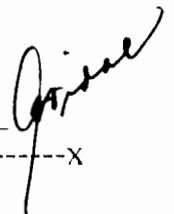


A.M. No. 09-5-2-SC – IN THE MATTER OF THE BREWING CONTROVERSIES IN THE ELECTIONS OF THE INTEGRATED BAR OF THE PHILIPPINES.

A.C. No. 8292 – ATTYS. MARCIAL M. MAGSINO, MANUEL M. MARAMBA AND NASSER MAROHOMSAIC, *Complainants, versus* ATTYS. ROGELIO A. VINLUAN, ABELARDO C. ESTRADA, BONIFACIO T. BARANDON, JR., EVERGISTO S. ESCALON AND REYMUND JORGE A. MERCADO, *Respondents*.

Promulgated:
APRIL 11, 2013



X-----X

SEPARATE CONCURRING OPINION

BRION, J.:

I concur with the conclusion reached by Justice Jose Catral Mendoza that the *IBP-Western Visayas* is not the only region that has not been chosen by the Board of Governors (BOG) for the post of Executive Vice President (EVP) in the current rotational cycle, and cannot therefore automatically claim the EVP position for the 2011-2013 term.

I dispute the positions in Justice Presbitero J. Velasco, Jr.'s Dissent relating to the nature of the rulings of this Court in administrative matters, particularly his application of the doctrine of immutability of judgments, the strict application of the Rules of Court in administrative matters, and all his other arguments proceeding from these premises.

The best and most responsible recourse for the Court to take under the circumstances – taking into account its *constitutional supervisory authority* over the Integrated Bar of the Philippines (IBP), and the already confused IBP electoral history – is to order an election for the EVP position for the 2011-2013 term open to all regions and thereby recognize the start of a new rotational cycle for the IBP pursuant to the December 14, 2010 amendment of Section 47, Article VII of the IBP By-laws.

As a pro-active response of the Court to clear the seeds of confusion that has plagued the IBP and to stress the need for continuing study and consultations between the Court and the IBP on what is best for the organization, I propose the creation of a new continuing IBP Committee in the Court to generally handle the IBP's affairs; to study and suggest recommendations; to take the lead and initiative in efforts concerning the IBP; and to troubleshoot whatever problems may occur, instead of creating a special committee whenever an IBP problem arises.



The IBP

I begin with a brief background of the organizational structure of the IBP, the official organization of all Philippine lawyers (now numbering about 50,000) whose names appear in the Roll of Attorneys of the Supreme Court.¹ The IBP is divided into **nine (9) geographic regions**, namely: “Northern Luzon, Central Luzon, Southern Luzon, Bicolandia, Greater Manila, Western Visayas, Eastern Visayas, Western Mindanao and Eastern Mindanao.”²

Each of these regions is subdivided into Chapters and is represented by a Governor elected by delegates from among the member-Chapters of each region.³ These nine (9) Governors constitute the BOG which governs and has general charge of the IBP’s affairs and activities.⁴ Aside from the Governors, the other national officers of the IBP are: the **IBP President**, the **EVP**, the National Secretary, the National Treasurer, and the heads of the National Committees.⁵

The IBP President, the EVP and the Governors hold office for two (2) years, from July 1 of their first year until June 30 of their second year in office.⁶ After their election to the BOG, the members elect from among themselves the new EVP who – *previous to the recent December 14, 2010 amendments* – automatically and expressly served as the IBP President for the next term.⁷

The IBP President is the Chief Executive Officer of the IBP. He presides over all meetings of the BOG.⁸ The EVP, on the other hand, exercises the powers, functions and duties of the IBP President during the latter’s absence or inability to act, and performs such other functions and duties the IBP President and the BOG may assign to him. The EVP, as an incumbent Governor, is a voting member of the BOG.⁹

The Controversy

The *current controversy*¹⁰ before us directly followed and is related to an earlier controversy – the election of the Governor for the IBP-Western

¹ See: IBP website, available online at <http://www.ibp.ph/history.html> (last visited on February 27, 2012).

² See: Dissenting Opinion of Associate Justice Presbitero J. Velasco, Jr. in *In the Matter of the Brewing Controversies in the Election in the Integrated Bar of the Philippines*, A.M. No. 09-5-2-SC and A.C. No. 8292, December 14, 2010, 638 SCRA 1, 55.

³ IBP By-Laws, Article VI, Section 37.

⁴ IBP By-Laws, Article VI, Section 41.

⁵ IBP By-Laws, Article VII, Sections 47-48.

⁶ IBP By Laws, Article VII, Section 49.

⁷ IBP By-Laws, Article VII, Section 47. *Supra* note 2.

⁸ IBP By-Laws, Article VII, Section 50(a).

⁹ IBP By-Laws, Article VII, Section 50(b). See Dissenting Opinion of Associate Justice Presbitero J. Velasco, Jr. in *In the Matter of the Brewing Controversies in the Election in the Integrated Bar of the Philippines*, *supra* note 2.

¹⁰ Note that, as shown in the discussions, the IBP has had a series of problems, coming one after another, subsumed under the title “Brewing Controversies” docketed as A.M. No. 09-5-2-SC – IN THE MATTER OF THE BREWING CONTROVERSIES IN THE ELECTIONS OF THE INTEGRATED BAR

Visayas for the 2011-2013 term. This earlier controversy posed the question of how the required rotation of the post of Governor should be applied to the IBP member-Chapters in that region.

We resolved this earlier IBP-Western Visayas controversy through our **December 4, 2012 Resolution** in the present Administrative Matter.¹¹ We held that all the chapters in a region shall have the equal opportunity to compete for the position of Governor during one rotational cycle and can only serve once during that cycle; every winning Chapter shall be excluded after serving its term during the cycle, and shall be eligible to serve as Governor only in the next rotational cycle.¹²

In contrast with the earlier local IBP-Western Visayas problem, the current problem affects the IBP *at the national level* as it raises the issue of who should be eligible for election as **EVP** for the current 2011-2013 term. This EVP post, incidentally, is still vacant for the reasons explained below.

The eligibility issue surfaced after **IBP-Southern Luzon** intervened in the present Administrative Matter with the position that the *election for the post of EVP for the current 2011-2013 term should now be open to all regions*.

IBP-Western Visayas opposes the IBP-Southern Luzon's position and maintains that under the IBP's prevailing rotation by exclusion rule, *IBP-Western Visayas is the only region that has not been chosen by the BOG for the post of EVP in the current rotation cycle*, and should thus automatically hold the EVP position for the 2011-2013 term.

At stake in these opposing positions is not only the EVP position for the current 2011-2013 term, but the IBP Presidency for the 2013-2015 term under the IBP's unexpressed rule on succession. At a **deeper level**, however, and from the perspective of IBP history and its best interest, the issue is best expressed as:

Should the Court now recognize the **start of a new rotational cycle pursuant to the December 14, 2010 amendment** of the IBP By-laws and thereby start a new rotational cycle with a *clean slate and unburdened by the confused electoral records of the past*?

OF THE PHILIPPINES and A.C. No. 8292 – ATTYS. MARCIAL M. MAGSINO, MANUEL M. MARAMBA AND NASSER MAROHOMSALIC, *Complainants*, versus ATTYS. ROGELIO A. VINLUAN, ABELARDO C. ESTRADA, BONIFACIO T. BARANDON, JR., EVERGISTO S. ESCALON AND REYMUND JORGE A. MERCADO, *Respondents*.

¹¹ A.M. No. 09-5-2-SC and A.C. No. 8292, December 4, 2012.

¹² *Ibid.*

This formulation poses complicated issues of interpretation, IBP history, objectives and best interests, and requires a **bold and decisive solution** from this Court.

The Primary Governing Law

The logical starting point of this consideration is the source from where the present problem can be traced – *Section 47, Article VII of the IBP By-Laws, as amended by Bar Matter No. 491*. The provision states:

Section 47. *National Officers*. — The Integrated Bar of the Philippines shall have a President and Executive Vice President to be **chosen by the Board of Governors from among nine (9) regional governors, as much as practicable, on a rotation basis**. The governors shall be ex officio Vice President for their respective regions. There shall also be a Secretary and Treasurer of the Board of Governors to be appointed by the President with the consent of the Board. x x x

The Executive Vice President shall automatically become President for the next succeeding term. The Presidency shall rotate among the nine Regions. [emphases ours; italics supplied]

In its December 14, 2010 Resolution in the present Administrative Matter,¹³ the Court *further amended Section 47, Article VII of the IBP By-Laws* by deleting the provision on the election of the President considering that the “IBP no longer elects its President” since “the [EVP] automatically succeeds the President at the end of his term.”¹⁴ The provision, as further amended, now reads:

Sec. 47. *National Officers*. – The Integrated Bar of the Philippines shall have a President, an Executive Vice President, and nine (9) regional Governors. **The Executive Vice President shall be elected on a strict rotation basis by the Board of Governors from among themselves, by the vote of at least five (5) Governors**. The Governors shall be *ex officio* Vice President for their respective regions. There shall also be a Secretary and Treasurer of the Board of Governors.

The violation of the rotation rule in any election shall be penalized by annulment of the election and disqualification of the offender from election or appointment to any office in the IBP.¹⁵ (italics and emphasis supplied)

Interestingly, this new provision – while intending an automatic succession to the Presidency – *does not expressly so provide*.

a. **The Elements of the amended Section 47, Article VII of the IBP By-Laws**

¹³ *Supra* note 2.

¹⁴ *Id.* at 14.

¹⁵ *Id.* at 15.

Broken down to its components, Section 47, as amended, contains the following elements:

1. The IBP shall have a BOG consisting of nine (9) regional Governors, and its national officers shall be the President, the EVP, the Secretary, and the Treasurer, with each member of the BOG serving as *ex officio* Vice-President for their respective regions.
2. **The EVP shall be elected on a strict rotation basis** by the BOG from among themselves, by the vote of at least five (5) Governors.
3. Any violation of the rotation rule shall be penalized by annulment of the election and disqualification of the offender from election or appointment to any office in the IBP.

Elements (1) and (3) do not materially figure in, nor do they contribute to, the controversy. The problem, as has happened in the past, relates to the *element of rotation where its manner is the disputed issue*.

b. Some Questions and Answers

A first basic question that should be answered is: **what position, according to the IBP By-Laws, should rotate?**

The previous version of Section 47, Article VII of the IBP By-Laws (as amended by Bar Matter No. 491) provides the ready and express answer – the Presidency should rotate among the nine (9) regions.

In other words, a rotation *previously* required that all nine (9) regions, through their respective Governors, shall at some time during a rotational cycle take their “turn” as IBP President. This directive was by the express and direct wording of the By-Laws and could not thus be simply disregarded; it was the Presidency that must rotate among the regions, subject only to the “as much as practicable” qualifier.

In other words, the previous rule on rotation was considered *from the prism of the Presidency, not from the prism of the EVP*. This requirement for presidential rotation stood firm until its amendment under the Court’s December 14, 2010 Resolution cited above.

The new amendment now requires that “the EVP shall be elected on a strict rotation basis by the BOG from among themselves.” This means that the EVP position should rotate among the nine (9) regions. Whether the EVP will be the President in the next term, the present By-Laws do not expressly state but this is the intent expressed by the Court in its December 14, 2010 Resolution.

Thus, the rotation rule should now be considered *from the prism of the EVP*, not from the prism of the Presidency; it is now the EVP that must be counted, considered and assured. *The rotation of the Presidency is now only a subsidiary consideration that must bow to the primacy of the EVP's rotation.*

c. Historical Perspectives

How the IBP and the Supreme Court have *actually applied* the rotation requirement is interesting and, to some extent, confusing.

c.i. Evolution of the IBP Electoral System

An overriding consideration in looking at the rotational rule and its application is its origin since rotation has not consistently been the rule in the IBP.

The system of electing IBP Governors and the choice of national officials by the BOG came with the *original IBP By-Laws* in 1973.¹⁶ The *direct system* that then prevailed has been described as follows:

Before, members of the Board were directly elected by the members of the House of Delegates at its annual convention held every other year. The election was a two-tiered process. First, the Delegates from each region chose by secret plurality vote, not less than two nor more than five nominees for the position of Governor for their Region. The names of all the nominees, arranged by region and in alphabetical order, were written on the board within the full view of the House, unless complete mimeographed copies of the lists were distributed to all the Delegates. Thereafter, each Delegate, or, in his absence, his alternate voted for only one nominee for Governor for each Region. The nominee from every Region receiving the highest number of votes was declared and certified elected by the Chairman.¹⁷ (citations omitted)

The Governors elected as described above constituted the House of Delegates that directly elected the National President and Vice President.

c.ii. Bar Matter No. 491

The direct election system was changed after the **1989 IBP national election** that was marred by *massive irregularities*. The matter was brought to this Court and was docketed as **Bar Matter No. 491** which the Court resolved on October 6, 1989. The ruling, made pursuant to the Court's *constitutional supervisory authority* over the IBP, introduced sweeping electoral reforms in the election of the IBP national officers.

Under this ruling, the Court:

¹⁶ See *In the Matter of the Inquiry into the 1989 Elections of the Integrated Bar of the Philippines*, Bar Matter No. 491, October 6, 1989, 178 SCRA 398.

¹⁷ *Garcia v. De Vera*, A.C. No. 6052, December 11, 2003, 418 SCRA 27, 43-44.

(1) *annulled* the results of the 1989 national elections because of the massive irregularities;

(2) *abolished* the direct election of national officers by the House of Delegates;

(3) *restored the former system of having the IBP President and the EVP elected by the BOG from among themselves*, as well as the *right of automatic succession by the EVP to the Presidency* upon the expiration of the IBP President's two-year term; and

(4) *reinstated the rotational rule*.¹⁸

c.iii. The Rotation System

The Court explained in *Garcia v. De Vera*¹⁹ the **rationale for the rotational rule**, as follows:

The changes adopted by the Court simplified the election process and thus made it less controversial. The grounds for disqualification were reduced, if not totally eradicated, for the pool from which the Delegates may choose their nominees is diminished as the rotation process operates.

The simplification of the process was in line with this Court's vision of an **Integrated Bar which is *non-political*** and effective in the discharge of its role in elevating the standards of the legal profession, improving the administration of justice and contributing to the growth and progress of the Philippine society. [emphasis, italics and underscore ours]

Another Court ruling put it more bluntly and succinctly: the rotational rule was primarily instituted “in order to give all the regions and chapters their respective turns, each for a term of two years, to have a representative in the top positions, with the **aim** of *restoring the non-political character of the IBP and reducing the temptation of electioneering for the said posts*.”²⁰

The Court made the rotational rule *under Bar Matter No. 491* operational under the following terms:

4. At the end of the President's two-year term, the Executive Vice-President shall automatically succeed to the office of President. The incoming Board of Governors shall then elect an Executive Vice-President from among themselves. The position of Executive Vice-President shall be rotated among the nine (9) IBP regions. One who has served as President may not run for election as Executive Vice-President in a succeeding election until after the rotation of the presidency among the

¹⁸ Ibid.

¹⁹ Id. at 44-45.

²⁰ *In Re: Compliance of IBP Chapters with Adm. Order No. 16-2007, Letter-Compliance of Atty. Ramon Edison C. Batacan*, A.M. No. 07-3-13-SC, February 27, 2008, 547 SCRA 1, 7-8; emphases, underscore and italics ours.

nine (9) regions shall have been completed; whereupon, the rotation shall begin anew.²¹

In other words, while it was the Presidency that was *expressly* rotated, the rotation was made operational in the election of the EVP because of the rule on automatic succession,

To reflect the reinstatement of the rotational system and the other desired responses to the 1989 election irregularities, the Court under Bar Matter No. 491 ordered the *amendment of Section 47, Article VII of the IBP By-Laws* so that it read as quoted above. As an interim measure, the Court also designated an interim caretaker board²² that conducted the special elections for the Governors of the nine (9) regions.

c.iv. The Operation of the Rotational System

As envisioned, the elected Governors for the 1989-1991 term chose the IBP President and the EVP among themselves and thus *started the implementation of the presidential rotational system*. The members of the 1989-1991 BOG and their represented regions were:

Table No. 1

Elected Governors	Region
Conrado V. Posadas	Northern Luzon
Numeriano G. Tanopo, Jr.	Central Luzon
Yolanda Q. Javellana	Greater Manila
Francisco B. Santiago	Southern Luzon
Mariano M. Sibulo	Bicolandia
Benedicto H. Alo	Eastern Visayas
Eugene A. Tan	Western Visayas
Elias B. Lopez	Eastern Mindanao
Macabangkit B. Lanto	Western Mindanao

The Board elected from among themselves on January 28, 1990 Eugene A. Tan of Capiz, *Western Visayas, as IBP President*, and Numeriano G. Tanopo, Jr. of Pangasinan, *Central Luzon as EVP*. The official records of the IBP indicate that Atty. Tan served as IBP President only from January 28, 1990 to April 1991.²³ Atty. Tanopo succeeded Atty. Tan, initially as Acting President from the latter's remaining April to June 1991 term, and

²¹ *In the Matter of the Inquiry into the 1989 Elections of the Integrated Bar of the Philippines, supra* note 17, at 198.

²² Justice Felix A. Antonio was designated as Interim Caretaker and he served as such from October 19, 1989 to January 27, 1990.

²³ Atty. Eugene Tan **resigned** as IBP President as a result of charges of favoritism or discrimination in the hiring of officers and employees in the IBP and extravagant and irregular expenditure of IBP funds filed by several staff members of the IBP via a letter-complaint with the Chief Justice. In Bar Matter No. 565, dated October 15, 1991, the Court found the actuations of Atty. Tan as constituting grave abuse of authority and serious misconduct in office which would have warranted his removal from office, but in view of the fact that he had earlier tendered his resignation as IBP President and his term of office already expired on June 30, 1991, the Court imposed upon him the penalty of severe censure. See *Villaruel v. Grapilon*, Adm. Case No. 4826, January 27, 1999, 302 SCRA 138, 158-159.

subsequently as President in his own right from 1991-1993 as the 2nd IBP President in the presidential rotational system.

In these lights, *the rotational cycle should be counted from the time of Bar Matter No. 491, when the Court provided for the rotational system and the rule on automatic succession, and called for the election of the IBP President and EVP for the 1989-1991 term.* This term constituted the **first “turn” in the cycle.** Part of this term, of course, was under a caretaker, as a preliminary and preparatory measure under the developments that spawned Bar Matter No. 491.

For easy consideration of how the Bar Matter No. 491 changes actually operated, the tabulation below shows the IBP election developments from the 1989-1991 term up to the present:

Table No. 2²⁴

IBP Term	President	Executive Vice President
1989-1991	1. Eugene A. Tan Western Visayas a. Justice Felix Antonio served as Interim Caretaker (Oct. 19, 1989-Jan. 27, 1990) b. Pres. Tan resigned in <u>April 1991</u> c. EVP Tanopo served as Acting President from April 1991-June 30, 1991	1. Numeriano G. Tanopo, Jr. Central Luzon
1991-1993	2. Numeriano G. Tanopo, Jr. Central Luzon a. July 1, 1991-June 30, 1993	2. Mervin Encanto Greater Manila Area a. July 1, 1991-June 30, 1993
1993-1995	3. Mervin Encanto Greater Manila Area a. July 1, 1993-June 30, 1995	3. Raul R. Angangco Southern Luzon a. July 1, 1993-June 30, 1995
1995-1997	4. Raul R. Angangco Southern Luzon a. July 1, 1995-June 30, 1997	4. Jose Aguila Grapilon Eastern Visayas a. July 1, 1995-June 30, 1997
1997-1999	5. Jose Aguila Grapilon Eastern Visayas a. July 1, 1997-June 30, 1999	5. Arthur Lim Western Mindanao a. July 1, 1997-June 30, 1999
	6. Arthur Lim Western Mindanao a. July 1, 1999-June 30, 2001	6. Teopilo Pilanto, Jr. Northern Luzon a. July 1, 1999-June 30, 2001
2001-2003	7. Teopilo Pilanto, Jr.	7. Jose Anselmo Cadiz

²⁴

Term with controversy.

	Northern Luzon a. July 1, 2001-June 30, 2003	Bicolandia a. July 1, 2001-June 30, 2003
2003-2005	8. Jose Anselmo Cadiz Bicolandia a. July 1, 2003-June 30, 2005	8. Leonard de Vera Eastern Mindanao a. <i>July 1, 2003-removed from office on May 13, 2005 as Governor and EVP.</i> b. <i>Replaced by <u>Jose Vicente Salazar</u> (Bicolandia) for the rest of the term.</i>
2005-2007	9. Jose Vicente Salazar Bicolandia <i>August 2006-June 30, 2007</i> a. <i>Jose A. Cadiz initially served as Holdover President while case was pending (July 1, 2005-Aug. 2006)</i> b. <i>Assumed office in August 2006 up to June 30, 2007</i>	9. Feliciano Bautista Central Luzon a. July 1, 2005-June 30, 2007
2007-2009	10. Feliciano Bautista Central Luzon a. July 1, 2007-June 30, 2009	10. Rogelio Vinluan Southern Luzon a. <i>July 1, 2007-June 30, 2009</i> b. <i>Committed election irregularity in April 2009 but still served out his term as EVP</i> c. <i>In the Court's ruling of Dec. 14, 2010, was declared unfit to assume the Presidency for the 2009-2011 term.</i>
2009-2011	11. Justice Santiago Kapunan Caretaker a. served out the whole 2009-2011 term	11. Roan Libarios Eastern Mindanao a. July 1, 2009-June 30, 2011
2011-2013	12. Roan Libarios Eastern Mindanao a. July 1, 2011- Present	12. Vacant - Still Disputed

d. The Seeds of Confusion

***d.i. The First Seed of Confusion:
The De Vera EVP Term***

Counting from the Presidency of Atty. Tan of IBP-Western Visayas, the presidential rotation followed the following pattern and succession:

1. Western Visayas – Eugene Tan, 1989-1991
2. Central Luzon – Numeriano Tanopo, Jr., 1991-1993

3. Greater Manila – Mervin Encanto, 1993-1995
4. Southern Luzon – Raul Angangco, 1995-1997
5. Eastern Visayas – Jose Grapilon, 1997-1999
6. Western Mindanao – Arthur Lim, 1999-2001
7. Northern Luzon – Teofilo Pilanto, Jr., 2001-2003
8. Bicolandia – J. Anselmo Cadiz, 2003-2005

leaving only one region – Eastern Mindanao – without any IBP President from among the nine (9) regions; its ***turn as IBP President in the 2005-2007 term*** would have completed the rotation that Bar Matter No. 491 ushered in. The failure to complete the rotation was not due to any defect in the system, however, as Atty. Leonard De Vera was in fact elected the EVP for Eastern Mindanao for the IBP 2003-2005 term and *would have been IBP President for the 2005-2007 term, had he not been removed as Governor and EVP very shortly before his term as EVP ended.*

In *Velez v. Atty. De Vera*,²⁵ the Court dealt with the issue of whether the replacement of Atty. De Vera as EVP should come from Eastern Mindanao to preserve the rotation rule under Section 47, Article VII, of the IBP By-Laws. The Court replied in the negative and held that *the rotation rule had been completed despite the non-assumption of Atty. De Vera to the IBP Presidency.* The ruling held that:

In Bar Matter 491, it is clear that it is the position of IBP EVP which is actually rotated among the nine Regional Governors. The rotation with respect to the Presidency is merely a result of the automatic succession rule of the IBP EVP to the Presidency. Thus, the rotation rule pertains in particular to the position of IBP EVP, while the automatic succession rule pertains to the Presidency. The rotation with respect to the Presidency is but a consequence of the automatic succession rule provided in Section 47 of the IBP By-Laws.

In the case at bar, the rotation rule was duly complied with since upon the election of Atty. De Vera as IBP EVP, each of the nine IBP regions had already produced an EVP and, thus, the rotation was completed. It is only unfortunate that the supervening event of Atty. de Vera's removal as IBP Governor and EVP rendered it impossible for him to assume the IBP Presidency. The fact remains, however, that the rotation rule had been completed despite the non-assumption by Atty. de Vera to the IBP Presidency.²⁶ (emphases ours)

By this ruling, the Court itself appear to have planted **the first seed of confusion** *by separately considering the rotation system and the matter of presidential succession, thereby disregarding the express wordings of the IBP By-laws.*

How and why Atty. De Vera was removed from the position of EVP is an interesting tale that should be told in order to fully appreciate the Court's ruling.

²⁵ *Supra* note 16.

²⁶ *Id.* at 811.

In the 20th regular meeting of the BOG held on May 13, 2005 at the Waterfront Hotel in Cebu City, the BOG, by a 2/3 vote, resolved to remove Atty. De Vera as member of the BOG and as EVP under a Resolution that mainly cites “*the untruthful statements, innuendos and blatant lies in public about the Supreme Court and members of the IBP Board of Governors*” that Atty. De Vera uttered during the plenary session of the IBP 10th National Convention in relation to the decision of the BOG to withdraw the petition docketed as “*Integrated Bar of the Philippines, Jose Anselmo Cadiz, et al. v. The Senate of the Philippines, et al.*, SC-GR 165108.” These acts were also cited as bases for the disbarment proceedings against Atty. De Vera.²⁷

In EVP De Vera’s stead, the BOG installed IBP Governor Pura Angelica Y. Santiago (of Southern Luzon) as EVP. Atty. De Vera immediately protested the election of Atty. Santiago who responded by voluntarily relinquishing her EVP position through a letter to the BOG.

On June 25, 2005, the BOG elected IBP Governor Salazar of Bicolandia as the new EVP to replace Atty. Santiago.²⁸ With the election of Atty. Salazar of Bicolandia, *Eastern Mindanao effectively lost its chance to claim the IBP Presidency by succession in the 2005-2007 term. In this manner the system of rotation and succession then in place was derailed.*

***d.ii. The Second Seed of Confusion:
The Cadiz & Salazar Presidencies***

In the subsequent 2005-2007 IBP term (that should have been Eastern Mindanao’s turn in the Presidency), EVP Salazar did not immediately assume the post of IBP President (in light of the legal controversy that attended his assumption as EVP), and Atty. Jose Anselmo Cadiz served as holdover President until a new President was chosen and qualified.

The elected *EVP for the 2005-2007 term – Atty. Feliciano Bautista of Central Luzon (who should have been the EVP of an Eastern Mindanao President)* – protested this arrangement, leading the Court to rule in *A.M. No. 05-7-19-SC* in favor of Atty. Cadiz as *interim holdover President*. The Court cited Section 49 of the IBP By-Laws that the outgoing IBP President shall continue to hold office until his successor is chosen and qualified. At the same time, the Court ordered the elected EVP for the term to cease exercising the powers and functions of the Acting IBP President.

In *Velez v. Atty. De Vera*,²⁹ the Court confirmed Atty. Salazar’s election by the BOG as EVP for the remainder of Atty. De Vera’s 2003-2005 term. As a consequence, Atty. Salazar of the Bicolandia Region succeeded to the Presidency for the 2005–2007 IBP term (August 2006 to June 30, 2007) –

²⁷ Id. at 775-776.

²⁸ Id. at 779.

²⁹ *Supra* note 16.

the term that should have been Eastern Mindanao's under the prevailing systems of rotation and succession, had De Vera continued in his 2003-2005 EVP post and succeeded to the Presidency in the 2005-2007 term.

The Court's *Velez* conclusion was apparently not a very precise one; despite the disruption of the rotational system by Atty. De Vera's removal as EVP and his consequent failure to succeed to the IBP Presidency, the Court still concluded that with the election of Atty. De Vera as EVP, each of the nine (9) regions had already produced an EVP so that the rotational cycle had been completed.

This conclusion based its consideration *from the prism of the EVP* and in this sense ran counter to the express terms of Section 47, as amended by Bar Matter No. 491. It could have only been correct if it proceeded from the *implied premise* that with the election of Atty. De Vera to the EVP post in the 2003-2005 term, the 2005-2007 Presidency could have been Eastern Mindanao's as Atty. De Vera should have succeeded to this post had it not been for his removal from office. Based on this line of reasoning, the Court would still have impliedly counted the rotation from the prism of the Presidency.

Another implied premise in the Court's conclusion was the counting of the rotational cycle from the Presidency of Atty. Eugene Tan in the 1989-1991 IBP term. While the basis for the count was correct, the Court did not express its reason in the manner demanded by *the wording of the IBP By-laws, as amended by Bar Matter No. 491*. The Court – apparently looking at the *operational side of the rotation and not at the requirements of Bar Matter No. 491 amendment* – expressed its conclusion in terms of the completion of the rotational cycle with the election of Atty. De Vera *as EVP*.

The *Velez* seed of confusion further grew when the Court, while recognizing the completeness of the rotational cycle with the election of Atty. De Vera *as EVP in 2003-2005*, did not expressly declare that a *new rotational cycle for EVP* started under the 2005-2007 term of President Salazar. This declaration, had one been made, would have effectively recognized that a *new presidential rotation* was to take place by succession starting from the 2007-2009 term.

With *Velez* as the basic premise and take off point, ***the choice for the EVP for the 2005-2007 IBP term should have been open to all regions to usher in a new round of presidential rotation in the 2007-2009 IBP term.*** This was the term of Atty. Feliciano Bautista as the 2005-2007 EVP, making him the first EVP in the 2nd rotational cycle *from the prism of the EVP post*, and, by succession, the first President in the 2nd *presidential rotational cycle* in 2007-2009 IBP presidential term.

***d.iii. Further Seeds of Confusion:
The Ghosts of 1989 in 2009***

Under Atty. Bautista of Central Luzon's Presidency in the 2007–2009 IBP term, Atty. Rogelio Vinluan of Southern Luzon was elected as EVP without any accompanying controversy. In the regular course, EVP Vinluan would have assumed the presidency for the 2009–2011 term, but another election controversy intervened immediately before the end of the Bautista Presidency, *i.e.*, immediately before EVP Vinluan succeeded as President.

In the election of 2009 (held on April 25, 2009), six members of the BOG were proclaimed without any question. They were: Atty. Ma. Milagros N. Fernan-Cayosa (Northern Luzon); Atty. Ferdinand Y. Micalat (Central Luzon); Atty. Amador Tolentino, Jr. (Southern Luzon); Atty. Jose V. Cabrera (Bicolandia); Atty. Roland B. Inting (Eastern Visayas) and Atty. Roan Y. Libarios (Eastern Mindanao).³⁰

The results of the election of the other Governors, namely: Attys. Manuel M. Maramba of Greater Manila, Erwin M. Fortunato of Western Visayas, and Nasser A. Marohomsalic of Western Mindanao, were held in abeyance because of the **controversy that attended the Greater Manila election for Governor.**

In resolving this controversy at the BOG level, certain officials in the 2007-2009 term (who were still in office prior to the turnover to the officials for the incoming 2009–2011 term) acted on their own by holding *a special meeting presided over by EVP Vinluan*, in defiance of the authority of 2007-2009 IBP President Bautista. In this special meeting, they proclaimed Atty. Elpidio Soriano as the Governor for Greater Manila.³¹ This move was contested and came to this Court under the present Administrative Matter – *Magsino, et al. v. Vinluan, et al.*, A.C. No. 8292 and A.M. No. 09-5-2-SC.³²

In its **Resolution of December 14, 2010**, the Court, among others, confirmed the election of Governors Maramba, Fortunato and Marohomsalic; called for a special election for the position of EVP for the 2009-2011 term; found 2007-2009 officials EVP Vinluan, and Governors Abelardo Estrada, Bonifacio Barandon, Evergisto Escalon, and Raymund Mercado guilty of grave professional misconduct, and disqualified them from holding any IBP position in any future election; and declared EVP Vinluan unfit to hold his position and unqualified to assume the office of IBP President for the 2009-2011 term. The Court likewise designated retired Supreme Court Justice Santiago Kapunan as Office-in-Charge of the IBP until June 30, 2011.³³ The Court decreed as well the further amendment of Section 47, Article VII of the IBP By-Laws, quoted above.

³⁰ *Supra* note 2, at 24-25.

³¹ *Ibid.*

³² *Ibid.*

³³ *Id.* at 38-39.

***d.iv. The 2009-2011 Caretaker Term:
The Ailing IBP***

The 2009-2011 can be described as ailing, not because of the caretaker or Officer-in-Charge, retired SC Justice Santiago Kapunan, but because of the unusual character of that term.

The term of the regular President for the 2009-2011 term should have started on July 1, 2009, but there was no President in place at that time. Neither was there any Executive Vice President as none had been elected in light of the incomplete composition of the BOG that resulted from the 2009 election controversy. The ruling of the Court on the controversy was not also immediately forthcoming. It was not until December 14, 2010 or seventeen (17) months of the 24-month term that the Court resolution came.

In the special election for the position of EVP for the 2009-2011 term, Atty. Roan Libarios of Eastern Mindanao was elected. His election came a short six (6) months before the end of the 2009-2011 term so that he was only effectively there to be President for the 2011-2013 term. Not to be forgotten at this juncture is that the Court also further amended Section 47, Article VII of the IBP By-Laws.

This was effectively the situation under which EVP Libarios took over as President on July 1, 2011. The IBP was not dead as the resurrected Lazarus of biblical fame had been, but it was an ailing organization that continued to be bedeviled by earlier-planted seeds of confusion.

***d.v. The Libarios 2011-2013 Term:
Incomplete Normalcy***

The Libarios presidency was a period generally characterized by a return to normalcy, except for the lingering uncertainty that the Western Visayas regional governorship controversy brought with it. The Western Visayas regional election, supposed to be held on May 7, 2011, was the subject of a Temporary Restraining Order from the Court and no election was held on that day.

This is the problem that was first mentioned in the opening of this Separate Opinion as the controversy that ushered in the rotational issue, albeit at the local level and one that had since been resolved. On the heels of this resolved regional problem came the present national rotational issue on who can run for the EVP position for the 2011-2013 term.

SOLUTIONS AND CONCLUSIONS

At this point, a completely legalistic solution may leap out of the recital of the laws involved and the attendant factual developments. The problem before the Court, however, is not a controversy that a completely

legalistic approach would fully resolve. It does not involve the usual exercise of adjudicative power over justiciable controversies; it is not a dispute where the Court stands as a third party to the problem, *i.e.*, a third party whom the disputing parties approached for an authoritative ruling and who would then leave the parties to themselves after it renders a ruling.

The Court's rule in the present controversy is closer to that of a direct participant than to that of an impartial third party judge or arbitrator. In a very real sense, it is a participant as it cannot choose to dissociate or distance itself from the problem, from the solutions, and from the consequences of the actions it has taken or will take on IBP matters.

The IBP is a mandatory association of Philippine lawyers and all Members of the Court, as a requirement of the Constitution and of the judicial positions they hold, are members of the IBP. The same Philippine Constitution also imposes direct duties on the Court; it exercises mandatory regulatory and supervisory powers over the IBP as well as over all the members of the organization. These are not simply powers but duties on the part of the Court. Pursuant to this power and duty, the Court has acted on the IBP By-laws and the regulation of its activities, in fact, over the same problems that spawned the present controversy; in fact, the Court may have had its own lapses in resolving these problems.

From these perspectives, the resolution of the present controversy is not simply a matter of direct application or interpretation of the laws or of the rules utilizing legal as norms, principles and rules of procedures. The present controversy requires, more than anything else, the use of *foresight, wisdom, lessons learned from experience and history, a good feel for the objectives and purposes of the IBP, and to a large extent, a sense of mission for the organization and for the nation that the IBP and all its members are sworn to serve.*

For these reasons, the various aspects of the present controversy ought to be examined closely without omitting or glossing over any matter offered as a solution. It is in this spirit that the various options and even the positions taken by the Dissent are examined below.

A. The First Option – to Adopt and Apply the Velez ruling.

The first region to avail of its turn under the Bar Matter No. 491 rotational cycle, as shown by Table 2 above, was **Western Visayas** with the election of Atty. Tan as President and Atty. Tanopo of Central Luzon as EVP. This starting point is as a *given*, having been the first election decreed under Bar Matter No. 491 without any expressed qualification or terms of limitation. Specifically, the Tan Presidency was never, impliedly or expressly, considered a temporary or a transitional term under Bar Matter No. 491. It was simply the starting point of the presidential rotation that Bar Matter No. 491 established and should likewise be considered as the starting

point for consideration in resolving the various aspects of the present controversy.

Under this premise, the first full round of rotation should have been completed with the Presidency of Eastern Mindanao in the 2005-2007 term, ushered in, under the rules on succession, by the election of Atty. De Vera of Eastern Mindanao as EVP for the 2003-2005 term. Both the rules on succession and rotation would then have been totally satisfied under the original terms of Section 47, Article VII of the By-laws, as amended by Bar Matter No. 491.

The *Velez* ruling, unfortunately, only declared the rule on rotation completed and satisfied upon Atty. De Vera's *election as EVP* and omitted to state that it would have effectively ushered in Eastern Mindanao's Presidency through succession in the following 2005-2007 term. Recall on this point that the original By-laws expressly required that it was the Presidency, not the EVP position that had to be rotated so that there was effectively a three-stage process leading to the rotation. First, there is the election of the EVP, then his or her succession, and finally, the assumption to the presidency and rotation. *Velez* only provided for the first stage and in this sense, was incomplete in its terms and explanation.

The incompleteness, however, does not necessarily lead to the invalidity of the *Velez* ruling as it was still partially correct, *i.e.*, if the ruling would be understood in the sense that the 2005-2007 Presidency would have been an Eastern Mindanao turn that simply did not happen because of the removal of the duly elected EVP for Eastern Mindanao in the previous 2003-2005 term. In other words, the De Vera election as EVP was a reality that could not be erased but was not only carried to completion.

From this perspective, the **EVP for the 2005-2007** term (*i.e.*, the EVP who served under what would have been an Eastern Mindanao Presidency) can still be recognized as the Vice Presidency that ushered in the new presidential rotation that would have been served in the 2007-2009 term. This 2005-2007 EVP and 2007-2009 President was Atty. Feliciano Bautista. Under this view, ***the 2005-2007 EVP election should have been open to all regions as it was the EVP post that would have ushered in a new presidential rotation in the 2007-2009 IBP term.***

With the Bautista election as EVP in the 2005-2007 term and his Presidency in 2007-2009 as the starting points, the **IBP-Western Visayas' position** that it should automatically get the 2011-2013 EVP post clearly **fails**.

It must necessarily fail as – *starting from Atty. Bautista of Central Luzon in 2005-2007* – only two other EVPs have been elected, namely: ***Atty. Vinluan of Southern Luzon*** (who would have been disqualified as EVP were it not for the completion of his term as such, and who was declared

unfit to assume the Presidency in the 2009-2011 term) and *Atty. Libarios of Eastern Mindanao* for the 2009-2011 term.

The **South Luzon position** that the 2011-2013 should be open to all regions similarly fails. With Eastern Mindanao excluded because it cannot serve successive presidencies (i.e., 2011-13 and 2013-15), *all regions other than Central Luzon, Southern Luzon and Eastern Mindanao, can compete for the 2011-2013 EVP post*. This is far from the completely open election that South Luzon advocates. Likewise, the EVP post should still be open to six other regions, not only to Western Visayas.

Thus, both the Western Visayas and South Luzon positions must fail if a properly viewed and understood Velez ruling would be followed. To this extent, I concur with the *ponencia* of Justice Mendoza.

I draw a limit however to the disposition of the present Administrative Matter based on *Velez* ruling even if this ruling is viewed and understood as discussed above. The simple reason for this position is that a *Velez*-based disposition is not the best ruling that this Court can make because of the gaps and the seeds of confusion that *Velez* generated. These seeds can only germinate and sow the wind with further confusion if adopted by this Court. In other words, a disposition based on *Velez* is far from the *wise, reasonable* and *sober* ruling that the Court's relationship with the IBP and its duties under the Constitution demand.

B. The Second Option – Open the 2011-2013 EVP Election Open to All Regions by Considering the Present Term of Eastern Mindanao as the Completion of the Rotation that Started in the 1989-1991 Term.

Despite the amendment of Section 47, Article VII of the IBP By-Laws on December 14, 2010 mandating a rotation rule viewed *from the prism of the EVP*, the Court cannot ignore the reality that prior to the present amendment (i.e., from 1989-1991 term until December 2010), the **prevailing rule** was the rotation of the Presidency among the regions, i.e., the rotational rule must be considered from the prism of the Presidency and not of the Vice-Presidency.

This previous rule on rotation stood firm until its amendment only on December 14, 2010 - way into Atty. Libarios' EVP term or only six months before his EVP term ended on June 30, 2011.

Note in this regard that *prior to the present amendment*, the first rotational cycle would have been completed in the 2005-2007 term with the Presidency of Eastern Mindanao but no Eastern Mindanao Presidency actually came to pass. Note, too, that separately from the rule on presidential rotation, the By-Laws also provided for succession; the presidential rotation was carried out through the succession of the previous term's EVP to the Presidency.

Since Eastern Mindanao had not had its “turn” at the IBP Presidency (as the succession of its EVP did not take place) until the term of Atty. Libarios as President, the **second option open to the Court** is to consider the first cycle of presidential rotation completed only by the current Presidency of Atty. Libarios. This option proceeds *from the following premises*:

(1) Bar Matter No. 491 lays down the starting point of the IBP’s system of rotation *from the prism of the Presidency* under an arrangement that calls for the succession of the EVP to the Presidency; and

(2) these rules on rotation and succession prevailed until the amendment of Section 47, Article VII of the IBP By-Laws on December 14, 2010, decreeing the rotation of the EVP position but without any express reference to the rule on succession;

(3) the recent amendment of Section 47, Article VII of the IBP By-Laws should be interpreted prospectively so that it would take effect from the 2011-2013 term – the first turn in the EVP rotation; and

(4) the Court would further amend the By-Laws to restore the automatic succession of the EVP to the post of President effective 2011-2013.

This option means that both the Presidency of Bicolandia (IBP President Salazar) and the subsequent term of Central Luzon (IBP President Bautista) should be considered by this Court – if it were to really uphold fairness, the principles of Bar Matter No. 491, and the then prevailing terms of Section 47, Article VII of the IBP By-Laws – to be ***aberrant developments for purposes of the system of succession and rotation*** as they sidetracked what should have been these systems’ smooth and proper implementation.

To be sure, these intervening presidencies can possibly be justified – ***from the non-rotational and practical perspectives*** – by the qualifier “*as far as practicable*” pointed out above; this interpretation is, in fact, the only justification available to support the Court’s actions in the election of Salazar as EVP and his succession to the Presidency in 2005-2007 term.

The consequence though that cannot be denied under this view is that ***the 2011–2013 term of IBP President Libarios of Eastern Mindanao is that region’s only “turn” at the Presidency and is thus the only turn that effectively completes the 1st presidential rotational cycle that started with IBP President Tan in the 1989 –1991 term under Bar Matter No. 491.*** No rotation can simply be complete unless all the regions have taken their “turns” at the Presidency – the position that matters under the terms of Section 47, Article VII of the IBP By-Laws prior to 2010.

Thus, while the Bicolandia 2005-2007 and Central Luzon 2007-2009 terms in the Presidency may find justification, for practical purposes, under the cover of the above qualifier, they remain *aberrant terms* because of their effects on the system of succession and rotation, and *should be simply disregarded for purposes of the rotational rule*. Of course, these regions were not in any way at fault; they simply followed the then current Supreme Court rulings. But at this later point, when we already act with the benefit of experience and hindsight, *in a balancing test* between the start of a new rotation cycle under the Bicolandia 2005-2007 presidency and a new beginning *after* the 2011–2013 Eastern Mindanao Presidency, the balance should tilt in favor of the latter after considering:

- the wording of the IBP By-Laws prior to their amendment in 2010;
- the nature and character of the irregularities, distortions and uncertainties that the rotation system seeks to address;
- the long term effects of a Court ruling giving primacy to the strict application to the rotation rule (already signaled by the Court’s December 14, 2010 ruling in the present Administrative Matter);
- the fairness that this Court accords to Eastern Mindanao by its recognition of the turn of this Region in the IBP’s first rotational cycle; and
- the opportunity for a very smooth and seamless transition in the implementation of the newly amended Section 47; the Court is now offered the unique opportunity of implementing the amended Section 47 without the need for any disruptive transitional measures since the 2011-2013 EVP position is vacant.

With the terms of Attys. Salazar and Bautista disregarded *for purposes of the rotational rule*, President Libarios effectively becomes the 9th President whose term completes one full presidential rotation, where each region had been given a “turn” at the Presidency. Thus, Bar Matter No. 491 – valid and effective up to December 14, 2010 – has been completely complied with.

B.1. A New Beginning under the Second Option.

To *start the next cycle of rotation* from the **prism this time of the EVP position and to do this prospectively**, the rotation must start from the 2011-2013 term – the term immediately following the December 14, 2010 amendment, whose EVP still needs to be elected. Automatic succession to the Presidency will likewise start but this will have to actually take place in the 2013-2015 term as succession speaks of a future event reckoned from the effectivity of the EVP rotation in 2011-2013.

Thus, the choice of EVP who would serve with President Libarios in the 2011-2013 term should be open to all regions, except only for Eastern Mindanao which cannot serve as President for two (2) consecutive terms. This is the unique opportunity that is open to the Court as the present 2011-2013 EVP position is vacant. Notably, no region would be prejudiced as all regions have at this point served their respective turns in the Presidency.

To sum up the discussions above, the completion of one rotation through the “turn” of the 9th region to the Presidency, and the start of a new system of rotation through the EVP rotation, mean that:

- *The 2011-2013 Presidency of President Libarios will end the rotation of Presidency as decreed under Bar Matter No. 491.*
- *The 2011–2013 term will signal and count as the start of the new rule on strict rotation of the EVP position; this will be the first turn in the EVP rotation.*
- Elections can be held without need of any special transitory measures as the *post of EVP for the 2011-2013 term remains vacant.*
- *The 2011–2013 EVP should be chosen at large among the remaining eight regions (i.e., excluding the region of the 9th President since this will be the first turn for the EVP position and since the Presidency should not come in succession from the same region).*
- *The 2011–2013 EVP will automatically succeed to the position of President for the 2013–2015 term (effectively the start of a new turn from the prism of the Presidency); the Court though still needs to put an automatic succession provision in place after its deletion under the December 14, 2010 amendment.*

This conclusion is fully in accord with the conclusion of Justice Jose Catral Mendoza, based on his parallel reasoning on the matter. I submit that this is the most **sound, fair, reasonable and practical** conclusion under the circumstances.

To reiterate, it is fully **in accord with and fully respects the rotation and succession systems** that Bar Matter No. 491 dictated, while at the same time **seamlessly blending the old rule with the new terms of Section 47, Article VII of the IBP By-Laws, as amended.**

Most importantly, this option essentially fosters a **fair** result as it has respected the right of all IBP regions to serve the EVP and the Presidency, and at the same time gives the IBP a **fresh start** at another round of rotation with clearer terms. More than all these, by its insistence on the rule of

rotation and that all regions should serve their “turns,” it signals **the Court’s strong commitment to the rotational rule.**

C. Refutation of Justice Velasco’s Dissent

The Dissent essentially posits that Western Visayas should automatically be entitled to the 2011-2013 EVP position as the only region that has not served as EVP – a conclusion that no less than this Court has recognized in its December 14, 2010 Resolution. It defends this position through the invocation of technical arguments, particularly, the immutability of the Court’s judgment, estoppel, the impropriety of South Luzon’s intervention, and finally, the correctness in computing the 1st round of presidential rotation.

The Dissent particularly emphasizes that intervenor IBP-Southern Luzon seeks to re-open and set aside the Court’s December 14, 2010 Resolution that had long attained finality and immutability and that has been partially executed with the election of Atty. Libarios as EVP for the 2009-2011 term. It maintains that there has been no decision or resolution in the Court’s history that annulled its previous final decision which was not based on a motion for reconsideration filed within the fifteen-day period to appeal the decision; the cases of *Apo Fruits* and *Keppel* are not controlling since the parties therein filed their motions for reconsideration within the fifteen-day period.

The Dissent’s concerns are more specifically outlined below.

First, it argues that the petition for intervention filed by IBP-Southern Luzon after the finality of the Court’s December 14, 2010 Resolution violates Section 2, Rule 19 of the Rules of Court and settled jurisprudence on finality and immutability of judgments. It asserts that the December 14, 2010 Resolution became final and executory after the Court denied with finality the Motion for Reconsideration filed by Atty. Elpido G. Soriano on February 8, 2011. Thus, the Resolution is already immutable and unalterable and intervention is barred.

Second, the Dissent avers that the IBP-Southern Luzon and Governor Joyas are estopped from questioning the Court’s December 14, 2010 Resolution considering that Governor Joyas waited for more than one (1) full year after assuming the IBP-Southern Luzon Governor position before attempting to reopen the final resolution of the Court.

Third, the Dissent contends that IBP-Southern Luzon and Governor Joyas have no legal interest in the subject matter of litigation or in the success of either of the parties, in violation of Section 1, Rule 19 of the Rules Court. It notes that under the factual circumstances of the present case, IBP-Southern Luzon can no longer compete for the EVP position as it has already had two elected EVPs in the current rotation; thus, neither IBP-

Southern Luzon nor Governor Joyas has any legal interest in the subject matter of the present case.

Fourth, the Dissent maintains that the Court's December 14, 2010 Resolution has already settled the question of who among the regions are entitled to compete for the EVP position for the 2011-2013 term. The Court particularly decreed in its ruling that either the governor of Western Visayas or Eastern Mindanao should be elected as EVP for the 2009-2011 term; the one not chosen for this term shall have his turn in the 2011-2013 term. Considering that IBP-Eastern Mindanao became the 8th region to have successfully secured a seat as EVP for the 2009-2011 term (with Atty. Libarios' election as EVP in the 2009-2011 term and his assumption to the Presidency for the 2011-2013 term), the Dissent concludes that IBP-Western Visayas is the only remaining region left to compete for the EVP for the 2011-2013 term.

Fifth, the Dissent notes that for purposes of the rotation rule, the appropriate reckoning point for the start of the present rotation should be Atty. Tanopo's election as EVP and not Atty. Tan's election as President. It cites the Court's ruling in *Velez v. De Vera* where the Court held that the rule on rotation by exclusion particularly pertains to the position of EVP while the automatic succession rule pertains to the Presidency. Thus, it maintains that for the process to be complete, one must first be elected as EVP for the current term before he or she can serve as President for the next term; this process must be satisfied in strict sequence before a specific IBP region is deemed to have completed its turn to the IBP leadership. The Dissent also notes that Atty. Tan's term should not be counted against IBP Western Visayas for it would be unfair to consider his term of one year and three months (as a "transition President") as equal to the supposed service of two years as EVP and another two years as President as mandated by Section 47, Article VII of the IBP-By Laws.

Finally, the Dissent emphasizes that under the rule of immutability of judgment, the Court is duty-bound to: (1) uphold its December 14, 2010 Resolution; (2) deny IBP-Southern Luzon's petition for intervention and declare IBP-Western Visayas as the only region qualified to file a candidate for EVP for the 2011-2013 term. It emphasizes that exceptions to the doctrine of immutability of judgments do not obtain in the present case. In addition, the Dissent notes that there are no intervening developments after the finality of the December 14, 2010 Resolution rendering its execution unjust and inequitable.

These arguments are addressed in the same order they are posed under the topical headings below.

The doctrine of immutability of judgments does not apply to the Court's exercise of supervisory powers over the IBP

The Dissent's preoccupation and invocation of the principle of immutability of judgment apparently blinded it to the true nature of the Court's December 14, 2010 Resolution that the Court issued pursuant to its constitutionally-mandated supervisory power over the IBP. Section 5, Article VIII of the Constitution mandates the Court's power of supervision over the IBP. This is the same power that the Court exercised in the issuance of the rules on the *Writ of Amparo*, the rules on the *Writ of Kalikasan*, and the Rules of Court, among others.

In *Garcia v. De Vera*,³⁴ the Court held that that implicit in the constitutional grant to the Supreme Court of the power to promulgate rules affecting the IBP (under Section 5, Article VIII of the Constitution) **is the power to supervise all the activities of the IBP, including the election of its officers.** In ruling that that it had jurisdiction over the election of officers of the IBP, the Court elaborated on the constitutional history and the extent of the Court's supervisory powers over the IBP, as follows:

The authority of the Supreme Court over the IBP has its origins in the 1935 Constitution. Section 13, Art. VIII thereof granted the Supreme Court the power to promulgate rules concerning the admission to the practice of law. It reads:

SECTION 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines.

The above-quoted sections in both the 1987 and 1935 Constitution and the similarly worded provision in the intervening 1973 Constitution through all the years have been the sources of this Courts authority to supervise individual members of the Bar. The term Bar refers to the collectivity of all persons whose names appear in the Roll of Attorneys. **Pursuant to this power of supervision, the Court initiated the integration of the Philippine Bar by creating on October 5, 1970 the Commission on Bar Integration**, which was tasked to ascertain the advisability of unifying the Philippine Bar. Not long after, Republic Act No. 6397 was enacted and it confirmed the power of the Supreme Court to effect the integration of the Philippine Bar. Finally, on January 1, 1973, in

³⁴

Supra note 17.

the *per curiam* Resolution of this Court captioned In the Matter of the Integration of the Bar to the Philippines, we ordained the Integration of the Philippine Bar in accordance with Rule 139-A, of the Rules of Court, which we promulgated pursuant to our rule-making power under the 1935 Constitution.

The IBP By-Laws, the document invoked by respondent De Vera in asserting IBP independence from the Supreme Court, ironically recognizes the full range of the power of supervision of the Supreme Court over the IBP. For one, Section 77 of the IBP By-Laws vests on the Court the power to amend, modify or repeal the IBP By-Laws, either *motu proprio* or upon recommendation of the Board of Governors of the IBP. Also in Section 15, the Court is authorized to send observers in IBP elections, whether local or national. Section 44 empowers the Court to have the final decision on the removal of the members of the Board of Governors.

On the basis of its power of supervision over the IBP, the Supreme Court looked into the irregularities which attended the 1989 elections of the IBP National Officers. In Bar Matter No. 491 entitled *In the Matter of the Inquiry into the 1989 Elections of the Integrated Bar of the Philippines* the Court formed a committee to make an inquiry into the 1989 elections. The results of the investigation showed that the elections were marred by irregularities, with the principal candidates for election committing acts in violation of Section 14 of the IBP By-Laws. The Court invalidated the elections and directed the conduct of special elections, as well as explicitly disqualified from running thereat the IBP members who were found involved in the irregularities in the elections, in order to impress upon the participants, in that electoral exercise the seriousness of the misconduct which attended it and the stern disapproval with which it is viewed by this Court, and to restore the non-political character of the IBP and reduce, if not entirely eliminate, expensive electioneering.

The Court likewise amended several provisions of the IBP By-Laws. First, it removed direct election by the House of Delegates of the (a) officers of the House of Delegates; (b) IBP President; and (c) Executive Vice-President (EVP). Second, it restored the former system of the IBP Board choosing the IBP President and the Executive Vice President (EVP) from among themselves on a rotation basis (Section 47 of the By-Laws, as amended) and the automatic succession by the EVP to the position of the President upon the expiration of their common two-year term. Third, it amended Sections 37 and 39 by providing that the Regional Governors shall be elected by the members of their respective House of Delegates and that the position of Regional Governor shall be rotated among the different chapters in the region.

The foregoing considerations demonstrate the power of the Supreme Court over the IBP and establish without doubt its jurisdiction to hear and decide the present controversy. [emphasis supplied]

Pursuant to this supervisory power, the Court created a Special Investigating Committee to look into the “brewing controversies in the IBP elections, specifically in the elections of Vice President for the Greater Manila Region and Executive Vice President of the IBP itself and any other election controversy involving other chapters of the IBP, if any, including the

election of the Governors for Western Mindanao and Western Visayas.”³⁵ The investigation focused specifically on the following issues or controversies:

1. What is the correct interpretation of Section 31, Article V of the IBP By-Laws which provides:

“SEC. 31. **Membership.** – The membership (of Delegates) shall consist of all the Chapter Presidents and, in the case of Chapters entitled to more than one Delegate each, the Vice-Presidents of the Chapters and such additional Delegates as the Chapters are entitled to. Unless the Vice-President is already a Delegate, he shall be an alternate Delegate. Additional Delegates and alternates shall in proper cases be elected by the Board of Officers of the Chapter. Members of the Board of Governors who are not Delegates shall be members *ex officio* of the House, without the right to vote.”

2. Who was validly elected Governor for the Greater Manila Region?

3. Who was validly elected Governor for Western Visayas Region?

4. Who was validly elected Governor for Western Mindanao Region?

5. Who was validly elected IBP Executive Vice President for the next term?

6. What is the liability, if any, of respondent Atty. Rogelio A. Vinluan under the administrative complaint for “grave professional misconduct, violation of attorney’s oath, and acts inimical to the IBP” filed against him by Attys. Marcial Magsino, Manuel Maramba and Nasser Marohomsalic?³⁶

On the basis of the findings of the Special Investigating Committee, the Court resolved the various controversies relating to the elections in the various chapters of the IBP; declared EVP Vinluan unfit to hold his position and unqualified to assume the office of IBP President for the 2009-2011 term; designated retired Supreme Court Justice Santiago Kapunan as Officer-in-Charge of the IBP, and decreed the amendment of Sections 31, 33, par. (g), 39, 42 and 43, Article VI and Section 47, Article VII of the IBP By-Laws.

All these rulings and directives rested on the Court’s supervisory authority and were made in the exercise of the Court’s administrative rather than its judicial or adjudicatory functions, and were made in the exercise of its *power of supervision, not on the basis of the power of judicial review*. The Dissent apparently did not consider that in the exercise of these supervisory powers, the Court’s issuances **did not involve strictly judicial**

³⁵ *Supra* note 2.

³⁶ *Ibid.*

matters that become final and immutable under strict adjudication rules.

In blunter terms, the Court's exercise of supervision is a continuing regulatory process; the rulings issued under this power are not cast in stone as the Dissent inaccurately portrays; these rulings remain open for review by the Court in light of prevailing circumstances as they develop.

An example of this ongoing regulatory supervision by the Court over the IBP is **Section 77 of the IBP-By Laws, which gives the Court the power to amend, modify or repeal the IBP By-laws, either *motu proprio* or upon the recommendation of the Board of Governors**, as the Court did in fact, in Bar Matter No. 491 and subsequently in its December 14, 2010 Resolution when it ordered the amendment of Sections 31, 33, par. (g), 39, 42 and 43, Article VI and Section 47, Article VII of the IBP By-Laws.

This continuing regulatory supervision by the Court over the IBP is also exemplified by the way the Court dealt with the series of "brewing controversies" that beset the IBP starting with: (1) the 1989 IBP elections in Bar Matter No. 491; (2) the effects of the abbreviated term of EVP De Vera in *Velez v. Atty. De Vera*, (3) the brewing election controversies in various chapters of the IBP as well as the elections for the EVP for the 2009-2011 term that resulted in the issuance of the December 14, 2010 Resolution; (4) the issues with respect to the election of Governor for IBP-Western Visayas the outcome of which was the issuance of the Court's December 14, 2012 Resolution that clarified that the rotational rule was one by exclusion, and, finally, (5) the present Administrative Matter on the question of who is qualified to nominate a candidate for the position of EVP for the 2011-2013 term. Notably, the controversies starting from the 2009 IBP incidents have been subsumed under one consolidated A.M./A.C. docket number.

The dynamic character of the Court's power of supervision over the IBP is also evident from the manner the Court treats administrative matters brought before it.

An administrative matter (such as the one filed before the Court in A.M. No. 09-5-2-SC and A.C. No. 8292, subject matter of the December 14, 2010 Resolution) that is entered in the Court's docket is either an administrative case (A.C.) or an administrative matter (A.M.) submitted to the Court for its consideration and action pursuant to its power of supervision.³⁷

An **administrative case (A.C.)** involves disciplinary and other actions over members of the Bar, based on the Court's supervision over them arising from the Supreme Court's authority to promulgate rules relating to the admission to the practice of law and its authority over the Integrated

³⁷ See: Separate Opinion of Associate Justice Arturo D. Brion in *De Castro v. Judicial And Bar Council*, G.R. Nos. 191002, 191032, 191057 and A.M. No. 10-2-5-SC, March 17, 2010, 615 SCRA 666.

Bar. Closely related to A.C. cases are the **Bar Matter (B.M.)** cases particularly those involving admission to the practice of law.³⁸

An **administrative matter (A.M.)** is a matter based on the Supreme Court's power of supervision: under Section 6, Article VIII of the Constitution (the Court's administrative supervision over all courts and the personnel thereof); under Section 8 (supervision over the JBC); and under Section 5(5) (supervision over the IBP).³⁹

In administrative matters concerning the IBP, the Court can supervise the IBP by ensuring the legality and correctness of the exercise of its powers as to means and manner, and by interpreting for it the constitutional provisions, laws and regulations affecting the means and manner of the exercise of its powers. The Court, of course, is the final arbiter in the interpretation of all these instruments. For this precise reason, the IBP By-laws reiterates that the Court has the plenary power to amend, modify or repeal the IBP By-laws in accordance with policies it deems, not only consistent with the Constitution, laws and regulations, but also as may be necessary, practicable and appropriate in light of prevailing circumstances.

It is in this sense that *no entry of judgment is made* with respect to administrative matters brought before the Court because special circumstances may affect or radically change the directives or policies the Court may decree or adopt. In concrete terms, the Court may change, suspend or repeal these directives or policies if its finds their application to be contrary to law or public policy or inappropriate under the prevailing circumstances.

That administrative matters before the Court are not subject to the doctrine of immutability of judgments also find emphasis in administrative matters involving violations of ethical standards (such as the Code of Professional Responsibility or Code of Judicial Conduct) which are reviewed by the Court years after the promulgation of the decision or resolution upon a petition for clemency by the respondent. In many instances, the Court changes its rulings upon proof that the petitioner has reformed or suffered enough on account of his or her unethical conduct.

In the recent case of *Talens-Dabo v. Judge Arceo*,⁴⁰ the Court lifted the penalty of disqualification from re-employment in government imposed on Judge Hermin E. Arceo (imposed on him in the Court's Decision of July 25, 1996 finding him guilty of gross misconduct and immorality). The Court so acted after Atty. Arceo demonstrated that he has "sufficiently shown his remorse and reformation after his dismissal from the service meriting the Court's liberality." Similarly, in *Castillo v. Calanog*,⁴¹ the Court granted former Judge Manuel M. Calanog's petition for clemency and compassion

³⁸ Ibid.

³⁹ Id.

⁴⁰ A.M. No. RTJ-96-1336, November 20, 2012.

⁴¹ A.M. RTJ-90-447, December 16, 1994, 239 SCRA 268.

and lifted the penalty of disqualification from public office for immorality after the Court found him to be “sincerely repentant” three years after the Court’s July 12, 1991 Decision dismissing him from the service.

In sum, the Dissent’s invocation of the doctrine of immutability of judgments with respect to the Court’s December 14, 2010 Resolution is clearly misplaced. To reiterate, the Court’s issuances on administrative matters pursuant to its exercise of its regulatory supervision over the IBP does not become final and immutable as in ordinary adjudicated cases; it is always subject to continuing review by the Court, guided by the dictates of the Constitution, laws and regulations, as well as by policies the Court deem necessary, practicable, wise, and appropriate in light of prevailing circumstances.

The Rules of Court are not strictly observed in administrative matters

I cannot agree with the Dissent’s position that IBP Southern Luzon’s petition for intervention is barred by Section 2, Rule 19 of the Rules of Court that allows intervention at any time before final judgment. If judgment does not really become final in the sense understood in the adjudicatory sense, then the admission of an intervention should always be subject to the Court’s wise exercise of discretion. There, too, is the well-settled rule that the Dissent conveniently failed to mention: technical rules of procedure (*i.e.* the rules on Intervention in the Rules of Court) are not strictly applied in administrative proceedings such as the present case. In *Office of the Court of Administrator v. Canque*,⁴² we pointedly stated:

Technical rules of procedure and evidence are not strictly applied to administrative proceedings. Thus, administrative due process cannot be fully equated with due process in its strict judicial sense. A formal or trial-type hearing is not required. [Emphasis supplied]

Another misplaced argument is the Dissent’s invocation of our ruling in *Chavez v. PCGG*⁴³ and *Looyuko v. Court of Appeals*⁴⁴ which brings to mind an apple and oranges comparison. These cited cases, although indisputably correct in their particular setting, cannot be compared with the present matter because they are adjudicated civil cases governed strictly by the Rules of Civil Procedure on intervention.

Beyond the rule on stability of our jurisprudence and procedural technicalities, the Dissent should appreciate the relationship of the Court to the IBP and the role that the Constitution has assigned to the Court, all of which have been mentioned and discussed elsewhere in this Separate Concurring Opinion.⁴⁵ Likewise, it should have considered the importance of the administrative matter before us - issues that may determine future

⁴² A.M. No. P-04-1830, June 4, 2009, 588 SCRA 226, 236.

⁴³ G.R. No. 13071, May 19, 1999, 307 SCRA 394.

⁴⁴ G.R. Nos. 102696, 102716, 108257 & 120954, July 12, 2001, 361 SCRA 150.

⁴⁵ See pp. 24-26 of this Separate Concurring Opinion.

elections of the IBP. In these lights, insistence on the use of strict procedural rules cannot but be regarded as resort to petty arguments that only waste the time and attention of this Court. To use our usual phraseology on these kinds of arguments, rules of procedure should not be applied in a very rigid, technical sense; they are only used to help secure, not override, substantial justice. Note that we have made these rulings *even in the exercise of our adjudicative power* where stricter rules apply. In *Ginete v. Court of Appeals*,⁴⁶ we said:

Let it be emphasized that **the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice.** Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final, as we are now constrained to do in the instant case.

X X X X

The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice. [Emphasis supplied.]

Similarly, in *de Guzman v. Sandiganbayan*,⁴⁷ we had occasion to state:

The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering justice have always been, as they ought to be, conscientiously guided by the norm that **when on the balance, technicalities take a backseat against substantive rights, and not the other way around.** Truly then, technicalities, in the appropriate language of Justice Makalintal, “should give way to the realities of the situation.” [Emphasis supplied.]

Estoppel by laches cannot be applied to IBP-Southern Luzon and Governor Joyas

The Dissent’s invocation of the doctrine of estoppel by laches on the part of IBP-Southern Luzon and Governor Joyas is erroneous. Laches has been defined as the failure or neglect for an *unreasonable and unexplained* length time to do that which, by exercising due diligence, could or should have been done earlier, thus giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it.

⁴⁶ G.R. No. 127596, September 24, 1998, 292 SCRA 38.

⁴⁷ 326 Phil. 182 (1996).

Significantly, laches is not concerned with mere lapse of time; the fact of delay, standing alone, is insufficient to constitute laches. In *Chavez v. Perez*,⁴⁸ we emphasized that the hallmark of the application of laches is a question of inequity or unfairness in permitting a right or claim to be enforced or asserted, thus:

The doctrine of laches is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims, and is **principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.** There is no absolute rule as to what constitutes laches; each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court, and since it is an equitable doctrine, its application is controlled by equitable considerations. It cannot be worked to defeat justice or to perpetrate fraud and injustice. [emphasis supplied]

In the present case, the Dissent failed to cite any instance of unfairness or inequity in allowing the alleged belated intervention of IBP-Southern Luzon and Governor Joyas. At any rate, as mentioned above, the Court's issuances, on administrative matters pursuant to its exercise of its regulatory supervision over the IBP (such as the Court's December 14, 2010 Resolution) do not become final and immutable as in ordinary adjudicatory cases; they are always subject to continuing review by the Court. In filing the petition for intervention, IBP-Southern Luzon and Governor Joyas are merely asking for proper guidance from the Court pertaining to the issues involved with the IBP elections for EVP for the 2011-2013 term by invoking the Court's regulatory supervision over the IBP.

IBP-Southern Luzon and Governor Joyas have legal interest in the subject matter of litigation

I disagree with the Dissent's claim that IBP-Southern Luzon or Governor Joyas has no legal interest in the subject matter of litigation that would justify their intervention.

Contrary to the Dissent's view, they have (as all the other eight regions of the IBP) a direct and immediate interest in the proper implementation of the rotational rule with respect to the position of EVP for the 2011-2013 term, in the same manner that this Court and all its Members have similar interests on the matter. In fact, this Court's ruling on the proper implementation of the rotational rule for the EVP for the 2011-2013 term will directly and immediately impact on IBP-Southern Luzon which will either gain or lose the opportunity for direct and meaningful participation in IBP affairs as a result of the direct legal operation and effect of the Court's determination in the present case. Section 47 of the IBP By-laws, as amended, guarantees this legal interest when it provides that "[t]he

⁴⁸ G.R. No. 109808, March 1, 1995, 242 SCRA 73, 80.

Executive Vice President shall be elected on a strict rotation basis by the Board of Governors from among themselves, by the vote of at least five (5) Governors.

At any rate, the Court, has recognized exceptions to Section Rule 19, in the interest of substantial justice, as reflected in the following ruling:

The rule on intervention, like all other rules of procedure, is intended to make the powers of the Court fully and completely available for justice. It is aimed to facilitate a comprehensive adjudication of rival claims overriding technicalities on the timeliness of the filing thereof.⁴⁹

Prior to the 2010 amendment of Section 47, Article VII of the IBP By-laws, the rotation rule should be considered from the prism of the Presidency and not EVP

I disagree with the dissent's unqualified position that the rotation rule pertains to the position of EVP and not the position of IBP President. As the above discussions fully explained, the previous version of Section 47, Article VII of the IBP By-laws expressly required that the Presidency shall rotate among the nine (9) regions. The Dissent's view that a completed turn strictly requires election as EVP for the current term (two years of service as EVP) and then service as President for the next term (plus another two years as IBP President), is not supported by the plain import of the wordings of previous version of Section 47, Article VII of the IBP By-Laws that merely required that all the nine (9) regions, through their respective Governors, shall at some time during the rotation take their turn as IBP President. Under this system, it is the Presidency that must be counted, considered and assured and the election or effective rotation of the EVP is only a part of ensuring the rotation of the Presidency because the two positions are inextricably linked by the element of succession. In this sense, any rotation in the EVP post under the previous Section 47 was a subsidiary consideration that must bow to the primacy of the rotation of the Presidency.

Again, contrary to the Dissent's view, the Court's ruling *Velez v. Atty. De Vera* that the first rotation was completed with the election of Atty. De Vera as EVP is not a totally incorrect ruling; it is merely an incomplete ruling, but one that can nevertheless be put to good use with the correct appreciation and understanding of what Section 47, Article VII of the IBP By-Laws originally provided.

As previously discussed, the first region to avail of its turn in Bar Matter No. 491 was IBP-Western Visayas with the election of Atty. Tan as President and Atty. Tanopo of Central Luzon as EVP. This was the very first election under Bar Matter No. 941 and the import of this amendment would

⁴⁹ *Social Justice Society v. Atienza*, G.R. No. 156052, February 13, 2008, 545 SCRA 92.

be trivialized if the first election conducted under it would not fall under its rule. To be sure, Bar Matter No. 941 never stated, expressly or impliedly, that this first election was to be an interim measure; it simply decreed that there shall be presidential rotation and called for an election. From this perspective, *Velez* could not be wrong in counting the election of Atty. Tan as President as the first turn in the presidential rotational cycle, even if President Tan did not go through any prior election as EVP. Under this premise, *Velez* could not have been a totally incorrect ruling. As I mentioned above, it is a ruling that can be put to good use with a proper and correct understanding of what Bar Matter No. 941 provided for.

Thus, in this limited sense, I agree with the *ponencia* that the Court effectively opened a new round of rotation for the EVP position, to start after the 2003-2005 term. The new rotation cycle for EVPs, preparatory to the presidential rotation that Bar Matter No. 941 expressly required, started with the 2005-2007 election of Atty. Bautista of Central Luzon as EVP. From the *Velez* view, the presidential rotation that Bar Matter No. 491 required came to pass as the first turn in 2nd rotational cycle when Atty. Bautista succeeded to the IBP Presidency in 2007-2009 term.

In sum, following *Velez* to its logical consequence and observing the principle of exclusion, all regions other than Central Luzon, Southern Luzon and Eastern Mindanao can compete for the EVP post for the 2011-2013 term. This conclusion, of course, contradicts the IBP-Western Visayas' wish to have the 2011-2013 EVP position handed to it unopposed in a golden platter.

***The Court's December 14, 2010
Resolution did not overturn the Velez
ruling***

I likewise take exception to the Dissent's position that the Court's December 14, 2010 Resolution effectively overturned the *Velez* ruling. To be sure, there never was any statement in the December 14, 2010 ruling that the *Velez* ruling is incorrect.

Even if there had been, this Court – at this point – is not powerless to correct whatever misimpressions there might have been because of the confusing rulings heretofore issued.

It is to be noted that, the December 14, 2010 ruling itself has its imperfections that deepened the deviations from the rotation system instead of setting the system aright. For one, it completely failed to take into account the Court's ruling in *Velez*. Also, the Court erroneously adopted the Special Committee's incomplete computation of the presidential rotational cycle. Instead of counting the cycle from the Presidency of Atty. Eugene Tan of Western Visayas in the 1989-1991 term as Bar Matter No. 491 dictated, the Court counted the rotation from the Central Luzon Presidency in the 1991-1993 term. This mistaken premise led the Court to conclude that

only the Governors of the Western Visayas and Eastern Mindanao regions had not yet had their turn as EVP so that the choice of EVP for the 2009-2011 term should be solely confined to them.

The continued wranglings about the Court's past rulings – as exemplified by the Dissent's own objections – constitute the very reason why a clean slate, justified by a reasonably sensible reading of the By-laws, should now be made, to free up the IBP from any and all seeds of confusion that may linger. *In other words, rather than continue to find fault with past rulings and with one another, let this Court now accept that a new rule on rotation is upon us, and start to apply and implement this new rule without any reservations or qualifications arising from past rulings this Court made. This is the wisest, most reasonable and most practical ruling we can make under the present circumstances.*

The transitory and continuing nature of the Court's regulatory supervision over the IBP allows for a correction of the erroneous December 14, 2010 Resolution and does not amount to a flip-flop

As previously discussed, the Court's issuances pertaining to its regulatory supervision over the IBP does not become final and immutable as ordinary cases, as it is always subject to continuing review by the Court. This notion debunks entirely the Dissent's charge of flip-flopping should the Court reconsider its December 14, 2010 Resolution.

In light of the role, participation, powers and duties that the Court and its Members hold with respect to the IBP, the worst move that this Court can make at this point is to be irretrievably wedded to decisions and rulings the Court has rendered in the past. Rather, as the Supreme Tribunal in the land with specific powers duties and powers imposed no less than the Constitution, it should now act wisely, with foresight and with due regard to the lessons of the past; it should seek to restore rational consistency in the future rulings affecting the IBP. In fact, the Court should itself strive not to be a part of the problem; it cannot but be in the IBP's stage as a participant in a constitutionally-designed play, but it must act more as a actor/director keenly keeping a close and critical eye on the events and ready to lead, guide and act with measured firmness if and when the play gets out of hand.

The essence of judicial and jurisprudential life is growth and greater understanding of our efforts and their results, particularly for our constituencies and the laws we interpret. For as long as we do not flip-flop on the same case, thus confusing not only the public but the same parties who have previously applied our rulings and decisions, we should not hesitate to backtrack and correct our actions in the past, particularly, if our new directions better serve the objectives and purposes of the laws we interpret and the greater public good. After all, one of the Court's own

venerated doctrine – *stare decisis et non quieta movere* – itself recognizes that rulings are “not cast in stone for upon a showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, the Court is justified in setting it aside.”⁵⁰

D. Creation of a Permanent IBP Committee in the Supreme Court.

Consistent with the above principles and as a **pro-active response** that the Court can offer the IBP and the public who depend on lawyers for their legal needs, the Court must now recognize the continuing need for study and consultations with the IBP on what is best for the organization. The Court cannot undertake its constitutional duties alone. The IBP itself – of which the Members of this Court are themselves a member – should always actively be consulted as the party directly and immediately affected by the rulings and actions of the Court.

Towards this end, I propose the creation of a new and continuing IBP Committee in the Court to generally handle the IBP’s affairs; to study and suggest recommendations; to take the lead and initiative in efforts concerning the IBP; and to troubleshoot whatever problems may occur, instead of creating a special committee whenever IBP-related problems arise.


ARTURO D. BRION
Associate Justice

⁵⁰ *Philippine Guardians Brotherhood, Inc. (PGBI) v. Commission on Elections*, G.R. No. 190529, April 29, 2010, 619 SCRA 585, 595.