

## EN BANC

[ A.M. No. 09-5-2-SC, December 04, 2012 ]

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

[A.C. NO. 8292]

**ATTYS. MARCIAL M. MAGSINO, MANUEL M. MARAMBA AND  
NASSER MAROHOMSALIC, COMPLAINANTS, VS. ATTYS. ROGELIO  
A. VINLUAN, ABELARDO C. ESTRADA, BONIFACIO T. BARANDON,  
JR., EVERGISTO S. ESCALON AND REYMUND JORGE A. MERCADO,  
RESPONDENTS.**

### R E S O L U T I O N

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

The Court shall likewise act upon the Petition-in-Intervention<sup>[3]</sup> filed by the IBP-Southern Luzon Region, regarding its qualification to field a candidate for the position of Executive Vice-President for the 2011-2013 term.

#### **Brief Statement of the Antecedents**

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

WHEREFORE, premises considered, the Court resolves that:

1. The elections of Attys. Manuel M. Maramba, Erwin M. Fortunato and Nasser A. Marohomsalic as Governors for the Greater Manila Region, Western Visayas Region and Western Mindanao Region, respectively, for the term 2009-2011 are UPHELD;
2. A special election to elect the IBP Executive Vice President for the 2009-2011 term is hereby ORDERED to be held under the supervision of this Court within seven (7) days from receipt of this Resolution with

Attys. Maramba, Fortunato and Marohomsalic being allowed to represent and vote as duly-elected Governors of their respective regions;

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

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

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

**SO ORDERED.**

In the December 14, 2010 Resolution, the Court once again upheld its Resolution in Bar Matter No. 586, dated May 16, 1991, that the "rotation rule" under Sections 37<sup>[5]</sup> and 39<sup>[6]</sup> 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."<sup>[7]</sup>

A motion for reconsideration was filed but it was denied by the Court in its Resolution, dated February 8, 2011.<sup>[8]</sup>

On April 15, 2011, Gov. Erwin M. Fortunato (*Gov. Fortunato*) of IBP-Western Visayas Region wrote a letter<sup>[9]</sup> to the IBP-BOG seeking confirmation/clarification on whether "Capiz is the only Chapter in the IBP-Western Visayas Region eligible and qualified to run for Governor in the forthcoming election for Governor."<sup>[10]</sup>

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

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

On May 3, 2011, upon filing of the subject Urgent Motion and the IBP-Resolution, then Chief Justice Renato C. Corona issued a Temporary Restraining Order<sup>[11]</sup> (*TRO*) suspending the election for Governor of the IBP-Western Visayas Region and directing retired Justice Santiago M. Kapunan (*Justice Kapunan*), Officer-in-Charge of the IBP and Gov. Fortunato of the IBP-Western Visayas Region to file their respective comments thereon.

On May 31, 2011, the *TRO* was confirmed *nunc pro tunc* by the Court En Banc.<sup>[12]</sup>

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

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

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

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

### ***Issues for the Court's Consideration***

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

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

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

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

### ***Resolution of the Court***

#### ***Re: IBP-Western Visayas Region***

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

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

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