inhibition of the *ponente*. According to Justice Sabio information on the decision could not have been leaked by Justice Bato but by a member of the Division. 48

The Presiding Justice "did not do anything anymore" to prevent an "unpalatable" situation at the scheduled June 23, 2008 hearing, notwithstanding the "conflicting opinions" of Justices Reyes and Sabio. The "personal view" of the Presiding Justice was at the time "with Justice Cruz" but Justice Sabio had a "different interpretation". Neither did the Presiding Justice suggest that the Rules Committee be convened because the Committee then had only two members. He felt that it would be "better" if Justices Reyes and Sabio "could settle it between themselves". The Presiding Justice was seeing the Justices "practically" everyday because he did not want "these things to blow up". However, neither did it enter the mind of the Presiding Justice that the hearing on June 23 could be reset. Had he known that there was a motion to inhibit Justice Roxas, he would have changed his position "that it should be the Sabio group". 49

Also on June 20, 2008, the GSIS requested permission to conduct a power-point presentation during the hearing. ⁵⁰ Likewise the SEC, through the OSG prayed that it be allowed the use of Microsoft Powerpoint Application at the June 23 and 24, 2008 hearings. ⁵¹ Justice Roxas did not act on the motions.

On June 21, 2008, Justice Sabio came to know that it was the Division chaired by Justice Reyes that would handle the case on account of the opinion of Justice Cruz. ⁵²

In the morning of June 23, 2008, Justice Sabio consulted with Justice Martin Villarama, Jr. ("Justice Villarama") who advised him, "in no uncertain terms", that his stand was "correct" and that he should remain in the case. ⁵³ Justice Villarama said that the case should remain with the Special Ninth Division "regardless of the transfer of the *ponente* to the Eighth Division because of the pending motion to lift TRO", which the Special Ninth Division should resolve "following the general rule that when a decision or resolution is rendered by a division, a motion for reconsideration thereof should be acted upon by all the Members of that division, whether regular or special, which participated in the rendition of the decision or resolution, except in case of death, retirement or resignation of such Member." ⁵⁴

That morning, Justice Roxas also consulted Justice Villarama. The latter told the former that since there was a motion to lift the TRO, Justice Roxas should first rule on the motion. He also advised Justice Roxas to inhibit himself from the case, as there might be a problem (*mag-inhibit ka baka magka-problema*). Justice Roxas told Justice Villarama that he would follow his "suggestion". ⁵⁵

Justice Reyes also went to the office of Justice Villarama to tell him of his "strong conviction that the issuance of a TRO is not among the instances provided in Sec. 2 (d), Rule VI when the case shall remain with those Justices who participated in the case regardless of their transfer to other division(s)." Justice Villarama told Justice Reyes that per his "understanding and interpretation of said provision, . . . the case should remain with the Special Ninth Division." ⁵⁶

At 9:50 a.m., the Office of the Division Clerk of Court called Justice Reyes to inform him that the parties and their counsels were already in the hearing room. Justice Reyes informed the caller that he could not preside as Justice Sabio had "apparently hardened his position" and he wanted to avoid an "ugly spectacle". His name plate was displayed in the hearing room but Justice Sabio moved to another hearing room. ⁵⁷ Allegedly, the removal of the nameplate of Justice Reyes was the talk of the Court of Appeals for weeks. ⁵⁸

Villaraza Cruz Marcelo and Angangco entered its appearance as counsel for Meralco. ⁵⁹ At the hearing, Justice Sabio presided with Justices Roxas and Dimaranan-Vidal in attendance. Justice Roxas, the *ponente*, did not ask a single question. ⁶⁰ Not one of the Justices in attendance brought up the motion for inhibition filed by the GSIS against Justice Roxas. ⁶¹ In open court, the parties in CA-G.R. SP No. 103692 agreed to submit, within 15 days, simultaneous memoranda on the injunctive relief prayed for by the petitioners, after which the application for preliminary injunction would be deemed submitted for resolution. ⁶²

On June 25, 2008, or about two days after the separate conversations of Justice Villarama with Justices Sabio and Reyes, the Presiding Justice also consulted Justice Villarama about the letter-queries of Justices Roxas and Reyes on which Division should resolve "the matter of injunctive relief or issue the decision" in CA-G.R. SP No. 103692. ⁶³

The Presiding Justice issued Office Order No. 196-08-CMV reconstituting the Committee on Rules and designating Justice Cruz as the Chairperson, with Justices Rebecca De Guia-Salvador, Reyes, Hakim Abdulwahid, and Noel G. Tijam, as members. ⁶⁴ The Committee on Rules was tasked to propose amendments to the IRCA on or before August 15, 2008 "for submission and adoption of the Court *en banc*." (The office order was later amended by Office Order No. 196-08-CMV on August 4, 2008 to include as members Justices Mario L. Guariña III, Lucas P. Bersamin, and Teresita Dy-Liacco Flores.) ⁶⁵ The Rules Committee used to be composed of only three members, namely: Justices Cruz, Abdulwahid, and Roberto Barrios, now deceased, as members, with Justice Cruz as chairperson. ⁶⁶

It was also on June 25, 2008 that Presiding Justice Vasquez issued Office Order No. 200-08-CMV stating that, in view of the retirement of Justices Enrique Lanzanas, Lucenito N. Tagle, Agustin S. Dizon, and Rodrigo Cosico, and the appointments of Justices Ruben C. Ayson and Edgardo L. delos Santos, the Divisions would have a new composition effective July 4, 2008. ⁶⁷ Under that office order, Justice Sabio became the Chairman of the Sixth Division, with Justice Dimaranan-Vidal as a member. Justice Reyes became the Chairman of the Eighth Division, with Justices Roxas and Apolinario D. Bruselas, Jr. ("Justice Bruselas") as members.

On June 29, 2008, Justice Reyes went on official leave of absence to use a business class airplane ticket to Sydney, Australia that he had won in an APT Golf Tournament in January 2008. He was still on official leave when the reorganization of the Court of Appeals took place on July 4, 2008. ⁶⁸

On July 1, 2008, Justice Roxas told Justice Sabio that he did not attend the *Access to Courts (sic)* summit on June 30 and July 1, 2008 at the Court of Appeals Auditorium because he was busy with the Meralco case. Justice Sabio was taken aback because at that time the parties had not yet submitted their memoranda. ⁶⁹

That same afternoon, Mr. De Borja again called up Justice Sabio, seeking to meet with him for an "important" matter. Because Justice Sabio had 6-8 p.m. classes at the Ateneo Law School, they agreed to meet after his classes but not for long because his wife and his daughter, Atty. Silvia Jo Sabio who is an Attorney VI in the Office of the Chief Justice, ⁷⁰ would be waiting for him. ⁷¹ According to Justice Sabio, the conversation at that meeting with Francis de Borja went as follows:

17. By the time my class was finished at 8 pm, Mr. De Borja was already waiting for me at the Lobby Lounge of the 3rd Floor of the Ateneo Law School. His first words to me were: *Alam mo Justice kung sino ang kasama ko sa kotse? Si Manolo Lopez.* Then he said: *Noong tinatawagan kita at sinabi kong "Mabuhay ka Justice", si Manolo Lopez ang katabi ko noon. Nasa Amerika siya, kaya ako na lang ang pumunta dito para makiusap sa 'yo. Alam mo, itong kaso na ito is a matter of life and death for the Lopezes. And alam mo naman what the Marcoses did to them, which is being done now by the Arroyos.*

- At that point he mentioned the impasse between Justice Bienvenido Reyes and myself. He said: *Alam naming may problema kayo ni Justice Reyes tungkol sa chairmanship.*
- I was surprised how he came to know about it, as this was an internal matter of the Court of Appeals which only happened fairly

recently and many associate justices of the CA were not even aware of this. Just the same, I explained my stand and why I could not relinquish the chairmanship to Justice Reyes.

- He then replied: *Alam mo, Justice ang opinion dito ni Nonong Cruz ay i-challenge ang stand mo. Kaya lang, mayroon namang nagsabi na it might become messy.*
- Then he bragged to me: *Ako din ang responsible sa pag-recommend at pag-hire ng Villaraza Law Firm.*
- Then he explained that he was there to offer me a win-win situation.
- He said: *Justice, mayroon kaming P10 million. Ready. Just give way to Justice Reyes.*
- Then I said: *Bakit ganun. Nakasisiguro sila sa kanya, sa akin hindi?*
- He said: *Mas komportable lang sila sa kanya*
- At that point, I was shocked that he had a very low regard for me. He was treating me like there was a price on my person. I could not describe my feelings. I was stunned. But at the same time, *hindi ko rin magawang bastusin siya* because I had known him since 1993 and this was the first time that he had ever treated me like this, or shown that he believed I could be bought.
- So I just told him: *Francis, I cannot in conscience agree to that*
- His answer was: *Sabi ko nga sa kanila, mahirap ka talaga papayag. Kasi may anak iyang Opus Dei. Numerary pa.*
- At this point, I just wanted to leave, so I told him I could not stay long. I told him my wife and lawyer daughter were waiting.
- Even then, he was already insistent. His parting words before I left were: *Just think about it, Justice* **72**

At that time, Mr. De Borja was carrying a "sealed" brown paper bag, which he was handling "as if something important" was inside. However, Justice Sabio did not know if the bag contained P10 million. **73** In his car, Justice Sabio told his wife and his daughter, Silvia Jo, about the offer of Mr. De Borja for Meralco. **74**

In his affidavit submitted to the Panel of Investigators, Mr. De Borja describes himself as a businessman, a deal maker, and project packager. On July 1, 2008, he invited Justice Sabio for dinner "to touch base" and for *chismis* about the MERALCO-GSIS case. As the latter would have evening classes at the Ateneo Law School, and his wife and daughter would be waiting in their car after his classes, they just agreed to meet at the lobby-lounge of the School. What Mr. De Borja knew about the MERALCO case allegedly came from news reports but he was interested in the news because he is a "confirmed free-enterpriser". Moreover, De Borja thought that there was "[n]othing like hearing things directly from the horse's mouth". **75**

When Mr. De Borja and Justice Sabio met, Mr. De Borja averred he was indeed carrying a bag, not an expensive looking luggage. After parking his car at the Rockwell

basement, he took the escalator, intending to walk out of the mall. On his way, he passed by the Kenneth Cole shop and, since it was still early, he looked in and saw a T-shirt he liked. He bought the T-shirt, which he brought before the Panel of Investigators in the grey "Kenneth Cole Reaction" bag. The photographs of the bag and the T-shirt costing P1,650.00 are marked Exhibits "A-De Borja" and "A-1-De Borja" and attached to the *rollo* of A.M. No. 08-8-11-CA, while the photograph of the receipt issued by the Kenneth Cole Boutique, marked as Exhibit "A-2-De Borja", shows that the purchase was made on July 1, 2008 at 19:47. He stressed the bag did not contain P10 million.

Before the Panel, Justice Sabio claimed that the bag Mr. De Borja brought during the hearing was not the bag that Mr. De Borja was carrying when Justice Sabio saw him on July 1, 2008. What Mr. De Borja allegedly brought with him to the lobby-lounge of the Ateneo Law School was a brown bag with paper handle "about 2/3 (of the Kenneth Cole bag) in size". Justice Sabio was told by the Panel that it could be the subject of rebuttal evidence but he did not present such evidence.

According to Mr. De Borja, Manolo Lopez (Mr. Lopez), the owner of MERALCO whose wife was a member of Martha's Vineyard just like Mr. De Borja's wife, was also an acquaintance of Mr. De Borja at the Ateneo grade school. Mr. Lopez did not ask him (Mr. De Borja) to contact Justice Sabio. At a party where Mr. De Borja met Mr. Lopez, Mr. De Borja informed him that he knew Justice Sabio but Mr. Lopez did not say anything.

Mr. De Borja denied having offered P10 million to Justice Sabio. Instead, he claimed that Justice Sabio informed him that the government has offered him (Justice Sabio) money and a promotion to the Supreme Court to favor GSIS. When Mr. De Borja asked what would it take for Justice Sabio to resist the government's offer, Justice Sabio allegedly replied: "Fifty Million". ⁷⁶ He alleged that it was Justice Sabio who called up after that July 1, 2008 meeting to "feel" his reaction to the "P50 million solicitation". Justice Sabio asked him: "*O, ano, kumusta, ano ang nangyayari*".

Mr. De Borja admitted having given P300,000 to Justice Sabio, some 15 years ago, as a *balato* because he came to value the friendship of Justice Sabio that developed while the latter was helping the Roa family in a business transaction. Mr. De Borja earned "more than P25 million" although he received only P3 million as down payment out of the sale of 100 hectares of the Roa property. He gave the *balato* of 10% of the P3 million to Justice Sabio in cash at the Roa-owned bank in Cagayan de Oro. Since the Roas had a lot of "legal problems", Justice Sabio rendered advice and consultation at the time that he was an RTC judge in Cagayan de Oro. After the promotion of Justice Sabio to the Court of Appeals, Mr. De Borja invited him for dinner. They would see each other at get-togethers of the Roas with whom Mr. De Borja is related, even at a gathering in the house of Mr. De Borja's mother. ⁷⁷

On July 2, 2008, Justice Sabio that informed Presiding Justice Vasquez that he (Justice Sabio) was offered a bribe (which he rejected) to have him ousted from the Meralco case. The news allegedly shocked the Presiding Justice. Justice Sabio also went to Justice Villarama who was both "shocked and amused". Justice Sabio did not tell them who the "offeror" was. However, a day or two later, Justice Sabio found out that Mr. De Borja had called their mutual friend, Mrs. Evelyn Clavano, who was also shocked that Mr. De Borja had "the gall to ask her" to convince Justice Sabio to accept the bribe. ⁷⁸

Although Justice Sabio told the Presiding Justice that the offer of P10 million to a

Justice was, in the words of Justice Sabio, *bastusan na ito*, and he knew that bribing a Justice is a criminal act, the Presiding Justice did nothing because he could not "advise a fellow Justice on what to do" — the Justice would know what he should do. Neither did he think of consulting Justices Roxas and Dimaranan-Vidal on the chairmanship impasse. **79**

On July 3, 2008, to stop Mr. De Borja from pestering him with phone calls and text messages, Justice Sabio called up Mr. De Borja who told him: *Mabuti naman Justice tumawag ka, kasi malapit na ang deadline ng submission ng memorandum. Pinag-isipan mo bang mabuti ang offer namin? Kasi sayang din kung di mo tatanggapin, Kasi kahit aabot itong kaso sa Supreme Court, matatalo ka din. Sayang lang 'yung P10 million. Baka sisihin ka pa ng mga anak mo.* Shocked by what he heard, Justice Sabio said "No". Since Mr. De Borja did not seem to understand why he kept saying "No", Justice Sabio explained to him: *If I accept that, my conscience will bother me forever. How can I face my wife and two daughters? One a lawyer and the other a Numerary member of Opus Dei? And besides, how can I reconcile my being a member of PHILJA's Ethics and Judicial Conduct Department; being a lecturer of the MCLE; and being a pre-bar reviewer of the Ateneo Law School on Legal and Judicial Ethics?* Mr. De Borja retorted: *Wala naman kaming pinapagawa sa iyo na illegal, eh .* Then he added: *You know Justice, after two or three weeks, makakalimutan na ito ng mga tao. Meron naman diyang mga Atenista na tumatanggap.* Justice Sabio said: *I don't know about them, but I am different.* Mr. De Borja then said: *Well, if you will not accept, we will be forced to look for other ways.* To this, Justice Sabio said: *But they will have to contend with me.* In parting, Mr. De Borja said: *Justice, no matter what, saludo talaga ako sa iyo.*

Mr. De Borja admitted that Justice Sabio called him up, but denied the above conversation with Justice Sabio.

On July 4, 2008, the reorganization of the Court of Appeals became effective and brought Justices Reyes, Roxas and Bruselas to the Eighth Division. Justice Reyes went to see the Presiding Justice about the urgent motion for him to assume the chairmanship of the Division, which shows on its face that the Urgent Motion dated July 10, 2008 was received by the Court of Appeals at 2:08 p.m. on July 10, 2008 and by Atty. Teresita C. Custodio on July 9, 2008. Justice Reyes expressed to the Presiding Justice his apprehension that should he fail to assume the chairmanship, he would face administrative liability for nonfeasance or dereliction of duty. The Presiding Justice suggested that the respondents in the case be required to comment on the Urgent Motion "in a resolution to be issued by the former 9th Division of Justice J.L. Sabio, Jr. since to allow the new Division of Justice B.L. Reyes to issue the resolution . . . would render moot and academic" the same motion. Justice Reyes agreed and told the Presiding Justice that he would be sending over the records to him so that the Presiding Justice could place a note thereon as to what had been agreed upon. However, the records of the case did not reach the Presiding Justice. **80**

For Justice Roxas, the July 4, 2008 reorganization was mandatory and the Meralco case followed him as its *ponente* to the Eighth Division. By the reorganization, Justice Sabio was moved from the disbanded Special Ninth Division to the Sixth Division, as the reorganization did not spare any Justice. **81** Moreover, the IRCA does not require that the Justices that issued a TRO be the same Justices that will render the

decision. ⁸² This is because the TRO does not appear in Section 2 (d), Rule VII of the IRCA. Accordingly, only the issuance of a preliminary injunction could be an exception to the July 4, 2008 reorganization of the CA. ⁸³ He believes the IRCA does not require that the Justices who heard the case should also decide it because the CA is a court of record and Justices may rely on the transcript of stenographic notes. ⁸⁴ And so, once the three Justices have signed the decision, the *ponente* has the "pressing duty" to promulgate the decision. ⁸⁵

Since July 4, 2008, Justice Bruselas alleged that he acted "on all the *ponencias*" of Justices Reyes and Roxas, "just as they had acted" on his *ponencias*. ⁸⁶

On July 7, 2008, the GSIS filed its memorandum.

On or about July 8, 2008, Atty. Silvia Sabio, to help her father, sought the advice of Atty. Jose Midas Marquez ("Atty. Marquez") regarding the bribery attempt. Atty. Marquez advised that Justice Sabio should write the Chief Justice about the incident, detailing not only the bribery attempt but all that has transpired relative to the chairmanship issue. Atty. Silvia Sabio immediately called her father and relayed Atty. Marquez's advice. Later that date, Justice Sabio handed his daughter, Silvia, a handwritten letter for her to deliver to the Chief Justice. ⁸⁷ The handwritten letter, in essence, requested permission for Justice Sabio to "unburden" himself before the Chief Justice on the Meralco case. ⁸⁸

At around 2:30 p.m., Justice Reyes went to see Justice Sabio. The conversation between them, as recalled by Justice Sabio, was as follows:

- As soon as he came in, I said: *"Why did you stab me behind my back?"* He said, *"Why, what did I do?"* I asked him *Why is it that you have to resort to that strategy of seeking the opinion of Ed Cruz, in his personal capacity, when we could have discussed the matter with the PJ?*
- I reminded him that we were seated three times near each other on different occasions only recently and he never mentioned to me about the plan to oust me.
- He said: Perhaps that was my fault. I should have talked to you.
- I told him, that *all the while I thought we were friends. Why did you have to do these things behind my back and not discuss the matter with me face to face?*
- Then he said it just came about due to the urgent motion; that he was afraid Meralco would take action against him for nonfeasance for not doing his job.
- It was then that I said: *Are you aware that I was offered 10M for me to give way to you?*
- I further asked him the following: *In the first place, how was the Meralco emissary able to know that there was an impasse between you and me when that was supposed to be an internal matter?*
 - *If you will now insist on assuming the chairmanship after I told you of the 10Million offer, what will I think of you?*

- *Are you a Trojan horse? Can you blame me if I think you are part of this whole scheme or shenanigan?*
- *Does not the timing alone stink of corruption? After they failed to convince me of their offer, now they will use you to oust me? Is it because they are certain of your loyalty and they are uncertain with mine?*
- *And why did they file this stupid urgent motion to assume? In my nine years in this court, I have never seen such an animal as this. This is a cowardly act, and whoever advised this stupid motion is also stupid. Why do you have to dignify such a foolish motion? They should file a motion for me to inhibit or recuse myself.*
- *Why is it that Meralco actively participated in the hearing on the 23rd and never raised any question on the alleged irregularity of my having presided over the hearing?*
- *Why do you insist on assuming the case? Are you not aware that several days after the issuance of the TRO, respondents filed a motion for inhibition of Justice Vicente Roxas and a motion to lift the TRO. Who then had the right to resolve such motion?*
- *Under the circumstances, anong iisipin ko sa yo? Ano ang tingin ko ngayon sa iyo?*
- His feeble answer was: *you*. He then said he did not know of those pending motions. (Incidentally, these motions were never resolved.) He also said, *wala talaga akong interest dito kundi ayaw ko lang ma charge ng non-feasance for failing to do my duty.*
- I answered him: *Malayo yung non-feasance. Hindi ito nonfeasance. I taught the subject for many years and this is not one of them.*
- So I told him, I have made my decision on the matter. *Bahala ka na*. Then I stood up to show him to the door. He was silent after that and before he left, he put his arm around me.

For his part, Justice Reyes kept on repeating: *"Wala talaga ako dito, wala akong interest kung di yun lang hindi ako ma non-feasance*. Justice Sabio thought otherwise.

Meanwhile, Justice Roxas brought to the office of Justice Dimaranan-Vidal "the final decision on the MERALCO case" bearing his signature, which he gave to Justice Dimaranan-Vidal for "concurrence/dissent". According to Justice Dimaranan-Vidal, Justice Roxas explained to her the "rationale for his conclusion". Justice Roxas went out for a while and returned "with an expensive looking travelling bag" from where he pulled out the "purported final decision". Before the close of office hours, Justice Roxas returned to the chambers of Justice Dimaranan-Vidal to check if he (Justice Roxas) had signed his decision. When she replied that yes, he had signed it, Justice Roxas said he would pick it up the next day. **89**

Justice Dimaranan-Vidal signed the decision notwithstanding that on July 8, 2008

the Court of Appeals had been reorganized because she believed that the Special Ninth Division was still existing on account of its having issued the TRO. ⁹⁰ She also concurred with the portion of the decision recommending administrative sanctions against the GSIS lawyers because she believed the OSG or the OGCC should have appeared for the GSIS. ⁹¹

Also late that day, Justice Villarama told Justice Sabio that he had advised Justice Reyes to "lay off the case" and allow Justice Sabio "to continue" and to resolve the urgent motion for Justice Reyes to assume the chairmanship. Justice Villarama recalled that Justice Reyes repeatedly said: "*Wala talaga ako dito Jun, Wala akong personal interest dito*".

After "a careful and judicious study" of the more than 56-page decision of Justice Roxas, Justice Dimaranan-Vidal signed it. True to his word, Justice Roxas personally picked up the decision that day "purportedly for the action of the Acting Chairman, Justice Sabio", who was then on leave of absence until July 11, 2008. ⁹² Notwithstanding the fact that the parties had not submitted their respective memoranda, Justice Dimaranan-Vidal signed the "convincing" *ponencia*, including three copies of the signature page, because Justice Roxas was insistent of the urgency of the signing of the decision due to the impending lapse of the TRO on July 29, 2008. ⁹³ Justice Sabio thought otherwise. ⁹⁴

However, Justice Roxas denied that the decision he gave to Justice Dimaranan-Vidal was the final decision. He denied that he gave it to her for her signature. He said it was only for her to read because she asked to read it. He said it was a mere draft as "everything was unofficial" — there was no *rollo* or logbook with it, it was not placed in an envelope, and it did not have the "special seal" of Justice Roxas. It allegedly "was thrown in the garbage can".

On July 9, 2008, the OSG filed the memorandum for the SEC.

On July 10, 2008, Meralco filed an urgent motion praying that Justice Reyes assume the chairmanship of the Division, ⁹⁵ alleging the reasons for the urgent motion as follows:

5. At the scheduled oral arguments on 23 June 2008 in the instant case, the parties were first directed to one of the Hearing Rooms of the Court of Appeals. At the said room, the name plate of Justice Reyes was already placed on the table for the justices. Thus, petitioners were of the impression that the leave of absence of Justice Reyes was over and that he would be presiding over the oral arguments as Chairman of the Ninth Division of the Honorable Court.

6. However, when the parties were directed to transfer to another Room of the Court of Appeals for the oral arguments in the instant case, petitioners saw that the name plates on the table for the justices included that of Justice Sabio, Jr., together with that (*sic*) of Justices Roxas and Dimaranan-Vidal. Thereafter, Justice Sabio presided over the oral arguments as Chairman of the Special Ninth Division of the Honorable Court. Petitioners were, thus, of the impression that the regular Chairman of the Ninth Division, Justice Reyes, was still on temporary leave of absence.

7. Subsequently, it has come to the attention of the petitioners that Justice Reyes has already returned from his temporary leave of absence and has resumed his duties as Chairman of the Ninth Division of the Honorable Court.

8. Under the Internal Rules of the Court of Appeals, Justice Sabio, Jr. should now refrain from acting as the chairman of the Division hearing the instant case as he is already disqualified from acting as such upon the return of Justice Reyes.

8.1. With due respect, Justice Reyes cannot shirk from his bounden judicial responsibility of performing his duties and functions as Chairman of the Ninth Division of the Honorable Court.

8.2. Specifically, under Section 3 (d), Rule IV of the 2002 Internal Rules of the Court of Appeals, a case can remain with the justices who participated therein only when any of the following actions have been taken: (a) giving due course; (b) granting of a writ of preliminary injunction; (c) granting of a new trial; or (d) granting of execution pending appeal:

xxx xxx xxx.

9. None of the foregoing instances apply with respect to Justice Sabio, Jr.'s continuing hold on the case. Although Justice Sabio, Jr. was one of the Justices who issued the temporary restraining order in favour of the petitioners in the instant case, this circumstance is not among the grounds as above-quoted, when a justice of the Court of Appeals may remain in the Division.

10. As above-quoted, the rule is categorical that it is not the grant of a temporary restraining order but rather the grant of a writ of preliminary injunction that sanctions a justice's remaining with the Division. Thus, the continued participation of Justice Sabio, Jr., in the instant case, considering the clear Rules of the Honorable Court, is not only irregular but may lead one to conclude that he is exhibiting undue interest in the instant case.

On this day, Justice Reyes reported back to work after his trip to Australia. **96**

On July 11, 2008, Justice Sabio was on leave when Justice Roxas called him up for a meeting to discuss the case. Justice Sabio told him that he needed ample time to read the memoranda of the parties. Justice Roxas promised to send to Justice Sabio the memoranda immediately. **97**

At 4:00 p.m., Justice Reyes received from the Eighth Division Clerk of Court a copy of Meralco's Urgent Motion for him to assume the chairmanship of the Ninth Division.

On Monday, July 14, 2008 at the flag ceremony, Justice Sabio requested Justice Roxas to meet with him as he had by then read the memoranda of the parties. Justice Roxas initially agreed to the meeting but he later informed Justice Sabio that he had another matter to attend to; neither was he available in the afternoon. Justice Roxas had become scarce. Justice Sabio learned that Justice Dimaranan-Vidal was also looking for Justice Roxas. **98**

Justice Sabio prepared a resolution on the motion for the reconsideration of the TRO and informed Justices Roxas and Dimaranan-Vidal that he wanted to discuss it with them. The resolution he prepared "never saw light". **99**

At 10 a.m., Justice Roxas, with his messenger, brought the *rollo* of CA G.R. SP No. 103692 to Justice Reyes, and told the latter that he and Justice Bruselas would be coming over to deliberate on the case. Ten minutes later, the Eighth Division deliberated on the case. **100** After a cursory examination of the *rollo*, Justice Reyes

found that the decision had been signed by Justices Roxas and Bruselas but Justice Reyes asked for more time to study the case. 101

A transcript of the "Final Deliberation" on July 14, 2008 is attached to page 1926 of Volume III of the *rollo* of CA-G.R. SP No. 103692 and marked as Exh. 2- Roxas on page 279 of the *rollo* of A.M. No. 08-8-11-CA. According to Justice Roxas, it was he who prepared the transcript from memory to "lend credence" to the certification of Justice Reyes at the end of the decision pursuant to Article VIII, Section 13 of the Constitution. 102 Justice Reyes denied having seen it or having authorized its transcription. Justice Bruselas did not sign any transcript of the deliberation as he was not aware that a transcript was being taken. There was no stenographer present, as only the three of them, Justices Reyes, Roxas, and Bruselas were present at the deliberation. Neither was there a recording machine. Justice Roxas admittedly prepared the transcript "from memory". 103

The statement attributed to Justice Reyes in the transcript that there were "previous deliberations" were "really meetings", which they had twice, in the office of Justice Reyes, according to Justice Roxas. 104

On July 15, 2008, when she felt that the timing was right, Atty. Silvia Sabio testified that she handed her father's letter to the Chief Justice through his private secretary, Ms. Jasmin Mateo. 105 A few days later, however, Presiding Justice Vasquez told Justice Sabio that the Chief Justice would no longer meet with him, as the Presiding Justice had apprised the Chief Justice about the matter. 106

According to Justice Reyes, at 2:00 p.m. that day, the Office of the Presiding Justice informed him that Justice Sabio was waiting for him in his office. As soon as Justice Reyes was seated, Justice Sabio "berated" him and accused him of "orchestrating matters". Justice Sabio told him that an emissary of MERALCO had offered him P10 million to drop off the case, hence, he asked that if he was offered that much, how much could have been offered "to the principals?" 107

On July 17, 2008, Justice Reyes went back to the office of the Presiding Justice and informed him of the episode in the office of Justice Sabio. He also went to ask Justice Villarama for his opinion as to who was "the rightful claimant" to the chairmanship of the Division that should decide the Meralco case. Justice Villarama allegedly replied that they "were both correct".

On July 18, 2008, at the pre-launching meeting for the CA-CMIS, Justice Villarama had a "brief chat" with Justice Bruselas. The former told the latter that "both Justices Sabio and Reyes are correct in the sense that one (1) [of] them can properly assume chairmanship *either* under the exception provided in Sec. 2 (d), Rule VI of the 2002 IRCA depending on the final disposition of the prayer for injunctive relief, or pursuant to the general rule enshrined in Sec. 7 (b), Rule VI." 108

On July 21, 2008, Justice Roxas personally filed with the Presiding Justice 109 an "Interpleader Petition" 110 praying that Presiding Justice Vasquez "decide which division Chairman (Justice Sabio's Former Special 9th Division or Justice B. L. Reyes' 8th Division) should sign the Preliminary Injunction or Decision". 111 Justice Roxas averred that "[t]he impasse between two Chairmen from two Divisions has to be resolved much earlier than July 30, 2008 because July 30, 2008 is the expiration date of the TRO issued by the Special 9th Division (signed by Justice Jose L. Sabio, Jr., Justice Vicente Q. Roxas [*ponente*] and Justice Myrna Dimaranan-Vidal)." He opined that the two Chairpersons differed in the interpretation of Sections 1 and 2 (d) in relation to Section 5

of Rule VI on Process of Adjudication of the *Internal Rules of the Court of Appeals* (IRCA). **112** His stand was that the IRCA "should be strictly applied" because "[w]hen the provisions are clear, there is no room for interpretation".

Justice Roxas endorsed his "Interpleader Petition" to Justice Reyes for his "signature or dissent" to the "finalized MERALCO Decision", which had been in Justice Reyes' possession since July 14, 2008. **113** He also gave the *rollo* of the case to Justice Reyes. **114**

Presiding Justice Vasquez allegedly told Justice Roxas that as Presiding Justice, he had no authority to rule on the Interpleader Petition, which is not an administrative concern over which the Presiding Justice must intervene. Nevertheless, to avoid further discussion, the Presiding Justice told Justice Roxas that he would study the matter. **115**

On July 22, 2008, Justice Reyes wrote the Presiding Justice a letter on "what was discussed between us last 17 July 2008 at around 3:30 p.m." **116** Apparently the Presiding Justice had suggested "to endorse the case and have the Special Ninth Division direct the respondents to file their simultaneous comments on the petitioners' Urgent Motion (For Honorable BIENVENIDO L. REYES to Assume Chairmanship of the Division in the Instant Case) dated 10 July 2008."

Justice Reyes expressed "doubts" that the suggestion was "most prudent", as the dispute "revolves around the correct interpretation" of the IRCA. He believed that since the question was "purely internal", the CA should not seek "enlightenment" from the litigants for it would only be construed against its "competence". He shared Justice Cruz's and Roxas' interpretation of the IRCA. Hence, he urged the Presiding Justice to decide the matter; otherwise, he would interpret the rules according to his "best lights and act accordingly".

On July 23, 2008, Presiding Justice Vasquez asked for the *rollo* of CA G.R. No. SP No. 103692 so he could "properly submit the requested opinion". It was then that he came across the unresolved motion praying for the inhibition of Justice Roxas and the pending urgent motion to lift the TRO or to hold its enforcement in abeyance. The Presiding Justice considered the latter as a motion for reconsideration of the Resolution issuing the TRO. **117**

Meanwhile, at noon of that day, as Justice Reyes had not yet received "any reaction" from the Presiding Justice, he signed the decision as well as the Certification. It was promulgated on the same day.

The decision was promulgated without waiting for the Presiding Justice's opinion on whether it was the Eighth or Special Ninth Division that should decide the case. Justice Roxas alleged that he did not expect the Presiding Justice to "answer" or resolve the matter anyway.

On July 24, 2008, Presiding Justice Vasquez issued his reply to Justice Reyes' letter and Justice Roxas' "Interpleader-Petition". The Presiding Justice claimed having doubts on whether he possessed "the authority to decide the subject conflict" simply because under the IRCA, the Presiding Justice has control and supervision only over administrative affairs of the Court. The controversy was certainly not an administrative matter but Section 11 of Rule VIII of the IRCA provides that the Presiding Justice "has the authority to act on any matter not covered" by the Rules although such action should be reported to the Court *en banc*.

The Presiding Justice expressed in his letter the view that "the (Special Ninth)

Division that issued the temporary restraining order should continue resolving the injunctive prayer in the petition" because it was the Division that issued the Resolution granting the TRO and setting the hearing on the application for the issuance of a writ of preliminary injunction, aside from the fact that the parties did not contest the authority of Justice Sabio as Division Chairman at the time, although Justice Reyes had reported back to work. Moreover, the motion for inhibition and the urgent motion to lift the TRO "have a bearing" on the application of Section 2 of Rule VI of the IRCA, especially because Section 7 (b) of Rule VI **118** points to the retention of the case by the Special Ninth Division. Furthermore, the new Division headed by Justice Reyes may not be allowed to resolve the pending incidents because two of its members, Justices Reyes and Bruselas did not participate in the hearing on June 23, 2008. He did not believe that Justice Reyes would be charged with dereliction of duty should he not assume the chairmanship. The Presiding Justice ended his letter with the hope that the matter would be "laid to rest" and that whoever would be dissatisfied "with its outcome may elevate the matter to the Supreme Court".

At 2:00 p.m. that day, Justice Sabio informed the Presiding Justice that a decision had been promulgated in the Meralco case the previous day. The Presiding Justice was surprised because Justices Roxas and Reyes had asked him to resolve the impasse on the Division chairmanship. Upon inquiry, the Presiding Justice found that the decision had indeed been promulgated at 4:10 p.m. on July 23, 2008. **119**

It was also on July 24, 2008 that Justice Dimaranan-Vidal received a call from Justice Sabio, informing her that Meralco had offered him a bribe of P10 million "in exchange for his voluntary stepping out from the Meralco case in order to give way to Justice B. L. Reyes", and that the decision in the Meralco case had been promulgated by the Eighth Division. **120** Shocked that Justice Roxas did not inform her "as a matter of judicial courtesy" of the scrapping of the decision which she signed on July 8, 2008, Justice Dimaranan-Vidal wrote a letter to the Presiding Justice dated July 24, 2008, **121** bringing to his attention "the apparent and obvious irregularities in the handling of CA-G.R. SP No. 103692", and complaining about Justice Roxas' "lack of judicial courtesy" in discarding for reasons she would not know, his "purported final Decision" that he had asked her to sign and which she signed "after a judicious study of the records and *rollo* thereof". Justice Roxas gave the lame excuse that he had "to incorporate therein some ten pages which he forgot to include in his Decision".

Justice Dimaranan-Vidal expressed "surprise and consternation" when she learned "on even date that a Decision" in the case had been promulgated on July 23, 2008 by the Eighth Division chaired by Justice Reyes, with Justices Roxas and Bruselas as members. She said:

My deepest regret is that the undersigned who already signed the supposed final draft of the Decision in the instant case which bears the signature of the *ponente*, was not even informed by the latter as a judicial courtesy at least, of the hurried easing out of the undersigned from the case. This inevitably posed even to an unprejudiced mind the following questions: under what basis was the case suddenly transferred to the 8th Division and why is it that neither the undersigned nor the Acting Chairman Justice SABIO, of the Special 9th Division not consulted thereof? and, foremost, what happened to the Decision which the undersigned signed after devoting her precious time and effort in carefully and laboriously examining the voluminous records and *rollo* of the case?

Sad to say the circumstance obtaining herein constitute a flagrant

violation of the provision of Canon 5 particularly Sections 2 and 3 thereof of the New Code of Judicial Conduct for the Philippine Judiciary (A.M. No. 03-05-01-SC).

On July 25, 2008, Justice Bruselas wrote the Presiding Justice a letter, ¹²² which was "prompted by a disturbing telephone call" he received from Justice Sabio in the morning of July 24, 2008. Justice Sabio informed Justice Bruselas that, "after the injunction hearing" on June 23, 2008, Meralco offered him P10 Million "to either favor them or yield the chair" to Justice Reyes. Justice Sabio told Justice Bruselas that he had informed the Presiding Justice of the "bribery incident" and that he "was disgusted over the turn of events because he should have remained chair of the Special 9th Division that issued the TRO on the case." Justice Bruselas informed Justice Sabio that it was the first time that he heard of the matter and that he had "participated in the deliberation on the case and concurred with the *ponencia*" of Justice Roxas "without such information ever being taken up". Justice Sabio told Justice Bruselas that he would not leave the matter "as it is" because he would bring it up in the "open, to media, etc." Justice Sabio asked Justice Bruselas that if P10M was offered to him, how much would have been offered to the "others".

Troubled by the information, Justice Bruselas went to the Presiding Justice where Justice Dimaranan-Vidal, who had received the same call from Justice Sabio, joined them. After that meeting with the Presiding Justice, Justice Bruselas called up Justice Reyes who confirmed that he had heard about the "bribe offer" but that he did not reveal the same to Justice Bruselas as it "escaped" his mind. The effort of Justice Bruselas "to get in touch" with Justice Roxas proved futile.

Allegedly prompted by "the manner by which the decision . . . was arrived at, and how the decision was promulgated", and that unless an "immediate and thorough investigation thereon be undertaken" by the Court of Appeals, "both the individual and institutional integrity of the justices" and of the Court of Appeals would "undoubtedly be tarnished", Justice Sabio wrote on July 26, 2008 a letter ¹²³ to the Presiding Justice, which precipitated the present investigation.

On July 28, 2008, the *Philippine Daily Inquirer* "carried an account" of the letter of Justice Dimaranan-Vidal to the Presiding Justice, without her knowing how her confidential letter to the Presiding Justice leaked out. ¹²⁴

Before Justice Bruselas delivered his letter to the Presiding Justice, he received a copy of the letter of Justice Sabio and, through a telephone call, reiterated his "full agreement with his desired investigation".

The Presiding Justice called the Court of Appeals to an "emergency *en banc* session at 10:00 a.m. on July 31, 2008 at the Session Hall to elicit the reaction of the Court and on the "possible effect" on the decision rendered. The session was also called in order that the "predicament experienced in CA-G.R. SP No. 103692" could be deliberated upon by the Committee on Rules with a view to amending the IRCA on the reorganization of the Court of Appeals. The Executive Justices of Cebu and Cagayan de Oro, Justices Antonio L. Villamor and Romulo V. Borja, respectively, were instructed to attend the *en banc* session to report to the other Justices in their stations what transpired at the session, and to "collect the personal reaction, comment or view" of the Justices on the matter. ¹²⁵

In its closed door *en banc* session on July 31, 2008, "after a torrid discussion of all the issues," the Court of Appeals decided, as follows:

(1) **Refer the propriety of the actions of the Justices concerned to the Supreme Court, through the Office of the Court Administrator;**

(2) Leave the matter regarding the validity of the decision rendered in the above-entitled case to the parties for them to take whatever legal steps they may deem appropriate in the usual course of procedure; and

(3) Refer the conflict in the interpretation of our Internal Rules to the Committee on Rules of the Court of Appeals in order to prevent the recurrence of a similar situation. **126**

After the *en banc* session, Justice Dimaranan-Vidal expressed in a letter for the Presiding Justice **127** her "strong reaction" to the paper of Justice Roxas "falsely" imputing to her "grandstanding before the media or resorting to media-recourse instead of just filing an administrative complaint before the Supreme Court", and taking exception to "the equally outrageous, revolting and baseless accusation that she is allegedly clinging" to the case. She asserted that she never leaked a copy of her letter to the *Philippine Daily Inquirer*, as her letter was only intended to bring to the attention of the Presiding Justice "the impropriety done by Justice Roxas in the MERALCO case" that resulted in her having been eased out of the case notwithstanding that she "carefully and judiciously" examined the *ponencia* with more than 50 pages, after devoting her "precious time" to such study, and affixing her concurrence thereto. Justice Dimaranan-Vidal reiterated her prayer for an investigation of the matter.

Meanwhile, on that day, Mr. De Borja, executed an affidavit admitting that he was the businessman referred to by Justice Sabio, Jr. in his letter to Presiding Justice Vasquez. Mr. De Borja publicly claimed having learned "from the news" that Justice Sabio was "one of the justices" in the case arising from the order of the SEC to nullify the proxies issued in favor of the MERALCO management. He also alleged that Justice Sabio told him about the "blandishments coming from the government side", that he was being offered a promotion to the Supreme Court and money to favor the GSIS position. Mr. De Borja asked Justice Sabio, Jr., "What would it take for you to resist the government's offer?" and that the response of Justice Sabio, Jr. was "Fifty Million".

Justice Sabio asked permission from the Presiding Justice to hold a press conference the next day on account of the publicized affidavit of Mr. De Borja. The Presiding Justice told Justice Sabio that "this is a matter of self-defense on his part", hence, the Presiding Justice cannot stop him from doing so.

Justice Sabio issued a signed statement as an "initial response" to the affidavit of Mr. De Borja, "vehemently" denying that Mr. De Borja asked him what it would take for him to inhibit from the case, and that he "never asked for money" from him. **128**

On August 1, 2008, Justice Sabio called the press conference to read a signed statement entitled "My Reaction to Mr. Francis De Borja's Affidavit dated July 31, 2008 on the Meralco-SEC Case".

Expressing anger at the "filthy lie" of Mr. De Borja, Justice Sabio decided to narrate "almost word for word" his "conversations" with Mr. De Borja.

In an affidavit dated August 1, 2008, which Evelyn Clavano **129** executed in Davao City, she stated that —

Francis de Borja requested me if I have the cell phone number of Justice Jose L. Sabio Jr. He related that because he was very close to the Lopezes of Meralco, he wanted to call him regarding his possible inhibition in a certain Meralco case, wherein he was designated as a substitute member of the

division vice a justice who was temporarily on leave by reason of sickness. He further said that the Lopezes desire that the same Justice, with whom the Lopezes are more comfortable, to sit in the division.

So, I gave Francis de Borja the cell phone number of Justice Jose L. Sabio, Jr. through business card.

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On August 4, 2008, the Supreme Court constituted the Panel of Investigators to investigate "(1) alleged improprieties of the actions of the Justices of the Court of Appeals in CA-G.R. SP No. 103692 (*Antonio V. Rosete, et al. v. SEC, et al.*) and (2) the alleged rejected offer or solicitation of bribe disclosed respectively by Mr. Justice Jose Sabio and Mr. Francis de Borja".

The Panel of Investigators held hearings from August 8 to 23, 2008. Affidavits were submitted to the Panel to serve as the parties' direct testimonies upon which they were cross-examined by the Panel and the other parties.

On September 4, 2008, the Panel of Investigators submitted its Report of even date to the Courten *banc*.

According to the Report, "the investigation has revealed irregularities and improprieties committed by the Court of Appeals Justices in connection with the MERALCO case, CA-G.R. SP No. 103692, which are detrimental to the proper administration of justice and damaging to the institutional integrity, independence and public respect for the Judiciary." 130

Findings regarding the conduct of Associate Justice Vicente Q. Roxas

Justice Roxas inexcusably failed to act on a number of motions of the parties prior to the promulgation of the Decision.

As found by the Panel of Investigators, several motions were not resolved or acted upon by Justice Roxas. These were enumerated in the Report as follows:

- (a) The "Urgent Ex-Parte Motion to Defer Action on any Incident of the Petition Pending Resolution of Re-Raffle" filed by GSIS on May 29, 2008 soon after this case was filed on that date (*Rollo*, pp. 185-186).
- (b) GSIS' "Urgent Ex-Parte Motion to Inhibit" Justice Roxas, which was filed on May 30, 2008. **As the motion raised a prejudicial question, Justice Roxas should have resolved it before issuing the TRO sought by Meralco, but he never did** (*Rollo*, pp. 220-223).
- (c) GSIS' Motion to Lift TRO which was filed on May 30, 2008 (*Rollo*, pp. 187-210).
- (d) GSIS' Motion filed on June 18, 2008, praying that it be allowed to use Power point at the hearing on June 23, 2008. On June 20, 2008, the SEC filed a similar motion. Both motions were not acted upon by Justice Roxas (*Rollo*, pp. 593-621).
- (e) Meralco's "Motion for Extension of Time to file their Consolidated

Memorandum of Authorities and Reply to Respondent SEC's Comment" filed on June 25, 2008 (*Rollo*, pp. 981-987).

- (f) Meralco's "Urgent Motion for Honorable Justice Bienvenido L. Reyes to Assume Chairmanship of the Division in the Instant Case", which was filed on July 10, 2008 (*Rollo*, pp. 1262-1274). **131** (emphasis supplied)

We agree with the Panel of Investigators that "by ignoring or refusing to act on the motion for his inhibition, Justice Roxas violated Rule V, Section 3, third paragraph of the IRCA, which provides that he should resolve such motion in writing with copies furnished the other members of the Division, the Presiding Justice, the Raffle Committee, and the Division Clerk of Court". The pertinent portion of the said provision states:

Sec. 3. *Motion to Inhibit a Division or a Justice* — . . .

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A motion for voluntary inhibition of a Justice shall be acted upon by him alone in writing, copy furnished the other members of the Division, the Presiding Justice, the Raffle Committee and the Division Clerk of Court.

This Court cannot agree with Justice Roxas' proposition that the issuance of the TRO constitutes an implied denial of the motion to inhibit since under IRCA the obligation of the Justice to act on such a motion is mandatory.

Furthermore, the Court finds well-taken the Panel's finding that "Justice Roxas' failure to act on the other motions of the parties violated Canon 3, Rule 3.05 of the 1989 *Code of Judicial Conduct* (which applies in a suppletory manner to the *New Code of Judicial Conduct* for the Philippine Judiciary) providing that:

"Rule 3.05. — A judge shall dispose of the court's business promptly and decide cases within the required periods."

Even Section 5, Canon 6 of the *New Code of Judicial Conduct* mandates that "[j]udges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Thus, it has become well-settled in jurisprudence that even just undue delay in the resolving pending motions or incidents within the reglementary period fixed by law is not excusable and constitutes gross inefficiency. **132** With more reason, this Court finds suspicious and reprehensible the failure of Justice Roxas to act at all on pending motions and incidents in CA-G.R. SP No. 103692.

This is in fact not the first time that Justice Roxas has been cited administratively for failure to resolve pending incidents in cases assigned to him. In *Orocio v. Roxas*, A.M. Nos. 07-115-CA-J and CA-08-46-J, this Court imposed a P15,000 fine on Justice Roxas for unwarranted delay in resolving two motions for reconsideration in another case and sternly warned him that future commission any act of impropriety will be dealt with more severely.

Justice Roxas is guilty of gross dishonesty.

Apart from Justice Roxas' inexcusable inaction on pending incidents in the Meralco case, the Panel of Investigators found that he had been dishonest and untruthful in relation to the said case. The Court adopts the following findings of the Panel:

2. Justice Roxas was dishonest and untruthful.

(a) Justice Roxas admitted that the "Transcript of Final Decision", which is supposed to be a transcript of the deliberation on July 14, 2008 of the Eighth Division on the final decision in the Meralco case was not a true "transcript" of the minutes of the meeting, but purely a "transcript from memory" because no notes were taken, no stenographer was present, and no tape recorder was used. It was in fact a drama which he composed "from my recollection" to comply with Sec. 9, Rule VI of the IRCA which requires that "minutes of the meeting, *i.e.*, deliberation, shall be kept." The so-called "transcript" is a **fabrication** designed to deceive that there had been compliance — when actually there was none — with the prerequisite of the IRCA that consultation and/or deliberation among the members of the Division must precede the drafting of a decision.

(b) The statement in the "transcript" that it was a "recap from our previous deliberations" was another **falsehood** because there had been no previous deliberations.

(c) The reference in the "transcript" to a "Final Report of Justice Roxas" was also **false** for Justice Roxas admittedly did not submit a "report" as *ponente*, as required by Sec. 9, Rule VI of the IRCA, for deliberation by the Eighth Division on July 14, 2008. The "Final Report" which he submitted was admittedly the decision itself which he and Justice Bruselas, Jr. had already signed. The "Final Report" was merely the title of the page that served as the cover of the decision. Hence, Justice B.L. Reyes' supposed closing statement in the "transcript" that — "We have covered every angle of the Final Report of Justice Roxas extensively" is also **false**. Justice B.L. Reyes testified at the investigation that he had not seen the "transcript" until the copy in the *rollo* was shown to him by Justice Callejo, Sr. during his cross-examination of Justice B. L. Reyes on August 26, 2008.

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(e) Justice Roxas' testimony that when he brought the Meralco decision to Justice Dimaranan-Vidal on July 8, 2008, it was only a draft for her to read, because she asked if she may read it, not for her to sign it, is **completely false**. This testimony was labelled by Justice Dimaranan-Vidal as a **lie**, and she called Justice Roxas a **liar**, because she did not ask to borrow the decision for her reading pleasure, but Justice Roxas personally brought it to her office for her to sign as a member of the Special Ninth Division. After poring over it the whole night, she signed it, as well as three (3) additional signature pages which were to be attached to three (3) other copies of the decision. 133

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Indeed, the fabrications and falsehoods that Justice Roxas blithely proffered to the Panel in explanation/justification of his questioned handling of the Meralco case demonstrated that he lacks the qualification of integrity and honesty expected of a magistrate and a member of the appellate court.

Under Rule 140 of the Rules of Court, dishonesty is considered a serious offense that may warrant the penalty of dismissal from the service. Under the Rule IV, Section 52 of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty is

likewise considered a grave offense and warrants the penalty of dismissal even for the first offense. In the past, the Court has had the occasion to rule that:

. . . dishonesty and falsification are considered grave offenses warranting the penalty of dismissal from service upon the commission of the first offense. On numerous occasions, the Court did not hesitate to impose such extreme punishment on employees found guilty of these offenses.

Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for re-employment in the government service. **Dishonesty has no place in the judiciary.** 134

Justice Roxas showed a lack of courtesy and respect for his colleagues in the Court of Appeals.

The Panel of Investigators reported on this matter in this wise:

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(f) Justice Roxas was **thoughtlessly disrespectful** to a colleague and a lady at that, when he unceremoniously discarded, shredded, and burned the decision that Justice Dimaranan-Vidal had signed, because he allegedly forgot that Justice Dimaranan-Vidal and Justice Sabio, Jr. had already been "reorganized out" of the Special Ninth Division as of July 4, 2008, hence, out of the Meralco case. Out of courtesy, he should have explained to Justice Dimaranan-Vidal the reason why he was not promulgating the decision which she had signed.

The truth, it seems, is that Justice Roxas, who had consulted Justice Villarama, Jr. on which Division should decide the Meralco case, may have been convinced that it should be the Special Ninth Division. That is why he brought his decision to Justice Dimaranan-Vidal for her signature. However, somehow, somewhere, during the night, while Justice Dimaranan-Vidal was patiently poring over his decision, Justice Roxas was persuaded to bring his decision to the Eighth Division (to which he and Justice B.L. Reyes belong after the July 4, 2008 reorganization of the Court), it may have dawned on him that if the case remained in the Special Ninth Division, Justice Sabio, Jr. might dissent, requiring the Presiding Justice to constitute a special division of five. If he (Justice Roxas) should fail to obtain a majority of the Division on his side, he would lose his *ponencia*; someone else would become the *ponente* (perhaps Justice Sabio, Jr.). That may be the reason why he junked Justices Sabio, Jr. and Dimaranan-Vidal (even if the latter concurred with his decision) because he was unsure of Justice Sabio, Jr. He chose to cast his lot with his companions in the Eighth Division — Justices B. L. Reyes and Bruselas, Jr. — with whom he and Meralco were "comfortable".

(g) J. Roxas was **disrespectful to Presiding Justice Vasquez, Jr.** whose ruling on his "Interpleader Petition" he sought on July 21, 2008, but he promulgated the Meralco decision two (2) days later, on July 23, 2008, without waiting for Presiding Justice Vasquez, Jr.'s ruling which came out on July 24, 2008, only three (3) days after the Interpleader Petition was filed by him, and two (2) days after Justice B.L. Reyes also reiterated in writing his request for Presiding Justice Vasquez, Jr. to resolve the same chairmanship issue raised in the Interpleader. Presiding Justice Vasquez, Jr. was embarrassed and humiliated by Justices B.L. Reyes' and Roxas' **lack of courtesy and respect**

for his position as head of the Court.

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There is an old adage which says to gain respect one must learn to give it. If judges and justices are expected to treat litigants, counsels and subordinates with respect and fairness, with more reason, that judges and justices should give their fellow magistrates the courtesy and professional regard due to them as their colleagues in the Judiciary. Thus, in Canon 5, Section 3 of the New Code of Judicial Conduct, judges are expected to "**carry out judicial duties with appropriate consideration for all persons, such as** the parties, witnesses, lawyers, court staff and **judicial colleagues**, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties."

This Court cannot view lightly the discourteous manner that Justice Roxas, in his apparent haste to promulgate his decision in the Meralco case, treated his colleagues in the Court of Appeals. It behooves the Court to remind all magistrates that their high office demands compliance with the most exacting standards of propriety and decorum.

Justice Roxas' questionable handling of the Meralco case demonstrates his undue interest therein.

In the Report, the Panel of Investigators observed that Justice Roxas in fact began drafting his decision even prior to the submission of the parties' memoranda. As discussed in the Report:

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(d) Although the parties were given 15 days after the hearing on June 23, 2008, or up to July 8, 2008, to simultaneously submit their memoranda and memoranda of authorities, and actually submitted:

On July 7, 2008 — GSIS's 39 page-memorandum

On July 9, 2008 — SEC's 62 page-memorandum

On July 10, 2008 — MERALCO's 555 page-memorandum (by messenger) with memorandum of authorities

Justice Roxas prepared the decision before the parties had filed their memoranda in the case and submitted it to Justice Dimaranan-Vidal for her signature on July 8, 2008. His "rush to judgment" was indicative of **undue interest and unseemly haste**", according to J. Romero.

He **cheated** the parties' counsel of the time, effort, and energy that they invested in the preparation of their ponderous memoranda which, as it turned out, neither he nor the other members of the Eighth Division bothered to read before signing his decision. He made a mockery of his own order for the parties to submit memoranda, and rendered their compliance a futile exercise.

xxx xxx xxx (underscoring supplied)

We agree with Mme. Justice Romero's observation that the "rush to judgment" (even before the filing of the parties' memoranda) was indicative of Justice Roxas' **undue interest** and unseemly haste, especially when taken together with other circumstances. This inexplicable haste in resolving the case on the merits is likewise apparent in Justice Roxas' failure to resolve the several pending incidents and instead

jumping ahead to deciding the case on the merits; his "rushing" of Justice Dimaranan-Vidal into signing his draft Decision on July 8, 2008 when the parties' memoranda have not yet all been filed with the CA; his precipitate transfer of the case to the Eighth Division for promulgation of decision, without notice to Justice Dimaranan-Vidal of the Special Ninth Division who had already signed his draft Decision and despite the unresolved Chairmanship dispute between Justice Reyes and Justice Sabio which he (Justice Roxas) even submitted to the Presiding Justice for appropriate action, just a few days before the promulgation.

We reiterate here that as the visible representation of the law and justice, judges are expected to conduct themselves in a manner that would enhance respect and confidence of the people in the judicial system. The New Code of Judicial Conduct for the Philippine Judiciary mandates that judges must not only maintain their independence, integrity and impartiality; but they must also avoid any appearance of impropriety or partiality, which may erode the people's faith in the judiciary. This standard applies not only to the decision itself, but also to the process by which the decision is made. ¹³⁵ This Court will not hesitate to sanction with the highest penalty magistrates who exhibit manifest undue interest in their assigned cases. ¹³⁶

In sum, this Court finds that Justice Roxas' multiple violations of the canons of the Code of Judicial Conduct constitute grave misconduct, compounded by dishonesty, undue interest and conduct prejudicial to the best interest of the service, which warrant his DISMISSAL from the service.

Findings regarding the conduct of Associate Justice Jose L. Sabio, Jr.

In the Report, the Panel found that Justice Sabio likewise committed improprieties in relation to the Meralco case.

The circumstances of the telephone call of Chairman Sabio to his brother Justice Sabio showed that Justice Sabio failed to uphold the standard of independence and propriety expected of him as a magistrate of the appellate court.

In his testimony before the Panel, Chairman Sabio admits that he called up Justice Sabio on May 30, 2008 from Davao City, in response to a request for help from a member of the Board of Trustees of Meralco. Notwithstanding the fact that Chairman Sabio called to relay to Justice Sabio the "rightness" of the GSIS' cause and asked him "to help GSIS" and that Justice Sabio allegedly told his brother that he would act in accordance with his conscience, the same still constituted a violation of Canon 13 of the *Code of Professional Responsibility* for lawyers, which provides that:

"A lawyer shall . . . refrain from any impropriety which tends to influence, or gives the appearance of influencing the Court."

As they were both members of the Bar, it is incomprehensible to this Court how the brothers can justify their improper conversation regarding the Meralco case. As the Panel observed in its Report:

Ironically, both of them found nothing wrong with brother Camilo's effort to influence his younger brother's action in the Meralco case, because both believe that our Filipino culture allows brother-to-brother conversation, even if

the purpose of one is to influence the other, provided the latter does not agree to do something illegal. 137

For the Panel, Justice Sabio violated Sections 1, 4, and 5, Canon 1 of the *New Code of Judicial Conduct for the Philippine Judiciary*, which provide that —

Sec. 1. Judges shall exercise the judicial function independently . . . free from extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.

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Sec. 4. Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

Sec. 5. Judges shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to be free therefrom to a reasonable observer.

In the Investigators' mind, although Justice Sabio signed the TRO in favour of Meralco contrary to his brother's advice, Justice Sabio's "unusual interest in holding on to the Meralco case", seemed to indicate that he may have been actually influenced by his brother "to help GSIS". In arriving at this conclusion, the Panel noted the following circumstances: (1) Justice Sabio adamantly refused to yield the chairmanship of the Special Ninth Division although the regular chairman, Justice Reyes had returned to duty on June 10, 2008; and, (2) Justice Sabio officiously prepared and signed a resolution (a chore for the *ponente* Justice V. Roxas to perform), requiring the GSIS and the SEC to comment on Meralco's "Motion for Justice B. Reyes to Assume the Chairmanship of the 9th Division", which he probably intended to delay the decision on the preliminary injunction beyond the life of the TRO to the prejudice of Meralco and the advantage of the GSIS.

Based on the facts on record, the Court is wary of declaring that Justice Sabio had been influenced by his brother by speculating that he would have favored GSIS had he been a part of the division which rendered the decision in the Meralco case. However, we do find that it was improper for Justice Sabio to hold on to the chairmanship of the Ninth Division despite the return of Justice Reyes, when Justice Sabio's designation as acting chairman was clearly only for the duration of Justice Reyes' leave of absence. We likewise note with disfavor his stubborn insistence on his own interpretation of the IRCA and hostile, dismissive attitude towards equally well-reasoned positions of his colleagues on the proper interpretation of their rules. Such conduct on the part of Justice Sabio did nothing to aid in the swift and amicable resolution of his dispute with Justice Reyes but rather fanned the flames of resentment between them. We deem this sort of behavior unbecoming for a magistrate of his stature.

Justice Sabio's conversations with Mr. De Borja were improper and indiscreet.

On this matter, the Court accepts the following findings in the Report:

Knowing the nature of De Borja's profession, Justice Sabio, Jr. should have been wary of the former. He should have foreseen that De Borja had the Meralco case on his mind when he called Justice Sabio, Jr. True enough, De Borja mentioned the Meralco case and congratulated Justice Sabio, Jr. for having signed the TRO in favour of Meralco.

But that was not the last time Justice Sabio, Jr. would hear from De Borja. A month later, after Justice Sabio, Jr. had presided at the hearing of Meralco's prayer for preliminary injunction on June 23, 2008, and the case was ripening for decision or resolution, De Borja again called up Justice Sabio, Jr. and asked to meet him over dinner to "chit chat" about the Meralco case

Instead of telling off De Borja that he could not, and would not, talk about the Meralco case, Justice Sabio, Jr. agreed to meet De Borja in the lobby-lounge of the Ateneo Law School after his evening class in Legal Ethics in said school.

Justice Sabio Jr.'s action of discussing the Meralco case with De Borja was highly inappropriate and indiscreet. First, in talks with his brother; the second time in conversation with De Borja, Justice Sabio, Jr. broke the shield of **confidentiality** that covers the disposition of cases in the Court in order to preserve and protect the integrity and independence of the Court itself. He ignored the injunction in Canon 1, Section 8 of the *New Code of Judicial Conduct for the Philippine Judiciary* that: "**Judges shall exhibit and promote high standards of judicial conduct (and discretion) in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.**"

It was during that meeting with De Borja in the lobby-lounge of the Ateneo Law School, that De Borja allegedly offered him P10 million, in behalf of Meralco, to step out of the case and allow Justice Bienvenido Reyes to assume the chairmanship of the Special Ninth Division because Meralco was "not comfortable" with him (Justice Sabio, Jr.). He rejected the bribe offer because he "could not in conscience accept it."

Justice Sabio, Jr. was allegedly shocked and insulted that De Borja would think that he (Justice Sabio, Jr.) could be bribed or bought. The Panel is, however, honestly perplexed why in spite of his outraged respectability, Justice Sabio, Jr. called up De Borja two (2) days later (on July 3, 2008), to tell De Borja to stop "pestering" him with his calls. The Panel is nonplussed because, normally, a person who has been insulted would never want to see, much less speak again, to the person who had disrespected him. He could have just shut off his cell phone to De Borja's calls. De Borja denied that he reiterated his offer of P10 million to Justice Sabio, Jr. He denied saying that even if the case should go up to the Supreme Court, GSIS would still lose, hence, "*sayang lang yung P10 million; baka sisihin ka pa ng mga anak mo.*" He testified that his reply to Justice Sabio, Jr.'s call was "*deadma*" or indifference. Justice Sabio, Jr. blamed that call of his to a "lapse in judgment" on his part.

Be that as it may, the Investigating Panel finds more credible Justice Sabio, Jr.'s story about De Borja's P10 million-bribe-offer on behalf of Meralco, than De Borja's denial that he made such an offer. Why does the Panel believe him, and not De Borja?

First, because Justice Sabio, Jr. verbally reported the rejected bribe offer to CA Presiding Justice Conrado M. Vasquez, Jr. the next day — a fact admitted by Presiding Justice Vasquez, Jr.

Second, even though Justice Sabio, Jr. did not mention the bribe-offeror's name in both his verbal and written reports to Presiding Justice Vasquez, Jr., De Borja identified himself to the media as the person alluded to.

Third, De Borja's allegation, that Justice Sabio, Jr. wanted P50 million, not P10 million, is not believable, for, if Justice Sabio, Jr. quoted P50 million as his price, he would not have reported the P10 million bribe offer to Presiding Justice Vasquez, Jr. He would have waited for Meralco's reply to his counter-offer. 138

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Indeed, the Court agrees with the Panel that the allegation of solicitation on the part of Justice Sabio is not credible. Nevertheless, the continued communications between Justice Sabio and Mr. De Borja even after the latter's rejected bribery attempt is highly inappropriate and shows poor judgment on the part of Justice Sabio who should have acted in preservation of the dignity of his judicial office and the institution to which he belongs.

Premises considered, this Court is of the view that Justice Sabio's indiscreet and imprudent conversations regarding the Meralco case with his brother and Mr. De Borja and his actuations in the chairmanship dispute with Justice Reyes constitute simple misconduct and conduct unbecoming of a justice of the Court of Appeals which warrant the penalty of two (2) months suspension without pay.

Findings regarding the conduct of Associate Justice Bienvenido L. Reyes.

As previously discussed, Justice Reyes appealed to Presiding Justice Vasquez in a letter dated July 22, 2008, reiterating his (Justice Reyes') request that the Presiding Justice render an opinion which Division of the Court of Appeals — the Eighth Division with him as chairman, or the Special Ninth Division chaired by Justice Sabio should resolve the Meralco case. This was in conjunction with an Interpleader filed by Justice Roxas on the same issue with the Presiding Justice. Yet, despite the fact that the Presiding Justice informed Justices Reyes and Roxas that he would study the matter, Justices Reyes and Justice Roxas, together with Justice Bruselas, promulgated the decision in the Meralco case on July 23, 2008. Justice Reyes and Justice Roxas did not withdraw their request for a ruling nor did either of them advise the Presiding Justice beforehand of their intention to proceed with the resolution of the Meralco case. Thus, when the Presiding Justice issued his ruling on the chairmanship dispute on July 24, 2008, he was unaware of the promulgation of the Meralco decision on July 23, 2008, under the aegis of Justice Reyes' Eighth Division. As found by the Panel, "Presiding Justice Vasquez, Jr. was completely taken aback when he learned about it on July 24, 2008, the same day that he issued his opinion on the chairmanship issue which by then had become *functus officio*. He felt belittled and humiliated by the discourtesy of the two justices to him".

It bears repeating here that under Canon 5, Section 3 of the New Code of Judicial Conduct, judges are mandated to show the appropriate consideration and respect for their colleagues in the Judiciary.

Thus, we adopt the finding of the Panel on this point and find Justice Reyes guilty of simple misconduct, which is mitigated by the fact that he repeatedly asked Presiding Justice Vasquez to act on his request to rule on the conflicting interpretation of the IRCA. However, Justice Reyes should be reprimanded for taking part in the decision of

the subject case without awaiting the ruling of the Presiding Justice.

Findings regarding the conduct of Justice

Myrna Dimaranan-Vidal

The Court finds well-taken and adopts the findings of the Panel of Investigators, to wit:

Justice Dimaranan-Vidal deviated from the IRCA when she allowed herself to be rushed by Justice Roxas to sign the Meralco decision on July 8, 2008, without reading the parties' memoranda and without the deliberation among members of the Division required by the IRCA. She knew that the TRO would not expire until July 30, 2008 — some three (3) weeks away from July 8, 2008 — yet she allowed herself to believe Justice Roxas' misrepresentation that signing the decision was urgent. Her compliance with certain dissembling practices of other justices of the Court, in violation of the IRCA, showed weakness and lack of independence on her part. **139**

The following sections of Canon 1 of the Code of Judicial Conduct are instructive in this regard:

SEC. 1. Judges shall exercise the judicial function independently on the basis of their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.

SEC. 2. In performing judicial duties, judges shall be independent from judicial colleagues in respect of decisions which the judge is obliged to make independently.

Allowing a fellow justice to induce her to deviate from established procedure constitutes conduct unbecoming a justice for which Justice Dimaranan-Vidal should be **ADMONISHED** to be more circumspect in the performance of her judicial duties.

Findings regarding the conduct of

Presiding Justice Conrado M. Vasquez

It is the view of the Panel of Investigators that Presiding Justice Vasquez failed to provide the leadership expected of him as head of the Court of Appeals. The following quote from the Report summarizes the perceived lapses on the part of the Presiding Justice:

Clearly, Presiding Justice Vasquez, Jr. had been **indecisive** in dealing with the turmoil arising from the Meralco case. He **vacillated** and **temporized** on resolving the impasse between Justice Sabio, Jr. and Justice B. L. Reyes over the chairmanship of the Division that should hear and decide the Meralco case. He failed to take action on the reported bribe-offer by Meralco to J. Sabio, Jr. He **hesitated** to assert his leadership of the Court even when the parties repeatedly urged him to lay down the rule for them to follow. Was he hampered by the fact that he has relatives — two daughters — employed in the GSIS, and a sister who is a consultant thereof? He pleaded lack of authority. Was he not aware then, or did he discover too late, that under Section 11, Rule VIII of the IRCA, he is in fact **authorized to act "on any matter"** involving the Court and its members? That Rule provides:

Sec. 11. . . . the Presiding Justice or any one acting in his place is authorized to act on any matter not covered by these Rules.

Such action shall, however, be reported to the Court *en banc*.

He should have convened the Court *en banc* as soon as the alleged bribery attempt on Justice Sabio, Jr. was reported to him, for it was an attempt to corrupt a member of the Court, calling for the "protection and preservation of the integrity of the judicial processes" of the Court, hence, an administrative matter cognizable by the Court *en banc*. Section 5 (c), Rule I of the IRCA, provides:

Sec. 5. Matters cognizable by the Court *en banc*. — The Court *en banc* shall, *inter alia*:

(a) . . .

(b) **Adopt uniform administrative measures, procedures, and policies for the protection and preservation of the integrity of the judicial processes,**

Presiding Justice Vasquez admitted his "lapses in judgment". 140

In the light of the foregoing observations of the Panel, this Court is of the view that much of the trouble now being faced by the Court of Appeals could have been averted by timely, judicious and decisive action on the part of the Presiding Justice. Certainly, this unpleasant and trying episode in failure to act in the early part of his tenure as Presiding Justice has indelibly impressed upon him what is required of him as leader of the second highest court in the land. Nevertheless, Presiding Justice Vasquez is hereby severely reprimanded for his failure to act promptly and decisively on the controversy as required of him by the IRCA.

Findings regarding other personalities involved in the Meralco case

Although the Presiding Justice in his letter dated August 1, 2008 only referred to this Court "the propriety of the actions of the Justices concerned" in the Meralco case, we cannot simply turn a blind eye to the facts brought to light during the investigation that relate to potential liabilities of other personalities in the Meralco case.

With respect to Chairman Sabio, this Court has the power to discipline members of the Bar and his attempt to influence a member of the Judiciary, his brother at that, should be referred to the Bar Confidant for appropriate action.

With respect to Mr. De Borja, the present investigation has given this Court reason to believe that Mr. De Borja may be criminally liable for his attempt to bribe a magistrate of the Court of Appeals. This matter should be referred to the Department of Justice for appropriate action.

Pursuant to Section 13, Article VIII of the Constitution, this *per curiam* decision was reached after deliberation of the Court *en banc*. At the outset, the offer of three (3) members of the Court to recuse themselves was denied by the Court. Except for two members of the Court who were allowed to inhibit themselves from the case, the Justices voted as follows: Twelve Justices voted for the dismissal from service of Associate Justice Vicente Q. Roxas and one (1) voted for his suspension from the service for six (6) months. Ten (10) Justices voted for two (2)-month — suspension from service without pay of Associate Justice Jose L. Sabio, one (1) voted for six-month suspension, one (1) for reprimand only as he should be credited for being a "whistle blower" and one (1) for his dismissal from the service. Eight (8) Justices voted to

reprimand Associate Justice Bienvenido L. Reyes and five (5) for his suspension from the service for one (1) month. As to the rest, the voting was unanimous.

WHEREFORE, the Court RESOLVES as follows:

(1) Associate Justice Vicente Q. Roxas is found guilty of multiple violations of the canons of the Code of Judicial Conduct, grave misconduct, dishonesty, undue interest and conduct prejudicial to the best interest of the service, and is DISMISSED from the service, with FORFEITURE of all benefits, except accrued leave credits if any, with prejudice to his re-employment in any branch or service of the government including government-owned and controlled corporations;

(2) Associate Justice Jose L. Sabio, Jr. is found guilty of simple misconduct and conduct unbecoming of a justice of the Court of Appeals and is SUSPENDED for two (2) months without pay, with a stern warning that a repetition of the same or similar acts will warrant a more severe penalty;

(3) Presiding Justice Conrado M. Vasquez, Jr. is SEVERELY REPRIMANDED for his failure to act promptly and decisively in order to avert the incidents that damaged the image of the Court of Appeals, with a stern warning that a repetition of the same or similar acts will warrant a more severe penalty;

(4) Associate Justice Bienvenido L. Reyes is found guilty of simple misconduct with mitigating circumstance and is REPRIMANDED, with a stern warning that a repetition of the same or similar acts will warrant a more severe penalty;

(5) Associate Justice Myrna Dimaranan-Vidal is found guilty of conduct unbecoming a Justice of the Court of Appeals and is ADMONISHED to be more circumspect in the discharge of her judicial duties.

(6) PCGG Chairman Camilo L. Sabio's act to influence the judgment of a member of the Judiciary in a pending case is hereby referred to the Bar Confidant for appropriate action;

(7) Justice Jose L. Sabio, Jr.'s charge against Mr. Francis R. De Borja for attempted bribery of a member of the Judiciary is hereby referred to the Department of Justice for appropriate action.

This Decision shall take effect immediately.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Austria-Martinez, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro and Brion, JJ., concur.

Carpio, J., is on official leave.

Corona, J., I certify that J. Corona participated in the case. - RSP

Footnotes

1. Affidavit dated August 7, 2008 of Justice Reyes, par. 2.
2. *Rollo* of A.M. No. 08-8-11-CA, p. 383.
3. The petition was filed by counsel for Meralco, Quiason Makalintal Barot Torres Ibarra & Sison through Atty. Roel Eric C. Garcia.

4. *Rollo* of CA-G.R. SP No. 103692, p. 178.
5. Affidavit dated August 7, 2008 of Presiding Justice Vasquez, par. 1.
6. Annex A to Affidavit dated August 19, 2008 of Atty. Estrella C. Elamparo.
7. *Rollo* of CA-G.R. SP No. 103692, p. 185.
8. Affidavit dated August 19, 2008 of Atty. Elamparo, par. 7.
9. Affidavit dated August 19, 2008 of Atty. Elamparo, par. 7.
10. Affidavit dated August 7, 2008 of Justice Sabio, par. 1.
11. *Rollo* of CA-G.R. SP No. 103692, p. 213.
12. *Rollo* of CA-G.R. SP No. 103692, p. 212.
13. Affidavit dated August 7, 2008 of Presiding Justice Vasquez, par. 2.
14. *Rollo* of CA-G.R. SP No. 103692, p. 211.
15. Affidavit dated August 19, 2008 of Atty. Elamparo, pars. 8-9.
16. Affidavit dated August 7, 2008 of Justice Sabio, par. 2, as corrected by his testimony (TSN), August 26, 2008, pp. 158-161.
17. *Rollo* of A.M. No. 08-8-11-CA, p. 605.
18. Affidavit dated August 19, 2008 of Atty. Elamparo, par. 12.
19. *Rollo* of CA-G.R. SP No. 103692, p. 220.
20. Affidavit dated August 7, 2008 of Justice Roxas, p. 3.
21. Affidavit dated August 7, 2008 of Justice Roxas, p. 4.
22. *Rollo* of CA-G.R. SP No. 103692, p. 216.
23. Delivery receipt attached to the dorsal side of the notice of resolution, *Rollo* of CA-G.R. SP No. 103692, p. 215.
24. TSN August 14, 2008 50-64.
25. *Rollo* of CA-G.R. SP No. 103692, p. 187.
26. TSN August 14, 2008 74-76.
27. Affidavit dated August 7, 2008 of Justice Sabio, par. 4.
28. *Rollo* of A.M. No. 08-8-11-CA, p. 513.
29. Affidavit dated August 7, 2008 of Justice Reyes, par. 7.
30. *Rollo* of CA-G.R. SP No. 103692, p. 224.
31. *Rollo* of CA-G.R. SP No. 103692, Vol. I, p. 335; Vol. II, p. 636.
32. Affidavit dated August 7, 2008 of Justice Reyes, par. 7.

33. Affidavit Justice B.L. Reyes, par. 8.
34. Affidavit of August 7, 2008 of Justice Sabio, Jr., par. 6.
35. *Rollo* of CA-G.R. SP No. 103692, p. 586.
36. *Rollo* of CA-G.R. SP No. 103692, Vol. II, pp. 862 & 867.
37. Affidavit dated August 7, 2008 of Justice Reyes, par. 9.
38. Affidavit of Justice B.L. Reyes, par. 9.
39. *Rollo* of A.M. No. 08-8-11-CA, p. 53.
40. Affidavit dated August 7, 2008 of Justice B.L. Reyes, par. 10.
41. *Rollo* of A.M. No. 08-8-11-CA, p. 53.
42. *Rollo* of A.M. No. 08-8-11-CA, p. 56.
43. Affidavit dated August 7, 2008 of Justice B.L. Reyes, par. 11.
44. TSN August 13, 2008 248-259.
45. Affidavit dated August 7, 2008 of Presiding Justice Vasquez, par. 9.
46. Affidavit dated August 7, 2008 of Justice Reyes, pars. 12 & 13.
47. Affidavit dated August 7, 2008 of Justice Sabio, Jr. par. 7; *Rollo* of A.M. No. 08-8-11-CA, p. 74.
48. Affidavit dated August 7, 2008 of Justice Sabio, Jr., par. 8; *Rollo* of A.M. No. 08-8-11-CA, pp. 74-75.
49. TSN August 12, 2008 (a.m.) 137-141, 146-147, 153.
50. *Rollo* of CA-G.R. SP No. 103692, p. 593.
51. *Rollo* of CA-G.R. SP No. 103692, p. 598.
52. TSN August 11, 2008 44-47.
53. Affidavit dated August 7, 2008 of Justice Sabio, par. 10.
54. Affidavit dated August 7, 2008 of Justice Villarama, par. 3.
55. TSN August 12, 2008 (p.m.) 206-211.
56. Affidavit dated August 7, 2008 of Justice Villarama, par. 5.
57. Affidavit dated August 7, 2008 of Justice Reyes, par. 14.
58. Affidavit dated August 7, 2008 of Justice Roxas, p. 5.
59. *Rollo* of CA-G.R. SP No. 103692, Vol. II, p. 977.
60. Affidavit dated August 7, 2008 of Justice Sabio, par. 11; *Rollo* of A.M. No. 08-8-11-CA, p. 75; TSN of CA-G.R. SP No. 103692, June 23, 2008.
61. TSN August 8, 2008 100-101.

62. TSN of CA-G.R. SP No. 103692, June 23, 2008, pp. 169-170.
63. Affidavit of August 7, 2008 of Justice Villarama, Jr., par. 6.
64. *Rollo* of A.M. No. 08-8-11-CA, p. 474.
65. *Rollo* of A.M. No. 08-8-11-CA, p. 475.
66. TSN August 8, 2008 230, 225.
67. *Rollo* of A.M. No. 08-8-11-CA, p. 275.
68. Affidavit dated August 7, 2008 of Justice B.L. Reyes, par. 15.
69. Affidavit dated August 7, 2008 of Justice Sabio; par. 14; *Rollo* of A.M. No. 08-8-11- CA, p. 75.
70. TSN August 8, 2008 185.
71. Affidavit dated August 7, 2008 of Justice Sabio, par. 15; *Rollo* of A.M. No. 08-8-11-CA, p. 75.
72. *Id.*, par. 17; *Rollo* of A.M. No. 08-8-11-CA, pp. 76-77.
73. TSN August 11, 2008 95-96, 160-162.
74. Affidavit dated August 7, 2008 of Silvia Jo G. Sabio; *Rollo* of A.M. No. 08-8-11-CA, pp. 83-84.
75. Affidavit dated July 31, 2008 of Mr. De Borja.
76. Affidavit dated July 31, 2008 of Mr. De Borja, pars. 16, 19-20.
77. TSN August 20, 2008 259-588.
78. Affidavit dated August 7, 2008 of Justice Sabio, Jr., pars. 19-21.
79. TSN August 12, 2008 (a.m.) 158-163, 178-180.
80. Affidavit dated August 7, 2008 of Presiding Justice Vasquez, pars. 12 & 13.
81. Affidavit dated August 7, 2008 of Justice Roxas, p. 7.
82. Affidavit dated August 7, 2008 of Justice Roxas, p. 8.
83. Affidavit dated August 7, 2008 of Justice Roxas, p. 8.
84. Affidavit dated August 7, 2008 of Justice Roxas, p. 9.
85. Affidavit dated August 7, 2008 of Justice Roxas, p. 10.
86. Affidavit dated August 7, 2008 of Justice Bruselas, par. 5.
87. Affidavit dated August 7, 2008 of Atty. Silvia Jo Sabio, pars. 5-8.
88. Affidavit dated August 7, 2008 of Justice Sabio, pars. 28-29; TSN August 12, 2008 (a.m.) 71-72.
89. Affidavit dated August 7, 2008 of Justice Dimaranan-Vidal, pars. 4 & 5.
90. TSN August 8, 2008 89-91.

91. TSN August 8, 2008 129-135.
92. Affidavit dated August 7, 2008 of Justice Dimaranan-Vidal, par. 9.
93. TSN August 8, 2008 105-107, 112, 116, 119.
94. TSN August 8, 2008 218-219.
95. *Rollo* of CA-G.R. SP No. 103692, Vol. II, p. 1262.
96. Affidavit dated August 7, 2008 of Justice Reyes, par. 17.
97. Affidavit dated August 7, 2008 of Justice Sabio, par. 36.
98. Affidavit of August 7, 2008 of Justice Sabio, Jr., par. 37.
99. TSN August 11, 2008 176-179.
100. Affidavit of August 7, 2008 of Justice B.L. Reyes, par. 19.
101. Affidavit of August 7, 2008 of Justice B.L. Reyes, par. 20-21.
102. TSN August 14, 2008 99-105.
103. TSN August 13, 2008 403-405, 419.
104. TSN August 14, 2008 113-121.
105. Affidavit dated August 7, 2008 of Atty. Silvia Jo Sabio, par. 9.
106. TSN August 12, 2008 (a.m.) 174-176.
107. Affidavit dated August 7, 2008 of Justice Reyes, par. 23.
108. Affidavit dated August 7, 2008 of Justice Villarama, par. 7. Under the same paragraph, Justice Villarama opined as follows:

. . . the pending motion to lift TRO, which in effect is a motion for reconsideration of its issuance in the first place, the former Special Ninth Division . . . which issued the said TRO retains jurisdiction and should resolve the said motion. Upon the other hand, if the application for preliminary injunction is denied or remained unacted upon, the position of Justice Reyes could be sustained on the ground that the exception under Sec. 2 (d), Rule VI does not come into the picture and therefore the *ponente* of the case (Justice Roxas) *and the two (2) other members* present Eighth Division) (*sic*) to which Justice Roxas was transferred should now assume jurisdiction over the case. However, considering the pendency of the motion to lift TRO and the fact that Justice Sabio, Jr. as Acting Chairman of the Special Ninth Division, together with Justices Roxas and Vidal, had presided and heard the oral arguments of the parties on MERALCO's application for preliminary injunction, the more prudent course of action is to allow the Special Ninth Division to resolve the motion to lift TRO and other pending matters, as well as the application for issuance of writ of preliminary injunction.

As a matter of procedure and orderly administration of justice in the CA, I think the case should be retained by the Special Ninth Division chaired by Justice Sabio, Jr. until the resolution of the incidents therein, *i.e.*, motion to lift TRO and inhibition. The impracticality of transferring the case to the present division of the *ponente* (Eighth Division), instead of letting the case remain with those Justices of the Special Ninth Division which had issued a TRO and heard the application for preliminary injunction, is highlighted by the fact that there are pending motions still unresolved, voluminous

pleadings and documents have been submitted by both parties which would take time to study and deliberated upon by the Justices, and the extreme urgency of MERALCO's petition necessitating swift resolution of the legal issues presented.

And as I explained to Justice Bruselas, Jr., in the event that the Special Ninth Division chaired by Justice Sabio, Jr. *grants the application for preliminary injunction*, Justice Bruselas, Jr. and Justice Reyes would have no authority at all to participate in the case, in accordance with the mandate of Sec. 2 (d), Rule VI of the *2002 IRCA*, since the case shall then remain with Justice Roxas and Justices Sabio and Vidal of the former Special Ninth Division, the latter two (2) Justices having both *participated in the issuance of the writ of preliminary injunction*. On the other hand, if such application for preliminary injunction is denied by the Special Ninth Division, then said provision would have no application. Hence, there could be no dispute that the two (2) other Members of the present Eighth Division to which Justice Roxas was transferred, Justices Reyes and Bruselas, shall participate in the adjudication of the case;

- 109. Affidavit dated August 7, 2008 of Presiding Justice Vasquez, par. 13.
- 110. *Rollo* of A.M. No. 08-8-11-CA, p. 9.
- 111. For Justice Roxas the "Interpleader Petition" was both a letter and a memorandum for the Presiding Justice (TSN August 14, 2008 66-68).
- 112. These rules state:

Sec. 1. *Justice Assigned for Study and Report*. — Every case, whether appealed or original, assigned to a Justice for study and report shall be retained by him even if he is transferred to another Division in the same station.

Sec. 2. *Justices Who May Participate in the Adjudication of Cases* — In the determination of the two other Justices who shall participate in the adjudication of cases, the following shall be observed:

xxx xxx xxx

(d) When, in an original action or petition for review, any of these actions or proceedings, namely: (1) giving due course; (2) granting writ of preliminary injunction; (3) granting new trial; (4) granting execution pending appeal have been taken, the case shall remain with the Justice to whom the case is assigned for study and report and the Justices who participated therein, regardless of their transfer to other Divisions in the same station.

Sec. 5. *Action by a Justice*. — All members of the Division shall act upon an application for temporary restraining order and writ of preliminary injunction. . . .

- 113. Exh. 8-Roxas; *Rollo* of A.M. No. 08-8-11-CA.
- 114. Affidavit of August 7, 2008 of Justice B.L. Reyes, par. 26.
- 115. Affidavit of August 7, 2008 of Presiding Justice Vasquez, par. 13.
- 116. *Rollo* of A.M. No. 08-8-11-CA, p. 12.
- 117. Affidavit of August 7, 2008 of Presiding Justice Vasquez, par. 15.
- 118. Section 7 (b) of Rule VI of the IRCA provides that "a motion for reconsideration of a decision or resolution shall be acted upon by the *ponente* and the other members of the

Division, whether of 3 or 5, and whether regular or acting, who participated in the rendition of the decision or resolution sought to be reconsidered, irrespective of whether such members are already in other Divisions at the time the motion for reconsideration is filed or acted upon, provided that they are still in the same station, otherwise Section 2, Rule 6 shall apply."

119. Affidavit dated August 7, 2008 of Presiding Justice Vasquez, par. 17.
120. Affidavit dated August 7, 2008 of Justice Dimaranan-Vidal, par. 8.
121. *Rollo* of A.M. No. 08-8-11-CA, p. 19.
122. *Rollo* of A.M. No. 08-8-11-CA, pp. 30 & 359.
123. *Rollo* of A.M. No. 08-8-11-SC, p. 23.
124. Affidavit dated August 7, 2008 of Justice Dimaranan-Vidal, par. 10.
125. *Rollo* of A.M. No. 08-8-11-CA, p. 233.
126. Affidavit of August 7, 2008 of Presiding Justice Vasquez, par. 21. According to the Presiding Justice, at one point, Justice Celia Leagogo commented "something like *pera-pera lang 'yan*." She allegedly asked Justice Roxas why he could not answer the question of Justice Dimaranan-Vidal on where the decision she signed was (TSN August 12 [p.m.] 80-81).
127. *Rollo* of A.M. No. 08-8-11-CA, p. 42.
128. *Rollo* of A.M. No. 08-8-11-CA, pp. 102 & 120. It reads in full as follows:

INITIAL RESPONSE TO THE AFFIDAVIT OF MR. FRANCIS ROA DE BORJA date July 31, 2008.

As initial reaction to the affidavit of Francis de Borja. I find it not only ridiculous but also incredible. He has absolutely twisted the facts to suit a wicked end.

I vehemently deny that he ever asked me what it takes to inhibit from the case; nor give any reply in the manner that he stated in the affidavit. I NEVER ASKED FOR MONEY.

On the contrary, he told me that he was sent by Manolo Lopez, who was with him in the car because it was a matter of life and death for them. And so they wanted the case to be "ensured". He mentioned about the abuses committed against the Lopezes during the Marcos time and now being done by the Arroyo administration. And so he pleaded for me to accept what he called a "win-win situation of ten million".

What they are doing now is obviously a SMEAR CAMPAIGN. Since they have the money and the resources, they will do all they can to discredit me.

This is only my initial statement. I will hold a press conference at about ten o'clock in the morning tomorrow at my office in the Court of Appeals and detail everything that transpired between me and Mr. Francis Roa de Borja.

31 July 2008

(Sgd.)

JOSE L. SABIO, JR.

ASSOCIATE JUSTICE

COURT OF APPEALS

129. *Rollo* of A.M. No. 08-8-11-CA, 136.
130. Report dated September 4, 2008, Panel of Investigators, p. 44.
131. *Ibid.*, p. 54.
132. *Sabatin v. Mallare*, A.M. No. MTJ-04-1537, March 25, 2004; *Arcenas v. Avelino*, A.M. No. MTJ-06-1642, June 15, 2007.
133. *Ibid.*, pp. 55-57.
134. *Madrid v. Quebral*, A.M. P-03-1744 & 1745, October 7, 2003.
135. *Edaño v. Asdala*, A.M. No. RTJ-06-1974, July 26, 2007.
136. *Padilla v. Asuncion*, A.M. No. 06-44-CA-J.
137. Report dated September 4, 2008, Panel of Investigators, p. 45.
138. *Id.*, pp. 47-49.
139. *Id.*, p. 59.
140. *Id.*, p. 52.