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B.M. No. 2713 (*Atty. Aileen R. Maglana vs. Atty. Jose R. Opinion*)

Promulgated:

June 10, 2014

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## DISSENTING OPINION

VELASCO, JR., J.:

Before this Court is another incident in the elections of Integrated Bar of the Philippines (IBP) wherein IBP Samar Chapter pleads that it should be given its **fair opportunity** to serve as Governor for IBP Eastern Visayas Region pursuant to the “rotation rule” established in Bar Matter No. 491,<sup>1</sup> as amended.

### Brief Statement of Facts

IBP Eastern Visayas Region (IBP-EVR) is composed of nine (9) Chapters, namely: Biliran, Bohol, Cebu Province, Cebu City, Eastern Samar, Leyte, Northern Samar, Samar and Southern Leyte.

On May 25, 2013, thirteen (13) delegates of IBP-EVR convened to elect the Governor of the said Region for the 2013-2015 term. The candidates for the coveted position were Atty. Aileen R. Maglana (Atty. Maglana), representing IBP Samar Chapter, and Atty. Jose Vicente R. Opinion (Atty. Opinion), representing IBP Eastern Samar Chapter. The outgoing Governor of IBP-EVR, Atty. Manuel Enage Jr. (Gov. Enage) presided over the elections.

After her nomination as candidate for Governorship, Atty. Maglana immediately moved that IBP Samar Chapter be declared as the sole and only chapter qualified to field a candidate for the position of Governor of IBP-EVR. Invoking the “rotation rule” established in Bar Matter No. 491, and considering that since the establishment of the aforementioned rule in 1989 **ALL** chapters **except Samar Chapter** had already served as Governor of IBP-EVR, Atty. Maglana claims that IBP Samar Chapter is the only remaining chapter which could field a candidate for Governor of IBP-EVR.<sup>2</sup>

On the other hand, Atty. Opinion rejected the foregoing arguments on the basis of a letter of Governor Vicente M. Joyas (Gov. Joyas) of IBP Southern Luzon Chapter, who was then acting as Chairman of the IBP Executive Committee, viz:

<sup>1</sup> *In the Matter of the Inquiry into the 1989 Elections of the Integrated Bar of the Philippines*, October 6, 1989, 178 SCRA 398.

<sup>2</sup> *Rollo*, pp. 38-40.

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.<sup>3</sup>

To which, Atty. Jose Aguilar Grapilon of IBP Biliran Chapter immediately asserted that it is only the Supreme Court which can decide as to who among the chapters are qualified to field a candidate for governor and that Gov. Joyas has never been competent or qualified to make the pronouncement.<sup>4</sup>

Atty. Opinion also alleged that during the previous elections for the position of governor, there was already a representative of Samar Chapter but the votes were waived.<sup>5</sup> However, the previous President of IBP Samar Chapter categorically denied that he made such waiver and further stated that he cannot waive, nor has any authority to waive, the right of IBP Samar Chapter to field a candidate for governor.<sup>6</sup>

After heated debates, Gov. Enage ruled that Atty. Opinion, as nominee from IBP Eastern Samar Chapter, was disqualified to run for Governor of IBP-EVR.<sup>7</sup> Gov. Enage likewise denied the motion to suspend the elections and allow the IBP Board of Governors (IBP BOG) to rule on the issue of Atty. Opinion's disqualification.<sup>8</sup> Consequently, Gov. Enage ordered the distribution of ballots to the delegates. Of the eleven (11) ballots, Atty. Opinion obtained six (6) votes, Atty. Maglana got four (4) votes while one ballot was unfilled. Nevertheless, since Atty. Opinion was earlier declared disqualified for the position, the votes made in his favor were considered stray and, thus, Gov. Enage proclaimed Atty. Maglana as the duly elected Governor of IBP-EVR for the 2013-2015 term.<sup>9</sup>

Atty. Opinion then filed an election protest before the IBP BOG. In its June 7, 2013 Decision,<sup>10</sup> the IBP BOG reasoned that for its failure to field a candidate for governor from 1989 to 2007 or to invoke the rotation rule to challenge the nominations of those candidates whose chapters had already been previously represented in the rotation cycle, IBP Samar Chapter is deemed to have waived its turn in the rotation order.<sup>11</sup> It also ruled that the IBP-EVR is already in its second rotation cycle with governors coming from Leyte, Bohol and Southern Leyte Chapters, and, thus, the six (6) remaining Chapters, which include Samar Chapter (where Atty. Maglana belongs) and

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<sup>3</sup> Id. at 20.

<sup>4</sup> Id. at 41.

<sup>5</sup> Id. at 40.

<sup>6</sup> Id. at 42.

<sup>7</sup> Id. at 53.

<sup>8</sup> Id. at 52-53.

<sup>9</sup> Id. at 57.

<sup>10</sup> Id. at 64-70.

<sup>11</sup> Id. at 68.

Eastern Samar Chapter (where Atty. Opinion belongs), were qualified to field their respective candidates.

Thus, the IBP BOG nullified the proclamation of Atty. Maglana and declared Atty. Opinion as eligible to run and proclaimed him as the duly elected Governor of IBP-EVR for the 2013-2015 term, to wit:

WHEREFORE, premises considered, the Board resolves as follows:

- 1) Protestant Atty. Jose Vicente R.M. Opinion is eligible to run for governor of Eastern Visayas Region for the term 2013-2015;
- 2) The six (6) votes cast in the name of protestant Atty. Jose Vicente R. M. Opinion are valid and counted in his favor;
- 3) The proclamation of protestee Atty. Eileen Maglana is annulled; and
- 4) Protestant Atty. Jose Vicente R.M. Opinion is declared the duly elected governor of Eastern Visayas Region for the term 2013-2015.

SO ORDERED.<sup>12</sup>

Hence, Atty. Maglana filed the present appeal. She reiterated that considering that IBP Samar Chapter is the only chapter which had not been represented as Governor of IBP-EVR since this Court's 1989 pronouncements in Bar Matter No. 491, it is the only qualified Chapter to field a candidate for the position of Governor of IBP-EVR for term 2013-2015.<sup>13</sup> She also asserts that, contrary to the conclusions of the IBP BOG, IBP Samar Chapter never waived its turn in the rotation because it does not know when should be its turn to serve as governor.<sup>14</sup>

### **The Issues**

The *ponencia* presented the following as the core issues to be resolved:

1. Whether the first rotation cycle in the 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 for the 2013-2015 term;
3. Whether IBP Samar Chapter is the only qualified chapter to field a candidate for governor in the 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.<sup>15</sup>

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<sup>12</sup> Id. at 70.

<sup>13</sup> Id. at 3-4.

<sup>14</sup> Id. at 4-6.

<sup>15</sup> *Ponencia*, p. 7.

## Discussion

In the present controversy, the *ponencia* affirmed the findings of the IBP-BOG and declare Atty. Opinion of IBP Eastern Samar Chapter as the duly elected Governor of IBP-EVR. The *ponencia* found that:

- a. the first rotation cycle has been completed in 2007;
- b. IBP Samar Chapter waived its turn in the first rotation cycle;
- c. IBP Samar Chapter is not the only qualified chapter to field a candidate for governor for the 2013-2015 term.

In this regard, I am constrained to express my dissent for the following reasons:

### **1. The first rotation cycle in the IBP-EVR, since the implementation of Bar Matter No. 491, has NOT been completed.**

In concluding that the first rotation cycle has been completed in 2007, the *ponencia* reasoned:

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 would 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.<sup>16</sup>

This is incorrect.

Giving a glimpse at the history of the governorship in IBP Eastern Visayas Region (IBP-EVR), the *ponencia* presented a list of previous Governors for IBP-EVR as follows:

<i>Term</i>	<i>Governor</i>	<i>Chapter</i>
1989-1990	Caretaker Board	
1990-1991	Benedicto H. Alo	Cebu Province
1991-1993	Baldomero C. Estenzo	(1 <sup>st</sup> ) Cebu City
1993-1995	Agustinus V. Gonzaga	(2 <sup>nd</sup> ) Bohol
1995-1997	Jose Aguila Grapilon	(3 <sup>rd</sup> ) Biliran
1997-1999	Kenny A.H. Tantuico	(4 <sup>th</sup> ) Northern Samar
1999-2001	Celestino B. Sabate	(5 <sup>th</sup> ) Eastern Samar
2001-2003	Emil L. Ong	Northern Samar
2003-2005	Manuel M. Monzon	(6 <sup>th</sup> ) Cebu Province
2005-2007	Manuel P. Legaspi	Cebu City
2007-2009	Evergisto S. Escalon	(7 <sup>th</sup> ) <i>Leyte</i>
2009-2011	Roland B. Inting	Bohol
2011-2013	Manuel L. Enage, Jr.	(8 <sup>th</sup> ) <i>Southern Leyte</i>
2013-2015	Disputed	Disputed

According to the *ponencia*, this is the first rotation cycle which allegedly ended in 2007.

From the foregoing, it is apparent that of the nine (9) chapters in IBP-EVR, only six (6) of them were able to sit as Governor as of 2007. Beyond 2007, Leyte Chapter was the seventh chapter to choose the IBP-EVR Governor while Southern Leyte Chapter was the eighth. Therefore, **IBP Samar Chapter is the ninth and the last chapter who is yet to have a Governor for IBP-EVR.**

Contrary to the postulate stated in the *ponencia*, **the rotation cycle could NOT have been completed or finished in 2007.**

The “rotation rule” in the election of IBP-EVP was introduced in Bar Matter No. 491, *In the Matter of the Inquiry into the 1989 Elections of the Integrated Bar of the Philippines*.<sup>17</sup> In that case, the Court made the following amendments to the IBP By-Laws:

- 9. Section 39, Article V is hereby amended as follows:

<sup>16</sup> Id. at 12-13.  
<sup>17</sup> Supra note 1.

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, the choice of which shall **as much as possible** be rotated among the chapters in the region. (emphasis supplied)

On December 14, 2010, in *In the Matter of the Brewing Controversies in the Election in the Integrated Bar of the Philippines, Magsino v. Vinluan*, A.M. No. 09-5-2-SC and A.C. No. 8292 (*Brewing Cases*), the Court adopted the proposed amendments<sup>18</sup> to the foregoing provision as follows:

E. That the provision for the **strict implementation of the rotation rule among the Chapters in the Regions** for the election of the Governor for the regions, (as ordered by this Honorable Court in Bar Matter No. 586, May 14, 1991) should be incorporated in Sec. 39, Article VI of the By-Laws, as follows:

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

A perusal of the amended provision reveals the Court's preferred policy of imposing the **mandatory** and **strict implementation** of the "rotation by exclusion rule." Unlike the previous rule which merely provides the "as much as possible" exception, the amended rule only accepts a "waiver" for the non-compliance with the said rule.

In fine, the "rotation by exclusion rule" means that once a member of a Chapter is elected Governor, the said Chapter is excluded and becomes ineligible to have another member elected as Governor until all the other Chapters in the region have had a chance to elect a Governor from among its members. The series of exclusions takes place at each election until the cycle of rotation among all the Chapters is concluded. After all the Chapters have had their respective Governors elected, then the Governor-slate is wiped clean. Thereafter, the second rotation cycle begins and all the Chapters are once again eligible to have one of their members elected as Governor. Once a Chapter has its member elected as Governor, it is again excluded from having another member elected as Governor until all the other Chapters in

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<sup>18</sup> Introduced by the Special Committee created by this Court composed of Retired Justices Carolina Griño-Aquino (Chairperson), Bernardo P. Pardo and Romeo J. Callejo, Sr.

the region have had a chance to elect a governor in the second cycle, and so on.<sup>19</sup>

It must be further emphasized that the rotation rule is meant to ensure an equitable sharing of responsibility in the Integrated Bar.<sup>20</sup> It was adopted under the pretext of giving each and every chapter of a certain IBP region the opportunity to be represented in the IBP BOG.

Hence, more than the results of popular vote, every examination of election in the IBP must proceed and be scrutinized under this precept. Simply put, it must always be borne in mind that **strict compliance with the rotation by exclusion is still the general and mandated rule.**

In this case, removed of all the analysis or any form of legal hermeneutics, interpretation and evaluation of Section 39, Article V of the IBP By-Laws, a glaring fact remains that, since the establishment of the rotation rule in Bar Matter No. 491, IBP Samar Chapter had never been granted the opportunity to serve as Governor of IBP-EVR and be represented in the IBP-BOG. As the records would bear, **ALL** of the other eight chapters, **except IBP Samar Chapter**, had already made their complete turns as Governor of IBP-EVR. Since 1991, or **for twenty-two (22) years** now, **NO ONE from the IBP Samar Chapter** had been granted this opportunity to have a seat in the IBP BOG. This is the uncontroverted, nay unfortunate, fact.

To my mind, this is contrary to the very purpose for the establishment of the “rotation by exclusion” rule. If the true objective of the rule is to give each and every chapter the opportunity to be represented in the IBP BOG, then it cannot be said that the rotation is actually completed when one chapter in the region is left out and **remains to be unrepresented** in the IBP BOG more than **twenty years after** the rotation rule was created.

In addition, the Chapters of IBP-EVR do not seem to agree that the rotation was to be completed and that they would have a fresh start of the rotation after 2007. There is also no showing that the concerned chapters have agreed on a sequence or a definite period or term that each of them would be seated as governor.

As stated, back in 2007, the rotation rule is still subject to the “as much as possible” exception, which must be contradistinguished with the “waiver” exception promulgated by this Court in 2010. This means that prior to the 2010 amendment, the Court gave much discretion on the chapters and allowed them to elect the governor of their respective regions without strictly complying with the rotation rule. Prior to 2010, the Chapters nominate and elect their governors without considering their turns in the

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<sup>19</sup> As explained in this writer’s Dissenting Opinion 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 & A.C. No. 8292, December 14, 2010, 638 SCRA 1.

<sup>20</sup> *Id.*

rotation and without following any mandated or agreed sequence. This also means that prior to 2010, there is no conclusive term or period when the rotation cycle would end.

On this point, the *ponencia* argues that “the dissent cannot simply apply Section 39, Article VI as amended in the present case because this amendment calling for the strict implementation of the rotation cannot be interpreted retroactively, but only prospectively, so that it would take effect in the 2011-2013.”

However, it is my understanding that the amendments introduced and approved by this Court in 2010 are **curative** or **remedial** in nature in the sense that it was made to cure or remedy an existing defect in the IBP By-Laws—the defect being the seeming inequality in some IBP Regions wherein some IBP Chapters dominate and control the election of governor or president to the prejudice of the other chapters. Thus, in order to address this predicament and give each and every IBP Chapter the opportunity at the IBP leadership, the Court preferred to impose the strict and mandatory implementation of the rotation by exclusion rule. Like any other rule or law which are primarily established as a remedial measure, this curative amendment should be given retroactive effect in the sense that it should address not only the defects after this Court’s 2010 pronouncement in the *Brewing Cases* but also the defects which are still existing. In this case, the retroactive application of the rule seems inevitable since the defect remains apparent because, as far as IBP Eastern Visayas Region is concerned, the envisioned objective that all its Chapters should be given the opportunity to serve as governor is yet to be achieved.

Furthermore, on a strict legal standpoint, if this Court indeed meant the rule to be prospective, this Court should not even consider the previous elections and the corresponding aberrations in the IBP Elections and just simply declare that, in view of the strict and mandatory implementation of the rotation by exclusion rule, there should be a fresh start or new rotation among the Chapters. But then again, to my mind, this is not the policy which the Court intends to adopt.

Thus, I cannot subscribe to the opinion of the *ponencia* that the first rotation cycle for the Governor of IBP-EVR has already been completed for unless and until IBP Samar Chapter had actually been given the opportunity to seat as Governor for IBP EVR, the **first rotation cycle for the position of IBP-EVR cannot be considered complete.**

## **2. IBP Samar Chapter did NOT waive its turn.**

The *ponencia* asserts that the rotation rule under Section 39, Article VI, as amended, of the IBP By-laws is not absolute and may be waived. Citing this Court’s pronouncements in the *Brewing Cases*, the *ponencia* ruled that IBP Samar Chapter waived its right under the rotation cycle when it did not field or nominate 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.<sup>21</sup>

In any case, what appears to be clear is that a perusal of the records shows that **NO express waiver was executed by the IBP Samar Chapter** to the effect that it is already foregoing its turn in the rotation cycle. Thus, the question now is: Should we consider IBP Samar Chapter's "failure to field or nominate its candidate for governor during an election or to challenge the nominations of those candidates whose chapters had already been previously represented" as an implied waiver that is sufficient to conclude that the **entire** IBP Samar Chapter is foregoing or relinquishing its right to serve as Governor of IBP-EVR?

The *ponencia* find that IBP Samar Chapter waived its right to the position of governor.

I believe otherwise.

Article 6 of the Civil Code provides that "Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law." To validly waive a right, there are three (3) essential elements: **(a) existence of a right; (b) the knowledge of the existence thereof; and (c) an intention to relinquish such right.**<sup>22</sup>

In the present case, there is no question on the presence of the *first* element considering that it is clearly established that IBP Samar Chapter has the right to be given the opportunity to be seated as Governor of IBP-EVR. However, I find that the *second* and *third* elements were not satisfied.

According to the *ponencia*, IBP Samar Chapter should have invoked its right to have its turn under the first rotation cycle on or before the elections for the 2005-2007 term.

Again, I disagree.

It was held that the standard of a valid waiver requires that it "not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences."<sup>23</sup> In here, it must be emphasized that it is only during the election for governorship 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 became clear that it is the only remaining Chapter of IBP-EVR which remains unrepresented in the IBP BOG. In fact, to my mind, IBP Samar

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<sup>21</sup> *Ponencia*, p. 13.

<sup>22</sup> *Valderama v. Macalde*, G.R. No. 165005, September 16, 2005, 470 SCRA 168, 182.

<sup>23</sup> *People v. Balderama*, G.R. Nos. 149382-83, March 5, 2003, 398 SCRA 642, 648.

Chapter, or any chapter for that matter, could invoke this right as the sole candidate only when ALL of the other chapters had their respective turns. I cannot subscribe to the position in the *ponencia* that IBP Samar Chapter should have invoked its right under the rotation before the 2005-2007 term because at that time, it is **NOT yet apparent** that IBP Samar Chapter is the sole and only remaining Chapter that should vie for the position of Governor. It must be pointed out that before the 2005-2007 term, IBP Samar Chapter is not the only unrepresented chapter. At that time, IBP Leyte and Southern Leyte Chapters were yet to be seated as Governor of IBP-EVR.

On the contrary, the right of IBP Samar Chapter as the sole and only remaining Chapter that should vie for the position of Governor for IBP-EVR became clear and definite only **AFTER** IBP Leyte Chapter had its turn in 2007-2009 **AND** IBP Southern Leyte Chapter had its turn in 2011-2013. Thus, it was timely for IBP Samar Chapter to invoke its right as the sole and only qualified chapter who could vie for the position of Governor of IBP-EVR for term 2013-2015 because **it was only during this time that it became clear and apparent that it is the only Chapter that remains unrepresented for the position of Governor of IBP-EVR.**

Indeed, the list of Governors contains “aberrations” in the rotation cycle wherein Northern Samar, Cebu City and Bohol Chapters already having served twice as governor. On this point, the *ponencia* argues that the “aberrant developments,” wherein some Chapters already had two (2) governors, “can only be justified under the ‘as much as possible’ qualifier.”

But it is also on this premise that these aberrations should not be taken against IBP Samar Chapter because previous to the 2010 amendments, these are valid aberrations. During those times, there is yet no established rule that a Chapter is considered to have lost or waived its right in the rotation. Likewise, these “aberrations” should not be utilized to mean that IBP Samar Chapter had already waived its right in the rotation cycle. This is considering the fact that during those times, the rotation rule still admits the “as much as possible” exception, and it is only in the *Brewing Cases* which was promulgated in 2010 that this Court had approved the amendment of Section 39, Article V of the IBP By-Laws to include “waiver” as a justification for non-compliance with the rotation rule.

This also means, at that time of the aberrations, it was not yet clear that IBP Samar Chapter already had the exclusive right to be Governor because, at that time, IBP Leyte and IBP Southern Leyte Chapters were still in line to vie for governor of IBP-EVR. As erstwhile stated, it is only **AFTER** IBP Leyte Chapter had its turn in 2007-2009 **and** IBP Southern Leyte Chapter had its turn in 2011-2013 that the right of IBP Samar Chapter became definite. Thus, it is only at this time that IBP Samar Chapter could assert its right under the rotation.

As regards the *third* element, it must be noted that up to this point, it remains unclear how this right under the rotation rule maybe waived or relinquished. Certainly, in the *Brewing Cases*, this Court ruled that 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. Nevertheless, the fact remains that the IBP By-laws is silent, not only on how and when the waiver should be made but most importantly, whether or not the Chapter President or the Board of Directors are clothed with authority to waive the turn of the Chapter in the rotation cycle in behalf of the chapter members. Lastly, there is no rule that prescribes the mode of notification to the IBP Chapter concerned that it is already its turn to assert its right to choose its Governor under the rotation system or else, its turn will be forfeited.

Consequently, considering that it remains unclear as to how the intended waiver should be made, and as to who should make the waiver in behalf of the Chapter, it is also similarly 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. Respondent Opinion was not able to show that IBP Samar Chapter made an express or implied waiver of its right to elect the Governor. Since there was no proof adduced, mere allegations on the alleged waiver will not suffice. In the absence of any proof or definite intention to relinquish the right, there could be no waiver.

In a similar vein, there is also no factual basis to presume conclusively, as viewed by the *ponencia*, that those who have not nominated or had a governor on or before 2007 (i.e. Southern Leyte, Leyte and Samar), have waived their respective turns in the rotation.

As erstwhile stated, in 2007 what prevails is the “as much as possible” exception. This means that the Chapters in the IBP-EVR elected their governor without any intention or indication that their failure to nominate a candidate for governor constitutes a waiver of their right in the rotation cycle. On the other hand, judging from the list of governors presented in the *ponencia*, there is already an admission, and thus, it is undisputed, that IBP Samar Chapter, to which Atty. Maglana belongs, had never been granted the opportunity to have a Governor for IBP-EVR.

To reiterate, the opportunity to be the sole and only Chapter to vie for the position of governor of IBP-EVR became definite and apparent only after IBP Leyte Chapter had its turn in 2007-2009 **and** IBP Southern Leyte Chapter had its turn in 2011-2013. Thus, it was timely for IBP Samar Chapter to invoke this right for the 2013-2015 term. If IBP Samar Chapter failed to invoke this right for the 2013-2015 term, then this is the only time that it could constitute as a “waiver” under Section 39, Article VI of the IBP By-laws because this is the exact instance when the rotation cycle in IBP-EVR is about to end.

Nevertheless, the *ponencia* posits the view that the “citation of Article 6 of the Civil Code and its application of a valid waiver of a right under civil law is misplaced” and then invokes the power of this Court to promulgate rules affecting the IBP pursuant to Section 5, Article VIII of the Constitution, as basis.

It must be emphasized, however, that there is no doubt on this Court’s authority over the IBP. What is simply being established is that the amendments in Section 39 of the IBP By-laws do not provide the parameters on the manner and circumstances over which a waiver is made.

In any case, I cannot subscribe to the position of the *ponencia* that Article 6 of the Civil Code is not applicable. It is my understanding that when this Court included “waiver” as an exception to the rotation by exclusion rule, this Court did not intend that it should have an interpretation which is different from the generally established legal principles governing waivers.

It is also worth to note that, as it stands, the general rule is for the strict and mandatory implementation of the rotation by exclusion rule. Thus, the burden of establishing proof that this case is an exception or that there was a waiver on the part of IBP Samar Chapter, rests upon respondent Atty. Opinion. In this regard, it is my considered view that Atty. Opinion was not able to successfully substantiate his claim that IBP Samar Chapter waived its right under the rotation.

The *ponencia* also argues that the “rotation in the region cannot simply be held hostage indefinitely by IBP Samar Chapter” and consider the same as an absurd situation.

On the contrary, IBP Samar Chapter does not appear to be holding on to this opportunity “indefinitely.” As stated, it was only during the elections for Governor of IBP-EVR for the term 2013-2015 that it became clear and definite that it is the only Chapter that remains unrepresented for the position of Governor of IBP-EVR. It was only during that time that IBP Samar Chapter can consider itself as the **sole and only qualified chapter** who could vie for the position of Governor of IBP-EVR for the term 2013-2015. IBP Samar Chapter invoked its right because it was only during that time it was permissible for IBP Samar Chapter to do so.

What is clearly being emphasized here is that this Court should give primary consideration to the rationale behind the rotation by exclusion rule, which is to give each and every Chapter the opportunity to seat as governor in each rotation.

**3. IBP Samar Chapter is the only qualified chapter to field a candidate for governor for the 2013-2015 term.**

As stated earlier, **ALL** of the other eight chapters in the IBP-EVR, **except IBP Samar Chapter**, had already been represented and made their complete turns and terms as Governor of IBP-EVR. Since IBP Samar Chapter is the **sole** and **only** remaining chapter that has yet to take a seat as Governor of IBP-EVR, the inevitable conclusion is that, pursuant to the mandatory and strict implementation of the rotation rule, it is the **ONLY QUALIFIED** Chapter to field a candidate for the position of Governor of IBP-EVR for the term 2013-2015.

### **Conclusion**

In sum, eight chapters of the IBP Eastern Visayas Region have been granted their opportunity to be represented in the IBP-BOG and had already completed their respective turns and terms as Governor. **IBP Samar Chapter is the last chapter in the rotation**, and, hence, **the only chapter left to field a candidate for Governor of the IBP Eastern Visayas**.

In the absence of clear and unequivocal waiver, IBP-EVR should strictly comply with the rotation by exclusion rule. It is only **AFTER** IBP Samar Chapter is given the opportunity to serve as Governor would the rotation be deemed complete. To rule otherwise would be contrary to the spirit of fair play and equal opportunity which is the very essence for this Court's establishment of the rotation by exclusion rule. If not accorded the right to choose its Governor in this rotation cycle, the IBP Chapter may end up having its Governor after another eighteen (18) years. It will thus remain unrepresented in the IBP BOG for forty (40) years since Bar Matter No. 491—a dire situation unintended by the Constitution and By-laws of the IBP.

### **Recommendation**

In addition, it must be observed that during IBP elections, the most aggressive among the chapters in the region would already engage in early campaigning in the sense that the prospective candidate would already secure the support and commitment of the majority of the delegates even before the nomination for the governor is held. This is probably one of the reasons why the elections in the IBP had some “aberrations” to the prejudice of some of the Chapters who similarly deserve an opportunity, or probably have more right, to have a seat at the IBP leadership but was less aggressive in the campaign.

To remedy the situation, I would like to respectfully recommend that Section 39, Article VI of the IBP By-laws be amended to the effect that:

- (1) This Court should establish a sequence in governorship in the sense that the end of each rotation cycle would be clearly apparent and definite.

The IBP Region should adopt the pre-ordained sequence based on the alphabetical listing of the chapters therein to avoid politicking in the IBP elections. This sequence must be strictly followed wherein the IBP Chapters will know their respective turns to choose the IBP Governor.

For example, the sequence in IBP-EVR will be:

- (a) Biliran
- (b) Bohol
- (c) Cebu City
- (d) Cebu Province
- (e) Eastern Samar
- (f) Leyte
- (g) Northern Samar
- (h) Samar
- (i) Southern Leyte

In accordance with the foregoing order, Biliran Chapter has the right to choose the governor for the first term of a fresh rotation cycle and the second term shall belong to Bohol Chapter and so on.


If for some reason (i.e. financial constraints, etc.) a chapter, say Bohol, waives its turn for the second term, then Cebu City is given the right to choose the governor for the said term. The turns of the remaining chapters shall be adjusted accordingly pursuant to the aforementioned sequence. This means, that after the term of Cebu City Chapter, the turn of Cebu Province should immediately follow, then of Eastern Samar and so on. After Southern Leyte Chapter has availed of its turn, Bohol Chapter, as the one who had previously waived its turn in the rotation, may reclaim its right as the last chapter in the rotation cycle. Otherwise, a new rotation shall start.

- (2) If a chapter opts to waive its turn in the rotation, the waiver should be reduced into writing and no implied waiver should be allowed.
- (3) No chapter in the region is given the right to elect a governor for two (2) or more terms in the rotation.

In view of the foregoing, I vote to:

- (1) **GRANT** the petition;
- (2) Declare **Atty. Opinion as DISQUALIFIED** to be seated as Governor of IBP Eastern Visayas Region for the 2013-2015 term and order him to immediately **VACATE** office; and

(3) **PROCLAIM** Atty. Maglana as the duly elected Governor of IBP Eastern Visayas Region for the 2013-2015 term.



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