



Republic of the Philippines
Supreme Court
Manila

EN BANC

ATTY. AILEEN R. MAGLANA,
Complainant,

B.M. No. 2713

Present:

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

- versus -

Promulgated:

ATTY. JOSE VICENTE R. OPINION,
Respondent.

June 10, 2014

X-----X

RESOLUTION

BRION, J.:

Before the Court is the Appeal dated June 11, 2013¹ (with Urgent Motion to Prohibit Protestant-Appellee to Participate in the Election for Executive Vice President of the Integrated Bar of the Philippines [IBP] Set

on June 15, 2013) filed by Atty. Aileen R. Maglana, President of IBP Samar Chapter, assailing the June 7, 2013 decision of the IBP Board of Governors (*BOG*).²

This BOG decision granted the election protest of Atty. Jose Vicente R. Opinion; declared Atty. Opinion as eligible to run for Governor of IBP Eastern Visayas for the 2013-2015 term; annulled the proclamation of Atty. Maglana as Governor of IBP Eastern Visayas; and proclaimed Atty. Opinion as the duly elected Governor of IBP Eastern Visayas for the 2013-2015 term.³

The Antecedents

On May 25, 2013, thirteen (13) delegates of the IBP Eastern Visayas Region gathered at the Session Hall of the Regional Trial Court (*RTC*), Branch 24, Bulwagan ng Katarungan, Capitol Site, Maasin, Leyte, to elect the Governor of their region for the 2013-2015 term. Also present during the meeting were the Court's designated observer, Judge Bethany G. Kapili (Executive Judge of the *RTC*, Branch 24, Maasin, Leyte), other lawyers of the Southern Leyte Chapter and outgoing Governor Manuel Enage, Jr. Governor Enage presided over the election. He then called the election to order and opened the nominations for the position of Governor of IBP Eastern Visayas for the 2013-2015 term.⁴

Upon a motion duly seconded, Atty. Maglana - the incumbent President of IBP Samar Chapter - was nominated for the position of Governor. Atty. Maglana then moved that Governor Enage declare that only IBP Samar Chapter was qualified to be voted upon for the position of Governor for IBP Eastern Visayas, to the exclusion of all the other eight (8) chapters. Atty. Maglana cited the rotation rule under Bar Matter No. 491 and argued that since 1989 or the start of the implementation of the rotation rule, only IBP Samar Chapter had not served as Governor for IBP Eastern Visayas.⁵

Atty. Opinion, the candidate of the IBP Eastern Samar Chapter, thereafter, took the floor and manifested that before he decided to run for Governor, he sought the opinion of the IBP if he was still qualified to run considering that he also ran for Governor and lost in the immediately preceding term. Atty. Opinion stated that he received an opinion dated April 2, 2013 from Governor Vicente M. Joyas, Chairman of the IBP Executive Committee, that pertinently stated:⁶

² Id. at 64-70.

³ Id. at 70.

⁴ Minutes of the Regional Election for IBP Governor of Eastern Visayas, Held On May 25, 2013 at the Session Hall, *RTC* Br. 24, Bulwagan ng Katarungan, Capitol Site, Maasin, Southern Leyte, id. at 37-38.

⁵ Id. at 39-40.

⁶ Id. at 40-41.

This has reference to your Letter dated March 15, 2013 addressed to former IBP President Roan I. Libarios seeking clarification on your Chapter's qualification to field a candidate for Governor on May 25, 2013.

Please be informed that your having lost the Governorship elections for Eastern Visayas in 2011 does not disqualify your Chapter from seeking an election for Governorship of Eastern Visayas Region. Thus, under the present set up, the IBP Chapters of Eastern Samar, Samar, and Biliran are qualified to field their respective candidate for the scheduled Regional Elections on May 25, 2013.⁷

Atty. Opinion also manifested that in the 2011 Regional Elections for IBP Eastern Visayas, the representative of IBP Samar Chapter, Judge Amanzar, waived "the votes as he cannot pursue an election at that time." Instead, Atty. Opinion was "asked to run."⁸ The Chapter President of Samar in 2011, however, categorically denied the waiver and said, "I did not pursue my intentions, although I had one at that time to run for governor, because I was financially handicapped... but I did not categorically waive our right to the governorship, because I believe that waiver should be, - should not be implied. I categorically say that I did not waive my right, or the right of the chapter to run for governor."⁹

Atty. Jose Aguilar Grapilon, the delegate from Biliran, meanwhile pointed out that Governor Joyas as Chairman of the IBP Executive Committee had no authority to make the above-cited pronouncement; it is only the Supreme Court that has the authority to determine the qualified chapters in the region.¹⁰

After heated debates on the proper interpretation of the rotation rule to the present case, Governor Enage eventually ruled that Atty. Opinion was disqualified from running for the position of Governor of IBP Eastern Visayas.¹¹ Thereafter, some delegates protested the decision of Governor Enage which prompted him to call a recess. When the session resumed, Atty. Malig-on, Vice President of IBP Cebu Chapter, moved that the election be suspended and the issue of Atty. Opinion's objection to Governor Enage's ruling be resolved by the IBP BOG. Governor Enage, however, denied this motion and, thereafter, ordered the distribution of the ballots.¹²

The counting of the ballots revealed that only ten (10) out of the eleven (11) ballots cast were filled up. Governor Enage counted the votes, with six (6) votes in favor of Atty. Opinion considered as stray votes and four (4) votes in favor of Atty. Maglana. He then proceeded to proclaim

⁷ Id. at 20.

⁸ Id. at 40.

⁹ Id. at 41-42.

¹⁰ Id. at 41.

¹¹ Id. at 47.

¹² Id. at 55.

Atty. Maglana as the duly elected Governor of IBP Eastern Visayas in view of the disqualification of the other nominee, Atty. Opinion.¹³

The Protest

On May 27, 2013, Atty. Opinion filed an election protest with the IBP BOG.¹⁴ In support of his election protest, Atty. Opinion raised two points.

First, he noted that since its introduction in 1990, the rotation rule had not been followed in the elections for Governor of IBP Eastern Visayas since Cebu Province, Cebu City, Bohol and Northern Samar have had two elected governors each, as opposed to other chapters which only had one governor elected. Since the rotation rule was not followed, IBP Eastern Samar Chapter cannot be disqualified to run since it was merely exercising its right to run for the second time in the same manner as that of the other chapters that had elected two governors.¹⁵

Second, he emphasized that IBP Samar Chapter had waived its turn in the rotation when it did not field a candidate for Governor in the 2007, 2009 and 2011 elections. He notes that IBP Samar Chapter should not be allowed to assert its turn in the rotation at anytime; otherwise, it would disrupt the sequence considering it “follows Cebu City sequence wise.” Thus, for the 2013 regional elections, both Eastern Samar and Samar should have been declared eligible to run for Governor of IBP Eastern Visayas.¹⁶

In her Comment,¹⁷ Atty. Maglana argued three points.

First, IBP Samar Chapter did not waive its turn in the rotation. In fact, the former IBP Samar Chapter President, Atty. Cesar Mabansag, categorically denied, during the May 25, 2013 regional elections, that he had waived the right of IBP Samar Chapter to the governorship. Even if there was a waiver during the 2011 election, IBP Samar Chapter can reclaim its right to the governorship before the rotation is completed, pursuant to Section 39, Article VI, as amended, of the IBP By-Laws. Thus, for the 2013-2015 term, IBP Samar Chapter, which remains to be the only chapter that did not have its turn in the rotation, should be allowed to reclaim its right to the governorship.¹⁸

Second, she noted that since Bar Matter No. 586, dated May 14, 1991, mandated the strict implementation of the rotation rule, and based on IBP records, all chapters in the region, except IBP Samar Chapter, have already

¹³ Id. at 55-56.

¹⁴ Id. at 10-17.

¹⁵ Id. at 14.

¹⁶ Id. at 14-15.

¹⁷ Id. at 22-29.

¹⁸ Id. at 23.

had their turn in the rotation. Thus, she argued that in order for the rotation cycle in the region to be completed, IBP Samar Chapter, which had not yet had its turn in the rotation, should be deemed the only qualified chapter to field its candidate for governor in the May 25, 2013 regional elections.¹⁹

Third, she contended that even if the rotation cycle is reckoned from 1973, it is still IBP Samar Chapter's turn in the rotation, pursuant to the rotation rule under Section 39, Article VI, as amended, of the IBP By-Laws. She notes that with the election of Governor Enage in the 2011-2013 term, the remaining chapters that have not served as governor are Samar, Biliran and Eastern Samar Chapters. Thus, pursuant to Section 39, IBP Samar Chapter should be able to field its candidate for governor first, ahead of Biliran and Eastern Samar Chapters.²⁰

The IBP BOG Decision

In its June 7, 2013 decision, the IBP BOG granted the election protest of Atty. Opinion and declared him the duly elected Governor of IBP Eastern Visayas for the 2013-2015 term.

First, the IBP BOG held that IBP Samar waived its turn in the first rotation cycle, from 1989 to 2007. It noted that under the rotation rule, the governorship of a region shall rotate once in as many as the number of chapters there are in the region, to give every chapter a chance to represent the region in the IBP BOG. In the case of IBP Eastern Visayas, the region consists of nine (9) chapters, thus the cycle consists of nine governorship terms (from 1989 to 2007). Based on the records, it is clear that four chapters have been represented twice; IBP Eastern Samar was represented once while IBP Samar was never represented at all.

Based on these considerations, the IBP BOG concluded that IBP Samar Chapter effectively waived its turn in the rotation order when it did not field any candidate from 1989 to 2007, as well as when it did not invoke the rotation rule to challenge the nominations of those candidates whose chapters had already been previously represented in the rotation cycle.²¹

Second, the IBP BOG ruled that the first rotation cycle had already terminated with the 2005 to 2007 term despite the lack of representation from Eastern Samar as it has effectively waived its turn in the first rotation cycle. It emphasized that the rotation rule is not absolute and is subject to waiver, such as when the chapters, in the order of rotation, opt not to file or nominate their own candidates for governor during the election regularly done for that purpose. It also held that Atty. Maglana's contentions that IBP

¹⁹ Id. at 25.

²⁰ Id. at 26.

²¹ Id. at 68.

Eastern Samar can reclaim the governorship at any time and that the first rotation cycle cannot be completed unless IBP Eastern Samar has had its turn are completely anathema to the concept of the rotation cycle; the rotation cycle should run its course and the rotation in the region cannot be held hostage by any one chapter.²²

Third, the IBP BOG found that based on the rotation by exclusion rule (*i.e.*, once a member of the chapter is elected as governor, his or her chapter would be excluded in the next turn until all have taken turns in the rotation cycle), the six (6) remaining chapters in the region were actually qualified to field a candidate for governor in the May 25, 2013 regional elections. It also noted that the IBP Eastern Visayas region is actually already in its second rotation cycle with governors from Leyte (2007-2009), Bohol (2009-2011) and Southern Leyte (2011-2013) already having served the region. In the present case, both IBP Eastern Samar and IBP Samar were actually qualified to field their candidates for Governor, alongside IBP Cebu City, IBP Cebu Province, IBP Biliran and IBP Northern Samar Chapters.²³

Fourth, the IBP BOG concluded that Atty. Opinion, who was actually a qualified candidate for Governor of IBP Eastern Visayas, should be declared the duly elected Governor for IBP Eastern Visayas for the 2013-2015 term, considering that he garnered the majority six (6) votes, as opposed to the minority four (4) votes garnered by Atty. Maglana.²⁴

The Appeal

On June 11, 2013, Atty. Maglana filed the present Appeal (With Urgent Motion to Prohibit Protestant-Appellee to Participate in the Election for Executive Vice President of the Integrated Bar of the Philippines Set on June 15, 2013). In support of her Appeal, Atty. Maglana submits the following arguments:

First, IBP Samar Chapter is the only qualified chapter to field a candidate for governor for the 2013-2015 term, to the exclusion of all other chapters in the IBP Eastern Visayas region. She emphasizes that based on the records, IBP Samar Chapter clearly had never served as governor for IBP Eastern Visayas since the introduction of Bar Matter No. 491 in 1989.²⁵

Second, IBP Samar Chapter never waived its turn in the rotation cycle because under the rotation by exclusion scheme, it does not know when its turn to serve as governor would be. Even assuming that there had been a waiver, Section 39, Article VI, as amended, of the IBP By-Laws allows the

²² Id. at 68-69.

²³ Id. at 69.

²⁴ Id.

²⁵ Id. at 2-4.

chapter that waived its turn in the rotation order to reclaim its right at any time before the rotation is completed.²⁶

Third, the rotation cycle in the IBP Eastern Visayas region can only be completed once a nominee from IBP Samar Chapter had served as Governor for the 2013-2015 term. The rotation cycle cannot simply be deemed complete by just equating the number of terms with the number of chapters in the region. Atty. Maglana contends that the situation of IBP Samar Chapter is the same as that of Romblon Chapter in 2009 when the Court, in *In the Matter of the Brewing Controversies in the Election in the Integrated Bar of the Philippines*,²⁷ affirmed IBP Romblon Chapter's right to the 2009-2011 term despite the fact that there were other chapters in the Western Visayas region that had served more than one term.²⁸

On July 2, 2013, the Court issued a Resolution denying Atty. Maglana's prayer to restrain Atty. Opinion from voting in the election on June 15, 2013, the same having become moot and academic. In the same Resolution, the Court also required Atty. Maglana to furnish the Court, within five (5) days from notice, a certified true copy of the IBP BOG decision dated June 7, 2013.²⁹

On August 3, 2013, Atty. Maglana submitted her Compliance with the Court's directive in its July 2, 2013 Resolution.³⁰

The Issues for Resolution

The core issues raised by the present Appeal are the following:

1. Whether the first rotation cycle in IBP Eastern Visayas, since the implementation of Bar Matter No. 491, has been completed;
2. Whether IBP Samar Chapter waived its turn in the rotation order so that it can no longer claim its right to the governorship position for the 2013-2015 term;
3. Whether IBP Samar Chapter is the only qualified chapter to field a candidate for governor in IBP Eastern Visayas for the 2013-2015 term; and
4. Whether Atty. Opinion should be declared the duly elected Governor for IBP Eastern Visayas for the 2013-2015 term.

²⁶ Id. at 4-5.

²⁷ A.M. No. 09-5-2-SC and A.C. No. 8292, December 14, 2010, 638 SCRA 1.

²⁸ Id. at 5-6.

²⁹ Id. at 60.

³⁰ Id. at 62-71.

Our Ruling

We affirm the IBP BOG decision dated June 7, 2013 and declare Atty. Opinion the duly elected Governor of IBP Eastern Visayas for the 2013-2015 term.

We begin with a brief background on the organizational structure of the IBP. 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.³¹

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.³² In the case of IBP Eastern Visayas, the region is composed of nine (9) chapters, namely: ³³

1. Biliran
2. Bohol
3. Cebu Province
4. Cebu City
5. Eastern Samar
6. Leyte
7. Northern Samar
8. Samar
9. Southern Leyte

At least one (1) month before the national convention, the delegates from each region shall elect the Governor for their region, who shall be chosen by rotation.³⁴

These nine (9) Governors constitute the IBP BOG which governs and has general charge of the IBP's affairs and activities. 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.³⁵

³¹ See Separate Concurring Opinion of J. Brion in *In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines*, A.M. No. 09-5-2-SC and A.C. No. 8292, April 11, 2013, 696 SCRA 8, 97.

³² Id. at 99.

³³ *Rollo*, p. 3.

³⁴ Section 39, Article VI, as amended, of the IBP By-Laws.

³⁵ *Supra* note 31.

The Rotation Rule

The logical starting point in resolving the present matter before us is Section 39, Article VI of the IBP By-Laws, as amended by Bar Matter No. 491. This provision established the rotation rule in the IBP. The provision states:

SEC. 39. Nomination and election of the Governors. – At least one (1) month before the national convention the delegates from each region shall elect the governor for their region, the choice of which shall as much as possible be rotated among the chapters in the region.

In its Resolution in Bar Matter No. 586 dated May 16, 1991, the Court decreed without amending Section 39, Article VI of the IBP By-Laws that the rotation rule under Sections 37 and 39, Article VI of the IBP By-Laws should be strictly implemented “so that all prior elections for governor in the region shall be reckoned with or considered in determining who should be the governor to be selected from the different chapters to represent the region in the Board of Governors.”³⁶

Despite the call for strict implementation of the rotation rule under Bar Matter No. 586 in 1991, the Court amended Section 39, Article VI of the IBP By-Laws only in 2010 in *In the Matter of the Brewing Controversies in the Election in the Integrated Bar of the Philippines*,³⁷ by mandating the mandatory and strict implementation of the rotation rule, as well as recognizing that the rotation rule is subject to waivers by the chapters of the regions. The provision, as further amended, now reads:

Section 39. ***Nomination and election of the Governors.*** – At least one (1) month before the national convention the delegates from each region shall elect the Governor for their region, who shall be chosen by rotation which is mandatory and shall be strictly implemented among the Chapters in the region. When a Chapter waives its turn in the rotation order, its place shall redound to the next Chapter in the line. Nevertheless, the former may reclaim its right to the Governorship at any time before the rotation is completed; otherwise, it will have to wait for its turn in the next round, in the same place that it had in the round completed.³⁸

Broken down into its components, Section 39, Article VI, as amended, of the IBP By-Laws contains the following elements:

- (a) Delegates from each region shall elect the governor for their region who shall be chosen by rotation;

³⁶ See *In the Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines*, A.M. No. 09-5-2-SC and A.C. No. 8292, December 4, 2012, 686 SCRA 791, 794.

³⁷ *Supra* note 27.

³⁸ *Id.* at 14; italics and emphasis supplied.

- (b) Rotation of the governorship of each region shall be mandatory and to be strictly implemented;
- (c) A chapter may waive its turn in the rotation order which shall redound to the next chapter in the line; and
- (d) The chapter that waived its turn may reclaim its right to the governorship at any time before the rotation is completed; otherwise, it will have to wait for its turn in the next round, in the same place that it had in the round completed.

Elements a, c and d are key elements that are decisive in resolving the present controversy. As far as element (a) is concerned, the problem relates to the element of rotation where the manner of implementation is the disputed issue. Elements (c) and (d) also assume significance because of the assertion of waiver on the part of IBP Samar Chapter of its right to the governorship.

As has been interpreted and applied by the Court in the past, the rotation rule under Section 39, Article VI, as amended, of the IBP By-Laws actually consists of two underlying directives.

First is the directive for the mandatory and strict implementation of the rotation rule. The rule mandates that the governorship of a region shall rotate once in as many terms as there may be chapters in the region. This serves the purpose of giving every chapter a chance to represent the region in the IBP BOG.

Second is the exception from the mandatory and strict implementation of the rotation rule. This exception would allow a chapter to waive its turn in the rotation order, subject to its right to reclaim the governorship at any time before the rotation is completed. Thus, as the Court held in *In the Matter of the Brewing Controversies in the Election in the Integrated Bar of the Philippines*, “[t]he rotation rule is not absolute but subject to waiver as when the chapters in the order of rotation opted not to field or nominate their own candidates for Governor during the election regularly done for that purpose.”³⁹

The Operation of the Rotation System in IBP Eastern Visayas

Pursuant to Bar Matter No. 491, the delegates for the 1989-1991 term elected Atty. Benedict H. Alo of Cebu Province as Governor of IBP Eastern Visayas. This development ushered in the implementation of the rotation system for the governorship of IBP Eastern Visayas. Thus, the rotational

³⁹

Id. at 33-34.

cycle should be counted from the time of Bar Matter No. 491, when the Court provided for the rotation system. This term (1989-1991) constituted the first “turn” in the cycle and should be considered the starting point for consideration in resolving the various aspects of the present controversy. Note, however, that part of this term was under a caretaker that served as a preliminary and preparatory measure under the developments that initiated Bar Matter No. 491.

The tabulation below shows the election developments for the position of Governor for IBP Eastern Visayas from the 1989-1991 term up to the present, viz.:

Term	Elected Governors	Chapter
1989-1990	Caretaker Board	N/A
1990-1991	Benedicto H. Alo	Cebu Province
1991-1993	Baldomero C. Estenzo	Cebu City
1993-1995	Agustinus V. Gonzaga	Bohol
1995-1997	Jose Aguila Grapilon	Biliran
1997-1999	Kenny A.H. Tantuico	Northern Samar
1999-2001	Celestino B. Sabate	Eastern Samar
2001-2003	Emil L. Ong	Northern Samar
2003-2005	Manuel M. Monzon	Cebu Province
2005-2007	Manuel P. Legaspi	Cebu City
2007-2009	Evergisto S. Escalon	Leyte
2009-2011	Roland B. Inting	Bohol
2011-2013	Manuel L. Enage, Jr.	Southern Leyte
2013-2015	Disputed	Disputed

a. The First rotation cycle has been completed in 2007.

Counting from the governorship of Atty. Benedicto H. Alo of IBP Cebu Province Chapter, the first rotation cycle of governors, consisting of nine (9) governorship terms from 1989 to 2007, followed the following pattern and succession:

- 1. Cebu Province - Benedicto H. Alo, 1990-1991
- 2. Cebu City - Baldomero C. Estenzo, 1991-1993
- 3. Bohol - Agustinus V. Gonzaga, 1993-1995
- 4. Biliran - Jose Aguila Grapilon, 1995-1997
- 5. Northern Samar - Kenny A.H. Tantuico, 1997-1999
- 6. Eastern Samar - Celestino B. Sabate, 1999-2001
- 7. Northern Samar - Emil L. Ong, 2001-2003

8. Cebu Province - Manuel M. Monzon, 2003-2005
9. Cebu City - Manuel P. Legaspi, 2005-2007

leaving three chapters – Samar, Leyte and Southern Leyte – with no governor elected to represent the chapter’s slot in the rotation. Pursuant to the rotational rule, the governorship of a region shall rotate once in as many terms as there may be chapters in the region, to give every chapter a chance to represent the region in the IBP BOG. However, not every chapter was represented in the first rotational cycle. As the IBP BOG noted, there were instances when the Governor of IBP Eastern Visayas came from the same chapter, such as Northern Samar (1997-1999 and 2001-2003), Cebu Province (1990-1991 and 2003-2005) and Cebu City (1991-1993 and 2005-2007).

These “aberrant” developments, strictly speaking, sidetracked the smooth and proper implementation of the rotation rule in the first rotational cycle that started with the 1990-1991 term of IBP Cebu Province and which should have ended in the 2005-2007 term with all the chapters, including Samar, Leyte and Southern Leyte, given the chance to be governor. Stated otherwise, had the chapters strictly and mandatorily followed the rotation rule, the first rotational cycle should have been completed in 2007.

We cannot sustain Atty. Maglana’s arguments, that: (1) the first rotation cycle in IBP Eastern Visayas region had not been completed in 2007; and (2) that the rotation cycle can only be completed once a nominee from IBP Samar Chapter had served as governor for the 2013-2015 term, for two reasons.

First, as the IBP BOG established, the primary reason why some chapters, such as Northern Samar, Cebu Province and Cebu City, were represented twice (in the first rotation cycle) was because Samar either did not field any candidate from 1989 to 2007 or it failed to invoke the rotation rule to challenge the nominations of those candidates whose chapters had already been represented in the rotation cycle. We agree with the IBP BOG that Samar Chapter effectively waived its turn in the rotation order, as will be further explained below. Because of this waiver of its turn in the first rotation cycle, we conclude that the first rotation cycle had been completed in 2007.

Second, Atty. Maglana cannot simply reclaim IBP Samar Chapter’s right to the governorship in the 2013-2015 term because it is contrary to Section 39, Article VI, as amended, of the IBP By-Laws. This provision states that the chapter which has waived its turn in the rotation cycle may reclaim its right to the governorship at any time before the rotation is completed. Having been established that the first rotational cycle had been completed in the 2005-2007 term, IBP Samar Chapter can no longer belatedly reclaim its right to the governorship in the 2013-2015 term as it

should have exercised its claim on or before the completion of the first rotation cycle in 2007. In this regard, we quote with approval the disquisition of the IBP BOG:

Moreover, protestee's view that the Samar chapter, by virtue of its being the only chapter that has yet to have its turn as governor in the rotation rule era, can reclaim the governorship at any time it opts to and that the rotation cycle cannot be deemed completed until it does is anathema to the very concept of the rotation rule. The region cannot be held hostage indefinitely by one chapter. The rotation has to run its course. Indeed the flaw of protestee's reasoning would be even more apparent if the issue of the election of the Executive Vice President would come into play inasmuch as the Samar Chapter could then invoke its perceived right to the governorship when it is the turn of Eastern Visayas Region to have an EVP elected from its ranks, thus, giving it an undue advantage over the other chapters in the region.⁴⁰

The dissent, however, emphasizes that the preferred policy as mandated in Section 39, Article VI, as amended of the IBP By-Laws, is the mandatory and strict implementation of the rotation by exclusion rule. The dissent posits that unless and until IBP Samar Chapter had actually been given the opportunity to seat as Governor of IBP Eastern Visayas, the first rotation cycle for the position of IBP Eastern Visayas cannot be considered complete.⁴¹

The dissent's reliance on the mandatory and strict implementation of the rotation by exclusion rule, as mandated by Section 39, as amended, Article VI of the IBP By-Laws, is inaccurate. Despite the amendment of Section 39, Article VI of the IBP By-Laws mandating the strict implementation of the rotation by exclusion rule, the Court cannot ignore the reality that prior to the present amendment (*i.e.*, from the 1989-1991 term until December 2010), the prevailing rotation rule was not mandatory; the choice of governor should only be rotated as much as possible among the chapters of the region.

Note that this rule even prevailed after the first rotation cycle of governors, consisting of nine governorship terms from 1989 to 2007. Thus, the dissent cannot simply apply Section 39, Article VI, as amended, of the IBP By-Laws in the present case because this amendment calling for the strict implementation of the rotation rule cannot be interpreted retroactively, but only prospectively, so that it would only take effect in the 2011-2013 term.

As previously emphasized, not every chapter was represented in the first rotation cycle; there were three instances when the Governor of IBP Eastern Visayas came from the same Chapter, such as the case of Northern Samar, Cebu Province and Cebu City. These aberrant developments can

⁴⁰ Rollo, p. 69.

⁴¹ Dissenting Opinion of J. Velasco, p. 7.

only be justified under the “**as much as possible**” **qualifier** cited above. Based on these considerations and from a practical perspective, we can reasonably conclude that the first rotation cycle has been completed in 2007 despite the non-participation of Samar, Leyte and Southern Leyte, after considering the following premises:

- i. Bar Matter No. 491 lays down the starting point of the IBP's rotation system that called for the election of a governor for a region to be rotated as much as possible among the chapters of the region;
- ii. This rule on rotation prevailed until the amendment of Section 39, Article VI of the IBP By-Laws on December 14, 2010 decreeing the mandatory and strict implementation of the rotation rule; and
- iii. The recent amendment of Section 39, Article VI of the IBP By-Laws should be interpreted prospectively so that it would only take effect from the 2011-2013 term.

b. IBP Samar Chapter waived its turn in the first rotation cycle.

As mentioned, the rotation rule under Section 39, Article VI, as amended, of the IBP By-Laws is not absolute as it is subject to a waiver, as when a chapter in the order of rotation opts not to field or nominate its candidate for governor during the election regularly called for the purpose. The dissent, however, posits that IBP Samar Chapter did not waive its turn in the rotation cycle because there was no clear or unequivocal waiver on its part.⁴²

First, the dissent notes that no express waiver was executed by the IBP Samar Chapter to forego its turn in the rotation cycle. *Second*, the second and third elements of a valid waiver were not proven. The dissent argues only during the election for governor for 2013-2015 that IBP Samar Chapter could have been aware of its right to be the sole and only remaining Chapter that should vie for the position of Governor because it is only during that time that it becomes clear that it is the only remaining Chapter of IBP Eastern Visayas which remains unrepresented in the IBP BOG. Lastly, the IBP By-Laws is silent on how and when the waiver should be made and whether or not the Chapter President or the Board of Directors is clothed with authority to waive the turn of the Chapter in the rotation cycle on behalf of its members. Thus, the dissent concludes that it remains unclear that there was a clear and unequivocal intention on the part of IBP Samar Chapter and its members to waive its right to the governorship.⁴³

⁴² Dissenting Opinion of J. Velasco, p.7.

⁴³ Id. at 9.

The dissent's citation of Article 6 of the Civil Code and its application of the elements of a valid waiver of a right under civil law is misplaced.

Section 5, Article VIII of the Constitution mandates the Court's power of supervision over the IBP. In *Garcia v. De Vera*,⁴⁴ the Court held 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 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. For this reason, the IBP By-Laws mandates 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.⁴⁵

Pursuant to the Court's power of supervision over the IBP, the Court already spoke decisively on the issue of waiver under Section 39, Article VI, as amended, of the IBP By-Laws in *In the Matter of the Brewing Controversies in the Election in the Integrated Bar of the Philippines*.⁴⁶ As mentioned, the Court ruled that the rotation rule under Section 39 is not absolute, but is subject to a waiver, as when a chapter in the order of the rotation opts not to field or nominate a candidate for governor during the election regularly called for that purpose. Notably, the Court in that case also established the standards by which a chapter may be deemed to have waived its turn in the rotation cycle under Section 39, Article VI, as amended, of the IBP By-Laws. Thus, the dissent's reliance on the standards of waiver of rights under civil law cannot simply prevail over the standards set by the Court in the *Brewing Controversies* case.

In the *Brewing Controversies* case, the Court held that the six chapters in the region that should strictly take precedence in the rotation rule over Lanao del Sur Chapter (*i.e.*, IBP Sarangani Chapter and the other five chapters) waived their turn in the rotation order by not fielding a candidate for governor and by failing to invoke the rotation rule to challenge the nominations from the latter. In ruling that Atty. Marohomsalic of Lanao del Sur Chapter was qualified to run for governor in the 2009 elections, the Court noted that there were instances when the governor of Western Mindanao Region came from the same chapter and that the other chapters opted not to field or nominate their own candidates, thus:

⁴⁴ 463 Phil. 385 (2003).

⁴⁵ See Separate Concurring Opinion of J. Brion in *In the Matter of the Brewing Controversies in the Election in the Integrated Bar of the Philippines*, *supra* note 31, at 137-138.

⁴⁶ *Supra* note 27.

In the regular election of April 25, 2009, there is no dispute that the voting delegates of IBP Western Mindanao Region voted into office Atty. Marohomsalic of Lanao del Sur Chapter as Governor for the 2009-2011 term. During the said election, his only rival was Atty. Benjamin Lanto who also belongs to the same Lanao del Sur Chapter. A third candidate, Atty. Escobar from the Sarangani Chapter, was nominated but he declined the nomination.

While the Committee points out that six (6) chapters in the region, including Sarangani, are entitled to precedence over the Lanao del Sur chapter in the order of rotation, the fact remains that **not one of them nominated or fielded a candidate from their respective ranks during the April 25, 2009 election. Neither did any one of them challenge the nominations of the Lanao del Sur Chapter based on the order of rotation.**

By not fielding a candidate for Governor and by declining the nomination raised in favor of its Chapter President (Atty. Escobar), the IBP Sarangani Chapter is deemed to have waived its turn in the rotation order. The same can be said of the remaining chapters. They too are deemed to have waived their turn in the rotation as they opted not to field or nominate a candidate from among their respective members. Neither did they invoke the rotation rule to challenge the nominations from the Lanao del Sur Chapter. On the contrary, they fully expressed their concurrence to the cited nominations, which may be interpreted as a waiver of their right to take their turn to represent the region in the Board of Governors for the 2009-2011 term.

It need not be stressed that, as cited by the Committee itself, there were instances when the Governor of the Western Mindanao Region came from the same chapter such as ZAMBASULTA (1997-1999 & 1999-2001) and Sultan Kudarat (2003-2005 & 2007-2009). Thus, Atty. Marohomsalic could not be faulted if the other chapters opted not to field or nominate their own candidates. Having been validly nominated and duly proclaimed as the duly elected Governor of Western Mindanao, Atty. Marohomsalic therefore deserves to assume his position during the remainder of the term.

It would have been a different story if another Chapter in the order of rotation fielded its own candidate or invoked the rotation rule to challenge Atty. Marohomsalic's nomination. But the record is bereft of any showing that his nomination and subsequent election was challenged on that basis. If there was any challenge at all, it merely referred to his nomination by Atty. Macalawi which the Committee itself has found to be in order. Thus, no compelling reason exists to disregard the electoral mandate and nullify the will of the voting delegates as expressed through the ballot.

The "rotation rule" is not absolute but subject to waiver as when the chapters in the order of rotation opted not to field or nominate their own candidates for Governor during the election regularly done for that purpose. If a validly nominated candidate obtains the highest number of votes in the election conducted, his electoral mandate deserves to be respected unless obtained through fraud as established by evidence. Such is not the case here.

Suffice it to say, the “rotation rule” should be applied in harmony with, and not in derogation of, the sovereign will of the electorate as expressed through the ballot. Thus, Atty. Marohomsalic cannot be divested and deprived of his electoral mandate and victory. The order of rotation is not a rigid and inflexible rule as to bar its relaxation in exceptional and compelling circumstances.⁴⁷

The same facts obtain in the present case. As the IBP BOG noted, not all the nine (9) chapters of Eastern Visayas were able to field a governor for the first rotation cycle from 1989 to 2007 since three chapters were represented twice. IBP Eastern Samar Chapter, to which Atty. Opinion belongs, was represented once while IBP Samar Chapter, which Atty. Maglana represents, was not represented at all. The IBP BOG also established that some chapters were represented twice during the first rotation cycle because Samar Chapter either did not field any candidate for governor from 1989 to 2007 or it did not invoke the rotation rule to challenge the nominations of those candidates whose chapters had already been previously represented in the rotation cycle. Based on these considerations and pursuant to the Court’s December 14, 2010 ruling, we conclude that IBP Eastern Samar effectively waived its turn in the first rotation cycle.

To justify its position that it is the sole Chapter qualified to field a candidate in the 2013-2015 term, Atty. Maglana cites the December 14, 2010 Resolution of the Court in *In the Matter of the Brewing Controversies in the Election in the Integrated Bar of the Philippines*⁴⁸ where it upheld the turn of IBP Romblon Chapter which then completed the rotation cycle in IBP Western Visayas region.

The citation is also misplaced. In this case, the Court upheld the election of Atty. Fortunato as Governor of IBP Western Visayas since he obtained the highest number of votes and also because under the rotation rule, it was the turn of the Romblon Chapter to represent IBP Western Visayas Region in the IBP BOG. Contrary to Atty. Maglana’s contentions, the Court in that case never made a finding that there were also chapters that had two governors in one cycle and that these second terms were considered as “aberrations.” Furthermore, unlike the case of IBP Samar Chapter, the Court did not make any finding regarding the waiver of the right to the governorship in IBP Romblon Chapter’s case.

c. IBP Samar Chapter is not the only qualified chapter to field a candidate for governor for the 2013-2015 term.

With the end of the first rotation cycle in 2007 during the term of Atty. Manuel P. Legaspi of IBP Cebu City Chapter, the election of Atty.

⁴⁷ Id. at 32-34; emphases supplied.

⁴⁸ *Supra* note 27.

Evergisto S. Escalon of IBP Leyte Chapter in that same year effectively ushered in a fresh second rotation cycle in the IBP Eastern Visayas region. Thus, the second rotation cycle for governor in the IBP Eastern Visayas region now follows the following pattern and succession:

1. Leyte - Evergisto S. Escalon, 2007-2009
2. Bohol - Roland B. Inting, 2009-2011
3. Southern Leyte - Manuel L. Enage, Jr., 2011-2013

With the IBP Eastern Visayas region already in the second rotation cycle and with governors from Leyte, Bohol and Southern Leyte Chapters having served the region as starting points, Atty. Maglana's position that IBP Samar Chapter is the only remaining chapter qualified to field a candidate for governor in the 2013 -2015 term clearly fails. The rotation by exclusion rule provides that "once a member of [a] chapter is elected as Governor, his [or her] chapter would be excluded in the next turn until all have taken their turns in the rotation cycle. Once a full rotation cycle ends and a fresh cycle commences, all the chapters in the region are once again entitled to vie but subject again to the rule on rotation by exclusion."⁴⁹

Under this rule, considering that Leyte, Bohol and Southern Leyte Chapters already served in the second rotation cycle, the six remaining chapters are qualified to field their candidates for governor in the 2013-2015 term. Applied in the present case, it is clear that both IBP Eastern Samar and IBP Samar, along with Cebu Province, Cebu City, Biliran and Northern Samar Chapters, are qualified to field their candidates in the May 25, 2013 regional elections in the IBP Eastern Visayas region.

d. Atty. Opinion is the duly elected Governor for IBP Eastern Visayas for the 2013-2015 term.

Based on the above considerations, we agree with the IBP BOG that Governor Enage seriously erred in disqualifying Atty. Opinion as a candidate and in declaring the six (6) votes he garnered as stray.

The election of Atty. Opinion is well-settled. He did not only come from the chapter which is entitled to be elected for the position but also got the majority of six (6) votes, as opposed to the four (4) votes garnered by Atty. Maglana in the May 25, 2013 elections.

As the Court held in its December 14, 2010 Resolution in *In the Matter of the Brewing Controversies in the Election in the Integrated Bar of the Philippines*,⁵⁰ "[i]f a validly nominated candidate obtains the highest

⁴⁹ *Supra* note 36, at 798.


⁵⁰ *Supra* note 27.

number of votes in the election conducted, his electoral mandate deserves to be respected unless obtained through fraud as established by evidence.”⁵¹ Similarly, such is not the case here and thus, Atty. Opinion should be declared the duly elected Governor for IBP Eastern Visayas in the 2013-2015 term.


WHEREFORE, premises considered, the Court resolves that:

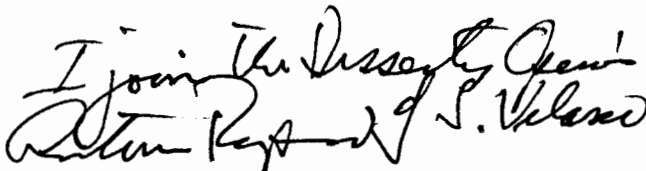
1. Atty. Jose Vicente R. Opinion is qualified to run for Governor of IBP Eastern Visayas region for the 2013-2015 term;
2. The six (6) votes cast in favor of Atty. Jose Vicente R. Opinion are valid votes and should be counted in his favor;
3. The proclamation of Atty. Aileen R. Maglana by Governor Manuel Enage, Jr. be annulled since she failed to obtain the majority of the votes cast in the May 25, 2013 elections; and
4. Atty. Jose Vicente R. Opinion be declared the duly elected Governor of IBP Eastern Visayas region for the 2013-2015 term, having garnered the highest number of votes cast in the May 25, 2013 elections.

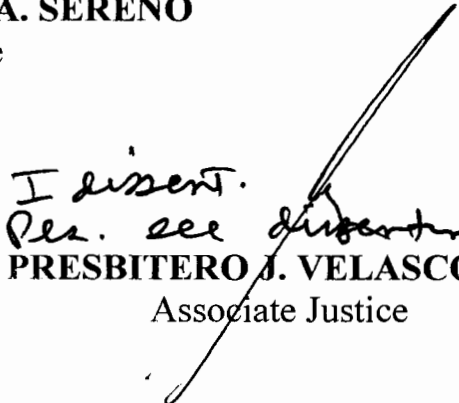
SO ORDERED.


ARTURO D. BRION
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice


ANTONIO T. CARPIO
Associate Justice


*I dissent.
Res. see dissenting opinion*
PRESBITERO J. VELASCO, JR.
Associate Justice

⁵¹ Id. at 34.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Martin S. Villarama, Jr.
MARTIN S. VILLARAMA, JR.
Associate Justice

Jose Catral Mendoza
JOSE CATRAL MENDOZA
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice

*I join the dissenting opinion
of J. Velasco*
MARIANO C. DEL CASTILLO
Associate Justice

Jose Portugal Perez
JOSE PORTUGAL PEREZ
Associate Justice

Bienvenido L. Reyes
BIENVENIDO L. REYES
Associate Justice

Marvic Mario Victor F. Leonen
MARVIC MARIO VICTOR F. LEONEN
Associate Justice