Republic of the Philippines
Sandiganbayan
Quezon City
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SEVENTH DIVISION

MINUTES of the proceedings held on 24 August 2018.

Present:

Hon. MA. THERESA DOLORES C. GOMEZ-ESTOESTA ---------- *Chairperson*
Hon. ZALDY V. TRESPESES ----------*Associate Justice*
Hon. GEORGINA D. HIDALGO ----------*Associate Justice*

The following resolution was adopted:

Crim. Case No. SB-17-CRM-2414 &2415 - People vs. Isabelo J. Maquino, et al.

This resolves the following:

1. Accused Isabelo J. Maquino and Lyndofer V. Beup's "MOTION FOR RECONSIDERATION (By Accused Maquino and Beup)" dated 14 July 2018;[1]

2. Accused Negenia V. Araneta and Noel T. Jaspe's "MOTION FOR RECONSIDERATION" dated 20 July 2018;[2] and

3. The prosecution's "CONSOLIDATED OPPOSITION [TO: MOTIONS FOR RECONSIDERATION BY ISABELO JACULO MAQUINO AND LYNDOFER V. BEUP, AND MA. NEGENIA V. ARANETA AND NOEL T. JASPE]" dated 13 August 2018.[3]

TRESPESES, *J.*

Submitted for the Court's resolution are the motions for reconsideration filed by accused Isabelo Maquino ("Maquino") and Lyndofer V. Beup ("Beup"), and that filed by accused Ma. Negenia V. Araneta ("Araneta") and Noel T. Jaspe ("Jaspe").

MAQUINO AND BEUP'S MOTION FOR RECONSIDERATION

In their motion, accused Maquino and Beup argue as follows:

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[1] *Rollo*, Vol. II, pp. 438-444.
[2] Id. at pp. 445-454.
[3] *Rollo*, Vol. III, pp. 9-19.

1. *Accused Maquino and Beup allege that the questioned resolution failed to resolve accused Beup's motion to quash, adapting the allegations and grounds in Maquino on inordinate delay.*

Accused Maquino and Beup argue that because Beup adopted Maquino's motion to quash, the justifications stated therein apply to Beup. However, Beup has not yet been arraigned. Thus, they claim that the Court only addressed the motion of accused Maquino when it denied the latter's motion to quash on the ground of inordinate delay due to Maquino's prior arraignment.

After quoting a portion of *Tatad v. Sandiganbayan*,[4] they also reiterate that the long delay before the Information was filed was unjustified and the reasons given by the prosecution to justify the delay cannot prevail over accused's right to speedy disposition of their cases.

2. *Accused Maquino and Beup argue that the questioned resolution failed to consider that accused Maquino is not liable for the crimes charged and that a mere technicality cannot prejudice his right to speedy disposition.*

Accused Maquino and Beup contend that the subject projects are lawful and were not disallowed by the Commission on Audit (COA), unlike that in *Joson III v. COA*,[5] where, notwithstanding the COA disallowance, the petition for Certiorari was granted. They conclude that there is, therefore, more reason to exonerate accused.

They repeat that the denial of the Motion to Quash on a simple technicality is prejudicial to Maquino and violates his right to speedy disposition.

3. *Accused Maquino and Beup aver that the Court erred in ruling that the facts charged do not constitute an offense.*

[4] 242 Phil. 563-577 (1988).
[5] G.R. No. 223762, 7 November 2017.

Accused Maquino and Beup claim that there is nothing factual about the allegations in the Information in SB-17-CRM-2414 regarding the elements of the crime.

They claim that the prosecution simply made general averments in the Information to make it appear that the elements of the crime are present or that the facts constitute an offense. They decry that this is unjust and prejudicial to them, and violates their right to be informed of the nature and cause of the accusation against them.

They add that there is nothing unlawful in awarding a project to the winning bidder. Also, the Information did not mention the undue injury which this act caused to the municipality, considering that the projects were properly implemented.

4. *Accused Maquino and Beup assert that the Court erred in not giving credit to the Ombudsman's 15 November 2011 Memorandum declaring accused Maquino to have no foreknowledge of the alleged irregularities and not liable for any wrongdoing.*

Finally, accused Maquino and Beup claim that the Ombudsman's Memorandum dated 15 November 2011 shows that accused Maquino should have been excluded from the present cases. They quote the following:

> The Final Evaluation Report in CPL-V-06-0583 is APPROVED WITH MODIFICATION.
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> xxx **Former Mayor Isabelo Maquino, meanwhile, appears to have no foreknowledge of the existence of irregularities w/c** [sic] **spawned the filing of the subject case. His signature/approval cannot sustain the charge of conspiracy, absent incontrovertible proof of his malicious participation.**
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> **Moreover, the Commission on Audit report neither found Mayor Maquino liable for any wrongdoing.** (Emphasis supplied by accused).

ARANETA AND JASPE'S MOTION FOR RECONSIDERATION

In their motion, accused Araneta and Jaspe emphasized that they adopted accused Maquino's Motion to Quash and reiterated the latter's arguments regarding inordinate delay. They also claim that they filed a reply to the prosecution's opposition, but before the said Reply could be

considered by the Court, the assailed Resolution dated 25 June 2018 was issued.

Accused Araneta and Jaspe argue that the grounds for denying accused Maquino's motion to quash do not apply to them as they have not yet entered their plea.

They went on to recite the chronology of events from the time of the filing of Agustin Sonza, Jr.'s Complaint until the filing of the Informations.

Citing *Coscolluela v. Sandiganbayan*,[6] accused Araneta and Jaspe assert that the eight-year delay in the said case caused the Supreme Court to dismiss the complaint against petitioners due to the Ombudsman's delay in the conduct of the investigation.

They also argue that the Ombudsman's referral of Sonza's complaint to the COA was unjustified because it could have accomplished the investigation just by looking at the Articles of Incorporation of TDMC and FGCI on file with the SEC.

They similarly cite *Tatad v. Sandiganbayan*,[7] as well as *Duterte, et al. v. Sandiganbayan*[8] in illustrating when inordinate delay is present. They conclude that the delay of almost eight years in *Coscolluela*, four years in *Duterte*, almost three years in *Tatad*, and more than six years in *Angchangco, Jr. v. Ombudsman* [9] were considered inordinate and ousts the prosecution of its authority to file the Information, as is the situation in the present case.

PROSECUTION'S CONSOLIDATED OPPOSITION

In its consolidated opposition, the prosecution counters as follows:

1. *There were technical flaws in the motions. Both were filed out of time. Also, counsel for Araneta and Jaspe filed an unsigned pleading.*

The prosecution observed that counsel for accused Araneta and Jaspe received the assailed Resolution on 11 July 2018, and filed their Motion for Reconsideration on 23 July 2018. Meanwhile, counsel for accused Maquino and Beup received the said Resolution on 9 July 2018 and filed their Motion for Reconsideration on 18 July 2018.

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[6] 714 Phil. 55-69 (2013).
[7] *Supra* at note 4.
[8] 352 Phil. 557-584 (1998).
[9] 335 Phil. 766-772 (1997).

The prosecution concludes that both motions were filed out of time, considering that the Revised Guidelines on the Continuous Trial of Criminal Cases limits the filing of a Motion for Reconsideration within a non-extendible period of five (5) calendar days from receipt of the resolution.

The prosecution further noted that in accused Araneta and Jaspe's motion, Atty. Posecion (the only signatory in the pleading) indicated only his 4th Compliance Period details. The prosecution adds that what he should have indicated was his 6th MCLE Compliance Period details.

The prosecution concludes that, not being updated on the MCLE requirement, Atty. Posecion is considered a delinquent member of the bar, citing Bar Matter 850, Rule 13, Section 12 (e) of the MCLE Implementing Regulations. Being prohibited from practicing law, Atty. Posecion cannot represent accused Araneta and Jaspe herein, much less, file pleadings on their behalf. Thus, accused Araneta and Jaspe's motion, signed solely by Atty. Posecion, is deemed an unsigned pleading. Meanwhile, an unsigned pleading is considered a mere scrap of paper, per *Regalado v. Regalado*.[10] A mere scrap of paper deserves scant consideration.[11]

2. *The rulings in Tatad and Joson are inapplicable as the facts therein are very different from that in the instant case.*

The prosecution argues that in merely adopting the motion to quash filed by accused Maquino, accused Beup binds himself to any resolution on the points Maquino raised therein. As accused Maquino entered his plea prior to questioning the Ombudsman' authority to file the Information on the ground of inordinate delay, he is deemed to have waived his right to question the same. If Beup wanted to raise arguments peculiar to his case, he should have filed his own motion to quash.

At any rate, the prosecution emphasizes that the Supreme Court ruling in *Tatad* indicates that mere delay in the preliminary investigation was not the only ground for dismissing the case. The ruling therein shows that "political motivations" and departure "from the established procedures prescribed by law in conducting preliminary investigations" were the important considerations. The three (3) year delay in the preliminary investigation was characterized as oppressive, capricious and vexatious because the complaint therein was about mere non-filing of the SALN.

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[10] 665 Phil. 837-844 (2011).
[11] *Reyes v. People*, G.R. No. 193034, 20 July 2015.

In contrast, the prosecution continues, the charges in the instant case [violation of Section 3(e) of Republic Act No. 3019 (R.A. No. 3019) and violation of Section 65 (b) (3) of Republic Act No. 9184 (R.A. No. 9184)] are much more complex, necessitating referral to the COA, which, unfortunately, did not act promptly.

The prosecution also counters accused Maquino's invocation of *Joson III v. Commission on Audit*[12] in claiming that he has no liability. The prosecution stresses that the issuance of a Notice of Disallowance is an administrative determination by the COA on fiscal matters based on government auditing procedures. It does not involve a determination of probable cause, much less guilt or innocence of the accused for the crimes charged.

3. *The 15 November 2011 Memorandum cited by accused was not approved by the Ombudsman. Hence, it does not have probative value.*

The prosecution points out that the 15 November 2011 Memorandum cited by accused, absolving him from liability, was not approved by the Ombudsman. In fact, the Ombudsman found probable cause to indict him, which led to the filing of the present case.

4. *Accused Maquino's argument that the facts charged in the instant Informations do not constitute an offense has already been addressed in the assailed Resolution.*

In arguing against accused Maquino's insistence that the facts charged in the instant Informations do not constitute an offense, the prosecution points to the assailed Resolution, where the Court outlined the ultimate facts vis-à-vis the elements of the offense before ruling that the Information conformed to the requirements of the Rules and the law.

5. *Accused Araneta and Jaspe's basis for the claim of inordinate delay are inaccurate.*

The prosecution claims that accused Araneta and Jaspe's argument that it took the Office of the Ombudsman eleven (11) years, three (3) months and

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[12] *Supra* at note 5.

twenty-five (25) days to complete the preliminary investigation is inaccurate. They averred that COA's investigation took several years, despite follow ups. Transmittal of pertinent documents to the Ombudsman Central Office also took some time. In addition, deliberations conducted on the liability of the accused also contributed to the delay, which all were reasonable.

OUR RULING

We **DENY** the motions for reconsideration filed by Isabelo J. Maquino and accused Lyndofer V. Beup, and by accused Ma. Negenia V. Araneta and Noel T. Jaspe due to technical defects and for lack of merit.

First, the Revised Guidelines on the Continuous Trial of Criminal Cases[13] explicitly mandates in Part III (c) thereof that a motion for reconsideration of the resolution of a motion to quash (among others enumerated therein) "shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution" and that "(m)otions that do not conform to the above requirements shall be considered unmeritorious and shall be denied outright."

Notably, it is also well-established that when using a private courier, the date of actual receipt of the pleadings by the court is considered the date of its filing. Thus:

> "The Rules provide that pleadings may be filed in court either personally or by registered mail. In the first case, the date of filing is the date of receipt. In the second case, the date of mailing is the date of receipt. Though filing of pleadings thru a private courier is not prohibited by the Rules, it is established in jurisprudence that the date of actual receipt of pleadings by the court is deemed the date of filing of such pleadings, and not the date of delivery thereof to a private letter-forwarding agency."[14] (Underscoring supplied.)

Having received through counsel the assailed resolution on 11 July 2018, accused Araneta and Jaspe had only until 16 July 2018 to file their motion. Records show that accused Araneta and Jaspe mailed their motion for reconsideration by private courier on 20 July 2018, which the Court received only on 24 July 2018. Clearly, accused Araneta and Jaspe's motion was filed way beyond the non-extendible five calendar days given them by the Rules within which to file their motion for reconsideration.

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[13] A.M. No. 15-06-10-SC (Resolution), 25 April 2017.
[14] *Bautista v. Bautista*, G.R. No. 202088, 8 March 2017. *See* also *Heirs of Miranda, Sr. v. Miranda*, 713 Phil. 541-552 (2013) and *Philippine National Bank v. Commissioner of Internal Revenue*, 678 Phil. 660-678 (2011).

Similarly, accused Maquino and Beup's motion for reconsideration, which was received by the Court on the eighth day from accused's receipt of the assailed resolution, is considered as having been filed beyond the prescribed period. Accused Maquino and Beup received through counsel the assailed Resolution on 9 July 2018. Pursuant to Rule 22, Section 1 of the Rules of Court, time shall not run until the next working day if the last day to file the motion fell on a Saturday. [15] Hence, they had until 16 July 2018 to file their motion. Because accused used the services of a private courier, the recognized rule is that the date of filing is the date when the Court actually receives the motion. As the Court received accused Maquino and Beup's motion only on 17 July 2018, the motion was filed late.

Second, we agree with the prosecution that accused Araneta and Jaspe's motion, which indicated their counsel, Atty. Posecion's non-updated (fourth) Compliance Period details,[16] may be expunged from the records. Bar Matter 850 mandates continuing legal education for IBP members as an additional requirement to enable them to practice law. This is "to ensure that throughout their career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law." Non-compliance with the MCLE requirement subjects the lawyer to be listed as a delinquent IBP member.[17] Moreover, Bar Matter No. 1922, dated June 3, 2008, requires "practicing members of the bar to indicate in all pleadings filed before the courts or quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Certificate of Exemption, as may be applicable." It further provides that "[f]ailure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records."

On the merits of the case, accused Beup, Araneta and Jaspe claim that the grounds for denying accused Maquino's motion to quash do not apply to them as they have not yet entered their plea. We rule that their argument is unavailing.

Accused Beup, Araneta and Jaspe cannot expect a separate ruling for their motion to quash after they orally adopted accused Maquino's motion to quash without filing any pleading which states how their circumstances might differ from him. They thereby chose to be bound by the ruling of the Court on Maquino's motion based on the latter's peculiar circumstance.

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[15] Section 1. How to compute time. — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

[16] As the prosecution correctly observed, the present compliance period should pertain to the sixth compliance period and counsel should at least have indicated his fifth compliance period details, not his fourth.

[17] *Cabiles v. Cedo*, A.C. No. 10245, 16 August 2017.

At any rate, accused Beup, Araneta and Jaspe's adoption of Maquino's motion to quash prior to their arraignment does not change the Court's ruling to deny their motion.

Earlier, accused Beup, Araneta and Jaspe's co-accused, Tabuga, raised inordinate delay based on the same factual antecedents in his motion to quash. We deny accused Beup, Araneta and Jaspe's claim of violation of their right to speedy disposition in the same manner, and restate the relevant portion of our 6 April 2018 Resolution in this regard:

> The right to a speedy disposition of a case is a right guaranteed under Section 16, Article III of the 1987 Philippine Constitution. Like the right to a speedy trial, it is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed.
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> The doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of the delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.
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> As to the **first factor** (*length of delay*), Taguba cites various dates in the conduct of the preliminary investigation to show the delay attending the same – i.e.; that the fact-finding investigation was requested by the Office of the Ombudsman-Visayas in February 2007; the Fact-Finding Investigation Report came out only on 22 October 2009; the Complaint-Affidavit and Counter-Affidavits were all submitted in 2013; and the Office of the Ombudsman issued its Resolution only on 2 August 2016. Admittedly, the preliminary investigation for these cases was lengthy. However, mere length of time is insufficient to hold that a violation of the right to speedy disposition has been committed. After all, a mere mathematical reckoning of the time involved is not sufficient and particular regard must be taken of the facts and circumstances peculiar to each case.
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> On the matter of the **second factor** (*reason for the delay*), the records showed that while the Office of the Ombudsman for the Visayas sought the special audit examination of the matter on 23 February 2007, it took several exchanges and follow ups before the Commission on Audit was able to comply with the request by submitting with the Office of the Ombudsman the corresponding Fact-finding Investigation Report on 20 January 2010. A Final Investigation Report was made by the Ombudsman's Visayas Regional Office on 5 January 2011. This, together with the records of the complaint, were received by the Office of the Ombudsman on 22 June 2011. The records further reveal that due to the disagreement on whether accused Maquino should be exculpated from criminal and civil liability, the Final Evaluation Report was drafted several times until a final complaint affidavit was drafted in its final form dated 1 March 2013. Thereafter, the parties

> filed their respective Counter-Affidavits and the Ombudsman issued its Resolution dated 2 August 2016. Accused then filed their motions for reconsideration, which the Ombudsman resolved in its Order dated 19 October 2017. Finally, the corresponding Informations were filed with the Sandiganbayan on 11 December 2017.
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> As may be gleaned from the foregoing, the delay should not be weighed heavily against the State because it does not appear that the Ombudsman intentionally delayed the case to gain some tactical advantage over the defendant or to harass or prejudice him.
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> Regarding the **third factor** (*assertion of the right*), we stress that while it has been held that accused has no legal duty to follow up the resolution of his case, the right to speedy disposition must be still be asserted, because like other rights, it may be waived. However, in the present case, the accused's feeble mention of inordinate delay in his motion, without a concomitant prayer for the dismissal of the case on the ground of violation of his right to speedy disposition, hardly qualifies as an assertion of the right.
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> With respect to the **fourth factor** (*prejudice caused by the delay*), we observe that in his motion, accused Tabuga merely alleged that he "has already been seriously prejudiced by the inordinate and unreasonable delay involved in the instant case." However, he failed to substantiate how he was prejudiced by the claimed delay, and was contented with simply quoting *Coscolluella v. Sandiganbayan.* On this score, we stress that the mere passage of time alone, without a significant deprivation of liberty or impairment of the ability to properly defend oneself, is not absolute evidence of prejudice.
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> At any rate, the right to speedy disposition should not operate to deprive the State of its inherent prerogative to prosecute criminal cases or generally in seeing to it that all those who approach the bar of justice is afforded fair opportunity to present their side.
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> Under the circumstances, there is no basis to rule that accused Tabuga's right to speedy disposition has been violated in a manner that justifies the dismissal of the cases. (Footnotes omitted. Emphases in the original.)

As to the other grounds in accused Maquino's motion to quash, which accused Araneta and Jaspe adopted, a simple perusal of the assailed Resolution shows that Maquino's motion to quash was dismissed not only because he belatedly filed the same after having already been arraigned.

Aside from inordinate delay, accused Maquino's other ground in his motion to quash is that the facts charged do not constitute an offense. Both of these grounds were passed upon by the Court in the body of the assailed Resolution.[18] As indicated in the dispositive portion thereof, the Court denied the "Motion to Quash filed by accused Maquino and adopted by

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[18] *Rollo*, Vol. II, pp. 422-424.

accused Lyndofer V. Beup, Noel T. Jaspe, Ma. Negenia V. Araneta."[19] Clearly, it was the stated intention of the Court for the denial of accused Maquino's motion to quash to bind those who joined the same.

As for accused Araneta and Jaspe's claim that they filed a reply to the prosecution's opposition, but before the said Reply could be considered by the Court, the assailed Resolution dated 25 June 2018 was issued, we find the same irrelevant. As stated in our Order dated 22 May 2018,[20] the Motion to Quash filed by accused Maquino and adopted by accused Beup, Jaspe and Araneta will be deemed submitted for resolution after the lapse of the fifteen (15) day period given to the prosecution to file its comment thereon.

Third, the rest of the arguments of accused movants deserve scant consideration.

Accused Maquino and Beup's reliance on *Joson III v. COA*[21] is misplaced. The said case refers to a ruling of the Supreme Court on the COA's Notice of Disallowance. It finds no application in the present cases, which pertain to alleged violations of Section 3(e) of R.A. No. 3019 and Section 65(b) (3) of R.A. No. 9184.

Regarding accused Maquino and Beup's insistence that the facts charged in the Information do not constitute an offense, we rule that, as correctly observed by the prosecution, this issue has already been sufficiently addressed by the Court in the assailed Resolution.

On accused Maquino and Beup's claim that the Ombudsman's Memorandum dated 15 November 2011 shows that accused Maquino should have been excluded from the present cases, suffice it to state that the final decision of the Ombudsman is to indict Maquino in the charges filed before the Sandiganbayan. It is not sound practice to depart from the policy of non-interference in the Ombudsman's exercise of discretion to determine whether or not to file information against an accused.[22]

Finally, accused movants' reliance on *Tatad v. Sandiganbayan*, and other cases, emphasizing the number of years the preliminary investigation took in each case, is misplaced. As has been held time and again, a mere mathematical reckoning of the time involved is not sufficient and particular regard must be taken of the facts and circumstances peculiar to each case when determining whether the right to speedy disposition has been violated.[23]

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[19] Id. at 430.
[20] *Rollo*, Vol. II, p. 344.
[21] *Supra* at note 11.
[22] *Galario v. Office of the Ombudsman*, 554 Phil. 86-111 (2007).
[23] *Remulla v. Sandiganbayan* (Second Division), G.R. No. 218040, 17 April 2017.

WHEREFORE, premises considered, the Court **DENIES** the Motions for Reconsideration filed by accused Isabelo J. Maquino and Lyndofer V. Beup, and by accused Ma. Negenia V. Araneta and Noel T. Jaspe.

Accordingly, let the arraignments of the following accused proceed as previously set – Raymund E. Tabuga on **10 September 2018**, and Lyndofer V. Beup, Noel T. Jaspe, Ma. Negenia V. Araneta and Felix Q. Gurrea on **28 September 2018, both at 8:30 in the morning.**

Likewise, let the Preliminary Conference on **28 September 2018 at 2:00 in the afternoon** at the Sandiganbayan Library proceed as scheduled.

SO ORDERED.

ZALDY V. TRESPESES
Associate Justice

WE CONCUR:

MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice, Chairperson

GEORGINA D. HIDALGO
Associate Justice