

**A.M. No. 13-04-03-SC** (*Re: Nomination of Atty. Lynda Chaguile, IBP Ifugao President, as replacement for IBP Governor for Northern Luzon Denis B. Habawel*)

**A.M. No. 13-04-08-SC** (*Re: Alleged Nullity of the Election of IBP Southern Luzon Vicente Joyas as IBP Executive Vice President [for 2011-2013]*)

Promulgated:

DECEMBER 10, 2013

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### DISSENTING OPINION

**VELASCO, JR., J.:**

With due respect to my esteemed colleague, Justice Leonen, I am constrained to register my dissent.

#### The Cases

These consolidated cases are off-shoots of *A.M. No. 09-5-2-SC*, entitled "*In Re: Brewing Controversies in the Elections in the Integrated Bar of the Philippines.*" (Brewing Case)

#### **A.M. No. 13-04-03-SC**

On March 27, 2013, in connection with the in the Brewing Case, Atty. Marlou Ubano (Atty. Ubano), the IBP Governor for Western Visayas, filed a "*Motion to Declare as Ultra Vires or Invalid Re: Portion of IBP BOG Omnibus Resolution dated 21 March 2013 Approving the Nomination of Atty. (Lynda) Chaguile, IBP Ifugao President, as replacement of IBP Governor for Northern Luzon Denis B. Habawel.*" In its April 2, 2013 Resolution, this Court, finding it necessary to discuss the issues raised in the said motion independently of the Brewing Case, *re-docketed* the motion as a separate administrative matter.

In the said motion, Atty. Ubano essentially assails the approval by the IBP Board of Governors (IBP BoG) of the nomination of Atty. Chaguile, IBP Ifugao Chapter President, as replacement of IBP Governor for Northern Luzon Denis B. Habawel (Atty. Habawel), who, on October 5, 2012, filed a Certificate of Candidacy (CoC) for the position of Governor of the Province of Ifugao

Under Section 4, Article I of the IBP By-Laws:

x x x A Delegate, **Governor**, officer or employee of the Integrated Bar, or an officer or employee of any Chapter thereof who **files a certificate of candidacy for any elective public office** shall be considered *ipso facto* **resigned** from his position from the date of the **start of the official campaign period**. x x x (emphasis supplied)

Following the above provision, Atty. Habawel is deemed *ipso facto* resigned from his post as IBP Governor for Northern Luzon, his resignation taking effect at the start of the official campaign period for the May 13, 2013 elections, which is on March 30, 2013.

In obvious anticipation of the resulting vacancy, the majority of the IBP BoG, in a meeting held on March 21, 2013, presided by then IBP National President Roan Libarios, approved the nomination and designation of Atty. Chaguile as replacement of Atty. Habawel. The designation process occurred over the objections of Atty. Ubano and Governors Manuel L. Enage, Jr. (Atty. Enage) and Israelito P. Torreon (Atty. Torreon) of IBP Eastern Visayas and IBP Eastern Mindanao, respectively. In said meeting, Atty. Habawel took part in the deliberation and in fact nominated Atty. Chaguile as his replacement.

It is against the foregoing backdrop that Atty. Ubano has assailed the entire process undertaken by the majority of the IBP BoG. He asserts that the foregoing acts of the IBP BoG are *ultra vires* because: (1) as of the time of the IBP BoG's approval, *Atty. Habawel still occupied the office of the Governor for IBP Northern Luzon* and hence, *there was no vacancy*;<sup>1</sup> and (2) the right and prerogative to elect a successor of a resigned governor belong exclusively to the delegates of the concerned region, not with IBP BoG,<sup>2</sup> as provided under paragraph 3 of Section 44 of the IBP By-Laws:

In case of any **vacancy** in the office of Governor for whatever cause, **the delegates from the region shall by majority vote, elect a successor from among the members of the Chapter** to which the **resigned** governor is a member to serve as governor for the unexpired portion of the term.<sup>3</sup> (emphasis supplied)

In its Comment, the IBP BoG counters that "it is not necessary that a position be absolutely vacant before the election or appointment of the successor"<sup>4</sup> and "as long as there is an imminent resignation or impending termination of the term of office, the successor maybe chosen."<sup>5</sup> IBP BoG added that:

7. While it is true that it is the delegates of the concerned IBP region who have the right to elect a successor, the **tradition** in the IBP has been that, where the unexpired term in **only for a very short period of**

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<sup>1</sup> Par. 2, Atty. Ubano's March 27, 2013 "*Motion to Declare as Ultra Vires or Invalid (Re: Portion of IBP BOG Omnibus Resolution dated 21 March 2013 Approving the Nomination of Atty. (Lynda) Chaguile, IBP Ifugao President, as replacement of IBP Governor for Northern Luzon Denis B. Habawel.*"

<sup>2</sup> Par. 3, id.

<sup>3</sup> As amended pursuant to Supreme Court Resolution dated March 2, 1993.

<sup>4</sup> Par. 4, p. 1, April 30, 2013 *Comment* of the IBP Board of Governors.

<sup>5</sup> Par. 5, p.2, id.

time, it is **usually the Board of Governors** which appoint a replacement or an officer in charge to serve the unexpired term.”<sup>6</sup> (emphasis supplied)

The IBP BoG further argued, “In any case, even if the choice of a replacement were left to the delegates of Northern Luzon, the **likelihood is that Atty. Chaguile would have been elected.**”<sup>7</sup>

Meanwhile, on April 23, 2013, Atty. Ubano, in a bid to stop Atty. Chaguile from succeeding Atty. Habawel, filed an “*Urgent Motion to Defer/Restrain Performance of Duties as Successor Governor of IBP Northern Luzon Region.*”

On May 16, 2013, this Court received a purported copy of the *Resolution* signed by the following delegates of IBP Northern Luzon calling for the election of the successor of Atty. Habawel: (1) Conde Claro C. Venus, President of IBP Abra, (2) Mariano R. Nalupta Jr., President of IBP Ilocos Norte, (3) Francisca M. Claver, Vice-President of IBP Baguio-Benguet, (4) Jose Rosario Jimenez, President of IBP Ilocos Sur, (5) Neriza M. Dasig-Cacatian, President of IBP Isabel, and (6) Abraham F. Datlag, President of IBP La Union. Attached therewith is a photo static copy of the same resolution purportedly signed by (7) Orlando D. Beltran, President of IBP Cagayan and (8) Leslie D. Costales, Acting President of IBP Nueva Vizcaya.

On May 20, 2013, the same delegates of the IBP Northern Luzon filed an *Opposition* against the nomination and approval of Atty. Chaguile’s appointment and called for the election of Atty. Habawel’s replacement, viz:

2. We express our **strong objection/ opposition to the IBP Board of Governors’ nomination and approval of Atty. Chaguile**, then IBP Ifugao Chapter President-elect, as replacement of Atty. Habawel considering that under paragraph 3, Section 44 of the IBP By-Laws, the Delegates of the concerned IBP Region, not the IBP Board of Governors, have the sole right to elect a successor of the resigned governor. (emphasis supplied)

On the same date, Atty. Ubano filed his “*Motion for Leave to File Reply with Very Urgent Motion to Restrain Atty. Chaguile from Voting in the EVP Election on 22 May 2013.*”

### A.M. No. 13-04-08-SC

This brings us to the second interrelated case, the antecedent facts of which are summarized in the “*Report on the Conduct of Election of the Executive Vice President of the Integrated Bar of the Philippines for 2011 - 2013*” (Cruz Report) submitted by Judge Danilo S. Cruz,<sup>8</sup> this Court’s designated observer of the said elections:

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<sup>6</sup> Par. 7, id.

<sup>7</sup> Par. 8, id.

<sup>8</sup> Pursuant to Administrative Order No. 107-2013 dated May 20, 2013.

The meeting for the purpose of electing the IBP EVP for term 2011-2013 was scheduled at 11 o'clock in the morning of May 22, 2013. It was originally scheduled on May 18, 2013 but was reset upon Atty. Ubano's request.

Initially, at the start of the said proceedings, only five (5) IBP Governors were present, namely: Atty. Joyas, Atty. Dominic C.M. Solis (Atty. Solis), Atty. Olivia Velasco-Jacoba (Atty. Velasco-Jacoba), Atty. Florendo B. Opay (Atty. Opay) and Atty. Chaguile.

Considering that there is already a quorum, Atty. Joyas proceeded to call the meeting to order. As Chairman of the Execom<sup>9</sup>, Atty. Joyas then designated the following as members of the election committee (Comelec): IBP National Secretary Nasser Marohomsalic (Atty. Marohomsalic) as Chairman, Atty. Rosario T. Setias-Reyes (Atty. Setias-Reyes) as second member and IBP Head Executive Assistant Aurora Geronimo (Geronimo) as third member. Atty. Joyas also relinquished in favor of Atty. Marohomsalic his post as Presiding Officer.

A few minutes later, Atty. Enage and Atty. Torreon arrived.

Atty. Marohomsalic then proceeded to call for the nomination for the position of IBP EVP for term 2011-2013. Atty. Solis rose to nominate Atty. Joyas. This was seconded by Atty. Velasco-Jacoba. Atty. Joyas then accepted the nomination.

Atty. Ubano then arrived and was followed by Atty. Leonor Gerona-Romeo (Atty. Gerona-Romeo).

Atty. Ubano then questioned the authority of Atty. Marohomsalic to act as Chairman. He also questioned the authority of Atty. Joyas as Chairman of the IBP Execom to designate the Presiding Officer for purposes of the EVP election. He reasoned that in the absence of the IBP National President and EVP, it is the Court which has the authority to designate the Presiding Officer.

When the issue was placed into a vote, the majority of the IBP BoG decided to retain the authority of Atty. Marohomsalic as Presiding Officer and Chairman of the Comelec.

Atty. Ubano then manifested that he had a pending petition before the Court to declare as *ultra vires* or invalid the election of Atty. Chaguile as governor for IBP Northern Luzon and that in view thereof, he moved for the deferment of the IBP EVP election and wait for the decision of the Court on the matter. Atty. Solis interdicted and said that in order to maintain civil and collegial atmosphere in the Board, he is in favor of Atty. Ubano's proposal to postpone the election.

Atty. Marohomsalic was about to call for division of the BoG on Atty. Ubano's motion to postpone the election when Atty. Joyas raised a

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<sup>9</sup> Since the incumbent IBP National President Atty. Roan Libarios also filed his CoC for the position of Representative for the First District of Agusan del Norte during the May 2013 Elections, he is likewise deemed resigned as of March 30, 2013 or the start of the campaign period. Considering that at that time, there is still no IBP EVP for term 2011-2013, who should, under the IBP By-Laws, may serve as Acting President, the IBP BoG created an IBP Executive Committee (Execom) to handle the affairs of the IBP pending the election of IBP EVP. In this regard, Atty. Joyas was elected Chairman of the IBP Execom.

point of order and countered that since they are already in the process of nomination, it will be out of order to entertain another motion. Atty. Marohomsalic then said that he stands corrected and declared Atty. Ubano's motion out of order. Atty. Ubano pressed his motion but to no avail.

Atty. Enage then rose to nominate Atty. Ubano for the position of IBP EVP for term 2011-2013.

**Atty. Ubano accepted his nomination with a qualification that it is subject to the resolution of the pending motion before the Court.** He also manifested his objection to the participation of Atty. Chaguile in the said election.

The voting by secret balloting proceeded and after the votes were tallied, **Atty. Joyas received five (5) votes while Atty. Ubano garnered four (4) votes.** (underscoring added)

Atty. Ubano has expressed the belief that the fifth vote of Atty. Joyas came from Atty. Chaguile because according to him, when he (Atty. Urbano) approached Atty. Chaguile, the latter made a suggestion that had Atty. Ubano not raised the issue against the validity of her appointment as governor, she would have voted differently.<sup>10</sup>

Arguing that Atty. Chaguile's designation as IBP Governor was illegal and invalid, and hence, the invalidity too of her vote in favor of Atty. Joyas, Atty. Ubano filed an *Urgent Omnibus Motion* to nullify the election for EVP Election on May 22, 2013 and to restrain Atty. Joyas from discharging the duties of EVP/Acting President until the final resolution of the issues.

In its June 18, 2013 Resolution, this Court ordered the consolidation of these cases.

### Issues

- (1) Whether the designation of Atty. Lynda Chaguile, the President-elect of IBP Ifugao Chapter, as successor of IBP Northern Luzon Governor Atty. Denis B. Habawel, is legal, valid and in accordance with the IBP By-Laws?
- (2) Assuming that the Atty. Chaguile's designation is invalid and illegal, can she be considered a *de facto* officer, thereby clothing her actions, including the vote cast in favor of Atty. Joyas for the position of IBP EVP for term 2011-2013, as valid?

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<sup>10</sup> Par. 1.23, p. 6, Atty. Ubano's May 31, 2013 "*Urgent Omnibus Motion*."

(3) Whether Atty. Vicente M. Joyas, IBP Governor for Southern Luzon, was validly elected as IBP EVP on May 22, 2013 and thus, should serve as IBP President for term 2013-2015?

### Discussion

#### *First Issue:*

**The designation of Atty. Lynda Chaguile as successor of IBP Northern Luzon Governor Atty. Denis B. Habawel was NOT in accordance with the IBP By-Laws and, hence, INVALID and ILLEGAL**

Section 44 of the IBP By-Laws provides:

In case of any **vacancy** in the office of Governor for whatever cause, **the delegates from the region shall by majority vote, elect a successor from among the members of the Chapter** to which the **resigned** governor is a member to serve as governor for the unexpired portion of the term.<sup>11</sup> (emphasis supplied)

The foregoing provision is clear as it is simple. It is the **delegates from the concerned region, i.e., IBP Northern Luzon**, and *not the IBP BoG*, who should decide and elect the replacement of Atty. Habawel.

The IBP BoG, on the other hand, argues that it has been a “tradition” in the IBP for the BoG to choose the replacement in cases where the term would be for a short period of time.

The IBP BoG posture is untenable and without basis.

It is well to note that even the IBP BoG recognizes that “it is delegates of the concerned IBP region who have the right to elect a successor”<sup>12</sup> for the position of governor. Nevertheless, notwithstanding the express mandate of the aforementioned Section 44 of the IBP By-Laws, the IBP BoG still chose to deviate therefrom. By citing “tradition” as a justification for its actions, the IBP BoG, in effect, admits that, indeed, it did not comply with the required process of filling up the vacancy for the position of IBP Governor and had deliberately disregarded the IBP By-Laws.

To my mind, this “tradition” or practice as the IBP claims, even if done repeatedly and consistently, cannot hold sway in light of the express and clear provisions provided by the IBP By-Laws. As in an ordinary statute, the “violation or non-observance” of the IBP By-Laws “shall not be excused by disuse, or custom or practice to the contrary.”<sup>13</sup> The IBP BoG, more than anyone else, should be the first to abide with and encourage obedience to the provisions of the IBP By-Laws. It should not, as it could

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<sup>11</sup> As amended pursuant to Supreme Court Resolution dated March 2, 1993.

<sup>12</sup> Par. 4, p. 2, April 30, 2013 *Comment* of the IBP Board of Governors.

<sup>13</sup> CIVIL CODE, Art. 7.

not, simply rely on what it believes is a “tradition” in the IBP to defeat a clear provision of the IBP By-Laws. Mere expediency will not excuse legal shortcuts.

Hence, contrary to its position, the **IBP BoG is without authority to elect and designate Atty. Chaguile as replacement for Atty. Habawel.** The IBP By-Laws has, in no uncertain terms, vested this authority and right in favor of the delegates from the region where the vacancy occurred – which, in this case, should be the delegates from IBP Northern Luzon. Thus, by arrogating unto itself the right to choose the governor for IBP Northern Luzon, the IBP BoG overstepped the boundaries of its authority and had effectively deprived the concerned delegates of their right to choose and elect the Governor who should represent them in the board.

There is likewise no basis for the IBP BoG – in fact, it does not even have the right – to assume that even if the choice of a replacement were left to the delegates of Northern Luzon, the likelihood is that Atty. Chaguile would have been elected.

Furthermore, it must be emphasized that the IBP By-Laws was promulgated with this Court’s approval. Hence, any change thereto or non-compliance therewith, constitutes a violation and travesty of this Court’s supervisory authority over the Integrated Bar.

Foregoing considered, there is no doubt that the designation of Atty. Chaguile as successor of IBP Northern Luzon Governor Atty. Habawel is **invalid and illegal.**

***Second Issue:***

**Atty. Chaguile CANNOT be considered a de facto officer**

The *ponencia* correctly observed that the third paragraph of Section 44 of the IBP By-Laws expressly and unambiguously states that “*the delegates from the region shall by majority vote, elect a successor from among the members of the Chapter to which the resigned governor is a member to serve as governor for the unexpired portion of the term*” and expressed surprise that “*the IBP – an institution expected to uphold the rule of law – has chosen to rely on ‘tradition’ to validate its action.*” In the same breath, however, it considered Atty. Chaguile as a *de facto* officer, thereby ratifying as valid her supposedly unauthorized actions, including her swing vote in favor of Atty. Joyas for the position of IBP EVP for term 2011-2013.

I am constrained to disagree.

A *de facto* officer is one who assumed office “under a color of a known appointment or election, void because the officer was not eligible or because there was a want of power in the electing body, or by reasons of some defect or irregularity in its exercise, such ineligibility, want of power,

or defect being unknown to the public.”<sup>14</sup> His or her “acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid so far as they involve the interest of the public and third persons, where the duties of the office were exercised under color of a known election or appointment, void because the officer was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power or defect being unknown to the public.”<sup>15</sup>

*Funa v. Acting Secretary of Justice Alberto C. Agra*<sup>16</sup> gave the following definition of the term *de facto* officer and the effects of his actions:

A *de facto* officer is one who derives his appointment from **one having colorable authority to appoint**, if the office is an appointive office, and whose **appointment is valid on its face**. He may also be one who is in possession of an office, and is discharging its duties under color of authority, by which is meant authority derived from an appointment, however irregular or informal, so that the incumbent is not a mere volunteer. Consequently, the acts of the *de facto* officer are just as valid for all purposes as those of a *de jure* officer, in so far as the public or third persons who are interested therein are concerned. (emphasis supplied)

Thus, the essential elements of *de facto* officership are:

- (1) There must be a *de jure* office;
- (2) There must be **color of right or authority**;
- (3) There must be actual physical possession of the **office in good faith**; and
- (4) There must be a **general acquiescence by the public or recognition by the public who deals with him of his authority as holder of the position**.<sup>17</sup>

The *de facto* doctrine is predicated on the rationale that “public interest demands that acts of persons holding, under color of title, an office created by a valid statute be, likewise, deemed valid insofar as the public – as distinguished from the officer in question – is concerned. Indeed, “it is far more cogently acknowledged that the *de facto* doctrine has been formulated, not for the protection of the *de facto* officer principally, but rather for the protection of the public and individuals who get involved in the official acts of persons discharging the duties of an office without being lawful officers.”<sup>18</sup>

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<sup>14</sup> *Aparri v. Court of Appeals*, No. L-30057, January 31, 1984, 127 SCRA 231, 329; citing *State v. Carroll*, 38 Conn. 449, 9 Am. Rep. 409.

<sup>15</sup> *Flores v. Drilon*, G.R. No. 104732, June 22, 1993, 223 SCRA 568, 582; citing *State v. Carroll*, 38 Conn., 449; *Wilcox v. Smith*, 5 Wendell (N.Y.), 321; 21 Am. Dec., 213; *Sheehan’s Case*, 122 Mass, 445, 23 Am. Rep., 323. Boldface supplied.

<sup>16</sup> G.R. No. 191644, February 19, 2013; citing *Dimaandal v. Commission on Audit*, G.R. No. 122197, June 26, 1998, 291 SCRA 322, 330; *The Civil Service Commission v. Joson, Jr.*, G.R. No. 154674, May 27, 2004, 429 SCRA 773, 786-787.

<sup>17</sup> Agpalo, R., *Administrative Law, Law on Public Officers and Election Law*, 2005 Ed., p. 342.

<sup>18</sup> *Monroy v. Court of Appeals*, No. L-23258, July 1, 1967, 20 SCRA 620, 626.



Here, contrary to the conclusion in the *ponencia*, the essential elements to be a *de facto* officer are, to me, indisputably absent. Withal, Atty. Chaguile cannot be considered as such officer for any or a mix of the following reasons:

*First*, there could be NO color of authority for Atty. Chaguile's designation as IBP Governor of Northern Luzon since her **designation as governor is void on its face**.

As erstwhile stated, Sections 44 of the IBP By-Laws clearly, unambiguously, and categorically provides that the authority to choose, elect and fill up the position of IBP Governor belongs to the delegates of the IBP Northern Luzon. Since it was the IBP BoG who made and approved the nomination, Atty. Chaguile's appointment as IBP Governor is void *ab initio* and hence, was made **without any semblance of authority**. It does not depict any "color of authority" but rather shows absolute **absence of authority**.

Indeed, a "*de facto*" officer need not show that he/she was elected or appointed in its strict sense, for a showing of a color of right to the office suffices. In fact, even without a known appointment or election, the *de facto* doctrine comes into play if the duties of the office were exercised under such *circumstances of reputation or acquiescence as were calculated to induce people, without inquiry*, to submit to or invoke his action, supposing him to be the officer he assumed to be."<sup>19</sup> Here, even the delegates of IBP Northern Luzon – in fact, a majority of them – which Atty. Chaguile is supposed to represent, expressed not only their *nonacquiescence* but their "**strong opposition/ objection**" against her appointment.

Thus, the second requisite is not satisfied.

*Second*, Atty. Chaguile took *actual physical possession* of the subject office in **bad faith**.

Being an officer of the Integrated Bar and, at that time, the incumbent chapter president of IBP Ifugao, she knew very well, or ought to have known, that under the third paragraph of Section 44 of the IBP By-Laws, the successor of a resigned governor is *elected by the delegates* of the concerned IBP Region, and NOT merely appointed or designated by IBP BoG. However, despite her presumptive awareness of this rule, Atty. Chaguile still deliberately and openly defied the said provision. On this score alone, it cannot be said that Atty. Chaguile had assumed the position as IBP Governor in good faith.

There can be no quibbling that Atty. Chaguile was aware of the strong objections against her appointment by the IBP Western Visayas Region and,

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<sup>19</sup> *Concurring Opinion* of J. Carpio-Morales in *Funa v. Ermita*, G.R. No. 184740, February 11, 2010.

more importantly, of the majority of the incumbent delegates of IBP Northern Luzon. These objections were echoed in the May 20, 2013 *Opposition* against her designation filed by the eight (8) delegates, representing the majority, of the IBP Northern Luzon Region and in a Resolution passed by the same delegates calling for the election to choose the successor of Atty. Habawel.

Despite the foregoing adverse reactions to her appointment as successor-governor for Northern Luzon Region, Atty. Chaguile *still* had the audacity of assuming the position and performing the duties and functions as IBP Governor.

Good faith and prudence dictate that Atty. Chaguile should have exercised restraint and circumspection by refraining from performing the duties and responsibilities of a lawfully elected governor until this Court shall have resolved the issues. No prejudice would have been caused to any party since the IBP BoG still had a quorum to transact business and the delegates of the IBP Northern Luzon Region had already taken concrete steps to fill the vacancy.

Consequently, the third requisite is likewise not satisfied.

*Lastly*, the public and the stakeholders, specifically, the majority of the delegates of the IBP Northern Luzon Region for the term 2011 to 2013 never acquiesced in Atty. Chaguile's *ultra vires* appointment as successor governor. To reiterate, the majority of the delegates had expressed their "strong objection/opposition" to Atty. Chaguile's appointment and even passed a resolution calling for an election to choose Atty. Habawel's successor.

It is thus clear that Atty. Chaguile utterly failed to meet the *second*, *third* and *fourth* requisites to be considered as a *de facto* IBP Governor. Consequently, all her actions, including her supposed vote in favor of Atty. Joyas for the position of IBP EVP for term 2011-2013, should be treated as **invalid, illegal and hence, without any legal force and effect.**

***Third Issue:***

**Atty. Vicente M. Joyas, IBP Governor for Southern Luzon, was NOT validly elected as IBP EVP on May 22, 2013**

As stated previously, during the May 22, 2013 IBP EVP election for term 2011-2013, Atty. Ubano got four (4) votes. On the other hand, Atty. Joyas obtained five (5) votes – **his fifth vote coming from Atty. Chaguile.** This is where the invalidity of Atty. Joyas' election comes in.

As mandated by paragraph 2, Section 47 of the IBP By-Laws, to be validly elected as EVP, the candidate must obtain *at least five (5) votes*. Given that Atty. Chaguile's vote is without legal force and effect, Atty.

Joyas for all intents and purposes only obtained four (4) valid votes, or **one (1) valid vote short** of the required five (5) votes threshold.

*Thus, the inevitable conclusion is that Atty. Vicente M. Joyas, IBP Governor for Southern Luzon, was NOT validly elected as IBP EVP on May 22, 2013.*

Furthermore, the May 22, 2013 election for the position of IBP EVP for the term 2011-2013 is tainted with infirmities which the *ponencia* obviously has overlooked.

*First*, the presiding officer of the said EVP election – who was, at the same time, the chair of the Comelec – was devoid of authority to preside over the said EVP election.

In the *Cruz Report*, it appears that it was Atty. Joyas, the Chairman of the IBP Execom and a candidate for the IBP EVP position, who appointed Atty. Marohomsalic as Presiding Officer of the EVP election.<sup>20</sup> Notably, it was also Atty. Joyas who appointed Atty. Marohomsalic as chairman of the Comelec for the said election.<sup>21</sup>

Again, this is a violation of the IBP By-Laws as Section 50 mandates that it is the national president who is authorized to “preside at all meetings of the Board of Governors,” including the election of an incoming EVP. In the absence, incapacity or resignation of the national president, it is the incumbent EVP who is authorized to preside over board meetings as well as the election of the incoming EVP. In the absence of both the national president and the EVP, it is this Court, in the exercise of its power of supervision, which is authorized to designate a presiding officer of an EVP election to ensure a fair, honest and credible election to choose the future head of the IBP. Consequently, it was highly improper and appalling for Atty. Joyas to appoint Atty. Marohomsalic.

Also, neither the IBP Execom nor the IBP BoG can make such appointment. In fact, the appointment of the Presiding Officer in an EVP election is not among the specific “functions of the board” provided under Section 41 of the IBP By-Laws. It must likewise be remembered that in the Resolution dated December 14, 2010 in A.M. No. 09-5-2-SC (*In Re: Brewing Controversies in the Elections in the Integrated Bar of the Philippines*) and A.C. No. 8292 (*Attys. Marcial M. Magsino, et al. v. Atty. Rogelio A. Vinluan, et. al*), this Court had the occasion to nullify the EVP election presided over by EVP Vinluan “for **lack of authority to preside over the election** and for lack of quorum.”

*Second*, the Presiding Officer of the EVP election on May 22, 2013 lacked independence essential to a fair and credible EVP election. As

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<sup>20</sup> May 27, 2013 *Report on the Conduct of Election of the Executive Vice President of the Integrated Bar of the Philippines for 2011 -2013 on May 22, 2013*, p.1.

<sup>21</sup> *Id.*

appointee of one of the EVP candidates, his independence was compromised at the very inception.

It must be noted that, as stated in the Cruz Report, Atty. Ubano has objected to the conduct of the IBP EVP elections and had pleaded to postpone the same pending the resolution by this Court of his motions to declare as *ultra vires* the approval of the nomination of Atty. Chaguile as replacement of IBP Governor for Northern Luzon Denis B. Habawel, and to restrain her from the performance of duties as such, and to disallow her to vote in the said IBP EVP Election.

In spite of these seemingly valid objections, Atty. Marohomsalic was instantly swayed by Atty. Joyas to overrule the same, as shown by the following excerpts of the Cruz Report:

Governor Solis interdicted and said that in fairness to Governor Ubano, and to maintain civil and collegial atmosphere in the Board, he is in favor of Governor Ubano's proposal to postpone the election.

**The Chairman was about to call for a division of the house** on the motion to postpone the election when Governor Joyas raised a point of order. He said that as the body is now in the process of nomination, it will be out of order to entertain another motion.

**The Comelec Chairman said he stands corrected and declared Governor Ubano's motion out of order.**<sup>22</sup> (emphasis supplied)

Moreover, an inherent conflict-of-interest situation existed when the presiding officer of the EVP election served at the same time as the chair of the Comelec of the said election. As Comelec chair, he and/or his members prepared the election paraphernalia, prescribed the rules governing the conduct of the EVP election, tallied, canvassed and certified the election results. As presiding officer at the same time, he conducted the election, resolved and ruled on motions and objections in the course of the election and validated the election results. There was never a check whether the respective functions of the Presiding Officer and Comelec had been honestly and faithfully done in the interest of fair, honest and credible election.

The *ponencia*, in claiming that "Atty. Ubano was accorded more than ample opportunity to argue his position," utterly misses the point. The crux of the issue was contextually whether the presiding officer – and Chair of the Comelec at the same time– conducted the EVP election and ruled on the various motions and objections fairly, objectively and independently. As explained earlier, he did not.

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<sup>22</sup> Judge Danilo S. Cruz's May 27, 2013 *Report on the Conduct of Election of the Executive Vice President of the Integrated Bar of the Philippines for 2011 -2013 on May 22, 2013*, p. 4.

### Conclusion

A wrong cannot be corrected by doing another wrong. To repeat, the provisions of the IBP By-laws as to who should choose the IBP Northern Luzon delegates representative in the IBP BoG are clear. Consequently, to clothe the actions and the vote of Atty. Chaguile with validity under the mantle of the *de facto* doctrine, as the *ponencia* wants it to be, would be to disregard and tolerate the blatant violations of the IBP By-Laws. This will set a very dangerous precedent as it would create the impression that this Court is keen in tolerating and encouraging malfeasance and deviation from the IBP By-Laws.


In view of the foregoing, I vote to **GRANT** the:

- (1) “Motion to Declare as Ultra Vires or Invalid Re: Portion of IBP BOG Omnibus Resolution dated 21 March 2013 Approving the Nomination of Atty. Chaguile, IBP Ifugao President, as replacement of IBP Governor for Northern Luzon Denis B. Habawel” dated March 27, 2013; and
- (2) “Urgent Omnibus Motion to Nullify the EVP Election on 22 May 2013.”

and accordingly:

- (1) declare as **NULL** and **VOID** the proceeding during the IBP EVP Election for term 2011-2013 held on May 22, 2013;
- (2) declare as **NULL** and **VOID AB INITIO** Atty. Chaguile’s designation as IBP Governor for Northern Luzon;
- (3) declare as **NULL** and **VOID** the **election of Atty. Joyas** as IBP EVP for term 2011, for his failure to obtain the required affirmative vote of at least five (5) Members of the IBP BoG;
- (4) order Atty. Joyas is to **relinquish** his post as IBP National President for the term 2013-2015 pending the election of the EVP for term 2011-2013. In the meantime, IBP EVP Rosario T. Setias-Reyes will act as Acting National President until such time that the EVP for term 2011-2013 shall have been elected.
- (5) order the *delegates of the IBP Northern Luzon for term 2011–2013* to **RECONVENE** and **ELECT** the **IBP Governor for Northern Luzon for term 2011–2013**, who in turn, is authorized to cast his or her vote for the position of IBP EVP for term 2011-2013;

(6) order the *Members of IBP BoG for term 2011-2013, including the elected IBP Governor for Northern Luzon for term 2011-2013 chosen by the concerned delegates*, to **RECONVENE** and **ELECT** the **IBP EVP for term 2011-2013**, who would serve as IBP National President for term 2013-2015.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice