

Republic of the Philippines
Supreme Court
Manila

EN BANC

**IN THE MATTER OF THE
BREWING CONTROVERSIES
IN THE ELECTIONS OF THE
INTEGRATED BAR OF THE
PHILIPPINES.**

A.M. No. 09-5-2-SC

X ----- X
**ATTYS. MARCIAL M. MAGSINO,
MANUEL M. MARAMBA AND
NASSER MAROHOMSALIC,**
Complainants,

A.C. No. 8292

Present:

SERENO, *CJ.*,*
CARPIO,**
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE, and
LEONEN, *JJ.*

- versus -

**ATTYS. ROGELIO A. VINLUAN,
ABELARDO C. ESTRADA,
BONIFACIO T. BARANDON, JR.,
EVERGISTO S. ESCALON AND
RAYMUND JORGE A. MERCADO,**
Respondents.

Promulgated:

DECEMBER 04, 2012

X ----- X

* On Leave.

** Acting Chief Justice per Special Order No. 1384 dated December 4, 2012.

RESOLUTION

MENDOZA, J.:

Subjects of this disposition are the: [1] Resolution Urgently Requesting the Supreme Court to Issue Clarification on the Query of Western Visayas IBP Governor Erwin M. Fortunato Involving the Application of the Rotational Rule in the Forthcoming Elections in his Region¹ (*IBP Resolution*), filed by the IBP Board of Governors (*IBP-BOG*); and the [2] Urgent Motion for Clarification with Prayer for Leave of Court to Admit Motion and to Intervene and for the Issuance of a Temporary Restraining Order² (*Urgent Motion*) filed by Atty. Marven B. Daquilanea (*Atty. Daquilanea*), immediate past president of the IBP-Iloilo Chapter.

The Court shall likewise act upon the Petition-in-Intervention³ filed by the IBP-Southern Luzon Region, regarding its qualification to field a candidate for the position of Executive Vice-President for the 2011-2013 term.

Brief Statement of the Antecedents

On December 14, 2010, the Court resolved the various controversies persistently pestering the various IBP chapter elections in a resolution,⁴ the dispositive portion of which reads:

WHEREFORE, premises considered, the Court resolves that:

1. The elections of Attys. Manuel M. Maramba, Erwin M. Fortunato and Nasser A. Marohomsalic as Governors for the Greater Manila Region, Western Visayas Region and Western Mindanao Region, respectively, for the term 2009-2011 are UPHELD;

¹ *Rollo*, pp. 3281-3285.

² *Id.* at 3259-3268.

³ *Id.* at 3454-3460.

⁴ *Id.* at 2998-3026.

2. A special election to elect the IBP Executive Vice President for the 2009-2011 term is hereby ORDERED to be held under the supervision of this Court within seven (7) days from receipt of this Resolution with Attys. Maramba, Fortunato and Marohomsalic being allowed to represent and vote as duly-elected Governors of their respective regions;

3. Attys. Rogelio Vinluan, Abelardo Estrada, Bonifacio Barandon, Jr., Evergisto Escalon, and Raymund Mercado are all found GUILTY of grave professional misconduct arising from their actuations in connection with the controversies in the elections in the IBP last April 25, 2009 and May 9, 2009 and are hereby disqualified to run as national officers of the IBP in any subsequent election. While their elections as Governors for the term 2007-2009 can no longer be annulled as this has already expired, Atty. Vinluan is declared unfit to hold the position of IBP Executive Vice President for the 2007-2009 term and, therefore, barred from succeeding as IBP President for the 2009-2011 term;

4. The proposed amendments to Sections 31, 33, par. (g), 39, 42, and 43, Article VI and Section 47, Article VII of the IBP By-Laws as contained in the Report and Recommendation of the Special Committee dated July 9, 2009 are hereby approved and adopted; and

5. The designation of retired SC Justice Santiago Kapunan as Officer-in-Charge of the IBP shall continue, unless earlier revoked by the Court, but not to extend beyond June 30, 2011.

SO ORDERED.

In the December 14, 2010 Resolution, the Court once again upheld its Resolution in Bar Matter No. 586, dated May 16, 1991, that the “rotation rule” under Sections 37⁵ and 39⁶ of the IBP By-Laws should be strictly implemented, “so that all prior elections for governor in the region shall be reckoned with or considered in determining who should be the governor to

⁵ Section 37. Composition of the Board. — The Integrated Bar of the Philippines shall be governed by a Board of Governors consisting of nine (9) Governors from the nine (9) regions as delineated in Section 3 of the Integration Rule, on the representation basis of one (1) Governor for each region to be elected by the members of the House of Delegates from that region only. The position of Governor should be rotated among the different Chapters in the region. (As amended pursuant to the Resolution of the Court dated December 14, 2010.)

⁶ Sec. 39. Nomination and election of the Governors. – At least one (1) month before the national convention, the delegates from each region shall elect the Governor for their region, who shall be chosen by rotation which is mandatory and shall be strictly implemented among the Chapters in the region. When a Chapter waives its turn in the rotation order, its place shall redound to the next Chapter in the line. Nevertheless, the former may reclaim its right to the Governorship at any time before the rotation is completed; otherwise, it will have to wait for its turn in the next round, in the same place that it had in the round completed.

be selected from the different chapters to represent the region in the Board of Governors.”⁷

A motion for reconsideration was filed but it was denied by the Court in its Resolution, dated February 8, 2011.⁸

On April 15, 2011, Gov. Erwin M. Fortunato (*Gov. Fortunato*) of IBP-Western Visayas Region wrote a letter⁹ to the IBP-BOG seeking confirmation/clarification on whether “Capiz is the only Chapter in the IBP-Western Visayas Region eligible and qualified to run for Governor in the forthcoming election for Governor.”¹⁰

As the IBP-BOG was unable to reach a unanimous resolution on the matter, it issued the subject IBP-Resolution, urgently requesting the Court to issue a clarification on the query of IBP-Western Visayas Region Gov. Fortunato involving the application of the rotational rule for the next regional election.

On April 29, 2011, Atty. Daquilanea, the immediate past president of the IBP-Iloilo Chapter, filed the subject Urgent Motion likewise seeking clarification on the application of the rotational rule for the election of Governor for IBP-Western Visayas Region for the 2011-2013 term, specifically, whether the IBP-Capiz Chapter would be the only chapter to be allowed to nominate candidates for said election.

On May 3, 2011, upon filing of the subject Urgent Motion and the IBP-Resolution, then Chief Justice Renato C. Corona issued a Temporary Restraining Order¹¹ (*TRO*) suspending the election for Governor of the IBP-Western Visayas Region and directing retired Justice Santiago M. Kapunan

⁷ Id. at 3014-3015.

⁸ Id. at 3240-3242.

⁹ Id. at 3287-3289.

¹⁰ Id. at 3289.

¹¹ Id. at 3243-3246.

(Justice Kapunan), Officer-in-Charge of the IBP and Gov. Fortunato of the IBP-Western Visayas Region to file their respective comments thereon.

On May 31, 2011, the TRO was confirmed *nunc pro tunc* by the Court En Banc.¹²

On May 17, 2011, the majority of the presidents of the various chapters composing the IBP-Western Visayas Region filed their Respectful Comment-in-Intervention,¹³ praying for the lifting of the TRO without prejudice to the resolution on the Urgent Motion.

In its Comment,¹⁴ dated June 2, 2011, the IBP-BOG, through Justice Kapunan, presented the view that with the completion of a rotational cycle with the election of Gov. Fortunato representing Romblon, “all chapters are deemed qualified to vie of the governorship for the 2011-2013 term without prejudice to the chapters entering into a consensus to adopt any pre-ordained sequence in the new rotation cycle provided each chapter will have its turn in the rotation.”¹⁵

Like the IBP, Atty. Daquilanea espoused the view that upon the completion of a rotational cycle, elections should be open to all chapters of the region subject to the exclusionary rule.¹⁶

On June 23, 2011, the IBP-Capiz Chapter filed its Comment-in-Intervention with Motion for Early Resolution,¹⁷ praying for a declaration that it was its turn to serve as Governor for IBP-Western Visayas Region and moving for the early resolution of the controversy.

¹² Id. at 3315-3317.

¹³ Id. at 3309-3314.

¹⁴ Id. at 3325-3329.

¹⁵ Id. at 3328.

¹⁶ Id. at 3318-3323.

¹⁷ Id. at 3339-3348.

Issues for the Court's Consideration

A reading of both the IBP-BOG Resolution and the Urgent Motion discloses that the respective movants are praying that the Court determine whether at the start of a new rotational cycle, nominations for Governor of the IBP-Western Visayas Region are: a] once again open to all chapters subject to the rule on “rotation by exclusion”; or b] limited only to the chapter first in the previous rotation cycle, following the previous sequence or “rotation by pre-ordained sequence.”

The issue, therefore, in the IBP-Western Visayas Region is whether, after the first cycle, the rotation rule will be the rotation by pre-ordained sequence or rotation by exclusion. The rotation by pre-ordained sequence is effected by the observance of the sequence of the service of the chapters in the first cycle, which is very predictable. The rotation by exclusion is effected by the exclusion of a chapter who had previously served until all chapters have taken their turns to serve. It is not predictable as each chapter will have the chance to vie for the right to serve, but will have no right to a re-election as it is debarred from serving again until the full cycle is completed.

As can be gleaned from the records and all pleadings, there is no dispute that the IBP-Western Visayas already completed a full cycle with the election of Gov. Fortunato of Romblon for the 2009-2011 term. The first governor was Eugene Tan of the IBP Capiz Chapter and, later, all chapters were able to serve as governors.

Thus, under the rotation by pre-ordained sequence, only members of the IBP-Capiz Chapter may vie for Governor of the IBP-Western Visayas Region. Under the rotation by exclusion, every chapter in IBP-Western Visayas Region may compete again.

Resolution of the Court

Re: IBP-Western Visayas Region

After an assiduous review of the facts, the issues and the arguments raised by the parties involved, the Court finds wisdom in the position of the IBP-BOG, through retired Justice Santiago M. Kapunan, that at the start of a new rotational cycle “all chapters are deemed qualified to vie of the governorship for the 2011-2013 term without prejudice to the chapters entering into a consensus to adopt any pre-ordained sequence in the new rotation cycle provided each chapter will have its turn in the rotation.” Stated differently, the IBP-BOG recommends the adoption of the rotation by exclusion scheme. The Court quotes with approval the reasons given by the IBP-BOG on this score:

6. After due deliberation, the Board of Governors agreed and resolved to recommend adherence to the principle of “rotation by exclusion” based on the following reasons:

- a) Election through ‘rotation by exclusion’ is the more established rule in the IBP. The rule prescribes that once a member of the chapter is elected as Governor, his chapter would be excluded in the next turn until all have taken their turns in the rotation cycle. Once a full rotation cycle ends and a fresh cycle commences, all the chapters in the region are once again entitled to vie but subject again to the rule on rotation by exclusion.
- b) Election through a ‘rotation by exclusion’ allows for a more democratic election process. The rule provides for freedom of choice while upholding the equitable principle of rotation which assures the every member-chapter has its turn in every rotation cycle.
- c) On the other hand, rotation by pre-ordained sequence, or election based on the same order as the previous cycle, tends to defeat the purpose of an election. The element of choice – which is crucial to a democratic process – is virtually removed. Only one chapter could vie for election at every turn as the entire sequence, from first to last, is already predetermined by the order in the previous rotation cycle. This concept of rotation by pre-ordained

sequence negates freedom of choice, which is the bedrock of any democratic election process.

- d) The pronouncement of the Special Committee, which the Supreme Court may have adopted in AM No. 09-5-2-SC, involving the application of the rotation rule in the previous election for GMR may not be controlling, not being one of the principal issues raised in the GMR elections.

7. Thus, applying the principle of 'rotation by exclusion' in Western Visayas which starts with a new rotation cycle, all chapters (with the exception of Romblon) are deemed qualified to vie for the Governorship for 2011-2013 term without prejudice to the chapters entering into a consensus to adopt any pre-ordained sequence in the new rotation cycle provided each chapter will have its turn in the rotation.¹⁸

The Court takes notice of the predictability of the rotation by succession scheme. Through the rotation by exclusion scheme, the elections would be more genuine as the opportunity to serve as Governor at any time is once again open to all chapters, unless, of course, a chapter has already served in the new cycle. While predictability is not altogether avoided, as in the case where only one chapter remains in the cycle, still, as previously noted by the Court "the rotation rule should be applied in harmony with, and not in derogation of, the sovereign will of the electorate as expressed through the ballot."¹⁹

Thus, as applied in the IBP-Western Visayas Region, initially, all the chapters shall have the equal opportunity to vie for the position of Governor for the next cycle except Romblon, so as no chapter shall serve consecutively. Every winner shall then be excluded after its term. Romblon then joins the succeeding elections after the first winner in the cycle.

¹⁸ Id. at 3327-3328.

¹⁹ Resolution dated December 14, 2010, p. 22.

Re: Query by IBP-Southern Luzon

On July 27, 2012, the IBP-Southern Luzon Region filed its Petition for Intervention,²⁰ seeking a declaration that it was qualified to nominate a candidate for the position of Executive Vice-President for the 2011-2013 term. It argued that since the Court removed its member, Atty. Rogelio Vinluan, as IBP Executive Vice-President for the 2007-2009 term, it should not now be prejudiced and disallowed to vie for the position of Executive Vice-President of the IBP for the 2011-2013 term. To do so would be a violation of the rotational system and the principle of equal rotation among the different regions to lead the IBP.

On September 21, 2012, Gov. Fortunato filed an *Ex Abundanti Ad Cautelam* Vigorous Opposition/Comment,²¹ opposing the position of the IBP-Southern Luzon on the ground that:

- 1] in its December 14, 2010 Resolution, the Court found that it was only the IBP-Western Visayas chapter and the IBP-Eastern Mindanao chapter that had yet to have their turns as Executive Vice-President. Since IBP-Eastern Mindanao, through now IBP President Roan I. Libarios, was elected as the Executive Vice-President, it is only IBP-Western Visayas which is the only region qualified to file a candidate for the 2011-2013 term;
- 2] Section 2, Rule 21 of the Rules of Court allows for intervention only before the rendition of judgment; and
- 3] Atty. Vinluan was actually able to serve his 2007-2009 term as Executive Vice President even if he was later on disqualified by the Court in December 14, 2010 Resolution. To allow IBP-Southern Luzon to vie for the position of Executive Vice President of the IBP for the 2011-2013 term would allow said chapter to serve twice as Executive Vice President since Atty. Raul R. Angangco of IBP Southern Luzon had already served as Executive Vice President for the 1995-1997 term.

²⁰ *Rollo*, pp. 3454-3456.

²¹ *Id.* at 3480-3500.

The Court finds merit in the contentions of both parties, and thus believes that the IBP-BOG should be given its say on the matter pursuant to the dictates of due process.

WHEREFORE, the Court hereby holds that in the IBP-Western Visayas Region, the rotation by exclusion shall be adopted such that, initially, all chapters of the region shall have the equal opportunity to vie for the position of Governor for the next cycle except Romblon.

The Temporary Restraining Order dated May 3, 2011 is hereby lifted and the IBP-Western Visayas Region is hereby ordered to proceed with its election of Governor for the 2011-2013 term pursuant to the rotation by exclusion rule.

The IBP Board of Governors is hereby ordered to file its comment on the Petition for Intervention of IBP-Southern Luzon, within ten (10) days from receipt hereof.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

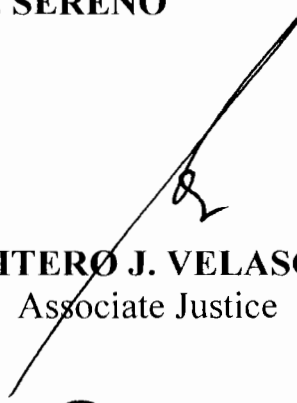
WE CONCUR:

(On Leave)

MARIA LOURDES P. A. SERENO
Chief Justice




ANTONIO T. CARPIO
Associate Justice
Acting Chief Justice



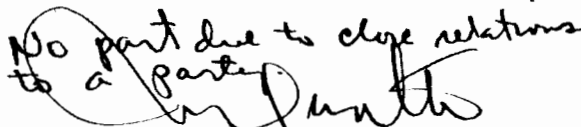
PRESBITERO J. VELASCO, JR.
Associate Justice




TERESITA J. LEONARDO-DE CASTRO
Associate Justice

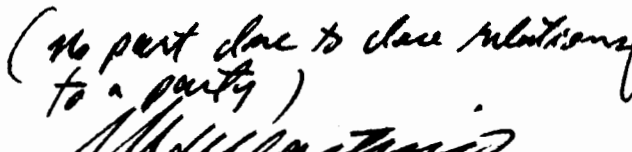



ARTURO D. BRION
Associate Justice

No part due to close relations to a party

DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice

(no part due to close relations to a party)

MARIANO C. DEL CASTILLO
Associate Justice



ROBERTO A. ABAD
Associate Justice




MARTIN S. VILLARAMA, JR.
Associate Justice



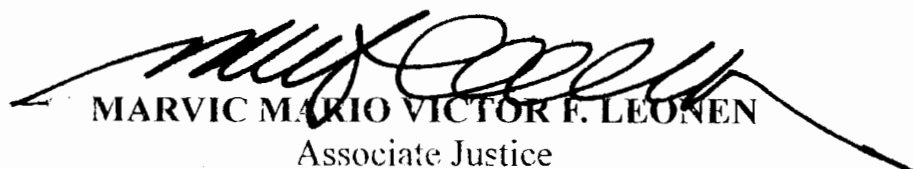
JOSE PORTUGAL PEREZ
Associate Justice



BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice