ZOILO ANTONIO VELEZ, COMPLAINANT, VS. ATTY. LEONARD S. DE VERA, RESPONDENT.

A.C. NO. 6697. July 25, 2006

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PER CURIAM:

Before Us are three consolidated cases revolving around Integrated Bar of the Philippines (IBP) Governor and Executive Vice-President (EVP) Atty. Leonard de Vera. The first pertains to a disbarment case questioning Atty. de Vera's moral fitness to remain as a member of the Philippine Bar, the second refers to Atty. de Vera's letter-request to schedule his oath taking as IBP National President, and the third case concerns the validity of his removal as Governor and EVP of the IBP by the IBP Board. The resolution of these cases will determine the national presidency of the IBP for the term 2005-2007.
A.C. No. 6697

The Office of the Bar Confidant, which this Court tasked to make an investigation, report and recommendation on subject case,[1] summarized the antecedents thereof as follows:

> In a Complaint dated 11 April 2005, complainant Zoilo Antonio Velez moved for the suspension and/or disbarment of respondent Atty. Leonard de Vera based on the following grounds:
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> 1) respondent's alleged misrepresentation in concealing the suspension order rendered against him by the State Bar of California; and
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> 2) respondent's alleged violation of the so-called "rotation rule" enunciated in Administrative Matter No. 491 dated 06 October 1989 (in the Matter: 1989 IBP Elections).
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> Complainant averred that the respondent, in appropriating for his own benefit funds due his client, was found to have performed an act constituting moral turpitude by the Hearing Referee Bill Dozier, Hearing Department - San Francisco, State Bar of California in Administrative Case No. 86-0-18429. Complainant alleged that the respondent was then forced to resign or surrender his license to practice law in the said state in order to evade the recommended three (3) year suspension. Complainant asserted that the respondent lacks the moral competence necessary to lead the country's most noble profession.
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> Complainant, likewise, contended that the respondent violated the so-called "rotation rule" provided for in Administrative Matter No. 491 when he transferred to IBP Agusan del Sur Chapter. He claimed that the respondent failed to meet the requirements outlined in the IBP By-Laws pertaining to transfer of Chapter Membership. He surmised that the respondent's transfer was intended only for the purpose of becoming the next IBP National President. Complainant prayed that the respondent be enjoined from assuming office as IBP National President.
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> Meanwhile, in his Comment dated 2 May 2005, respondent stated that the issues raised in above-mentioned Complaint were the very issues raised in an earlier administrative case filed by the same complainant against him. In fact, according to him, the said issues were already extensively discussed and categorically ruled upon by this Court in its Decision dated 11 December 2005 in Administrative Case No. 6052 (In Re: Petition to Disqualify Atty. Leonard De Vera). Respondent prayed that the instant administrative complaint be dismissed

following the principle of res judicata.

On 15 June 2005, both parties appeared before the Office of the Bar Confidant for presentation of evidence in support of their respective allegations.

Subsequently, in a Memorandum dated 20 June 2005, complainant maintained that there is substantial evidence showing respondent's moral baseness, vileness and depravity, which could be used as a basis for his disbarment. Complainant stressed that the respondent never denied that he used his client's money. Complainant argued that the respondent failed to present evidence that the Supreme Court of California accepted the latter's resignation and even if such was accepted, complainant posited that this should not absolve the respondent from liability.

Moreover, complainant added that the principle of res judicata would not apply in the case at bar. He asserted that the first administrative case filed against the respondent was one for his disqualification. x x x.

Bar Matter No. 1227A.M. No. 05-5-15-SC

As earlier adverted to, Bar Matter No. 1227 refers to Atty. de Vera's letter-request to this Court to schedule his oath taking as IBP National President. A.M. No. 05-5-15-SC, on the other hand, is a letter-report dated 19 May 2005 of IBP National President Jose Anselmo I. Cadiz (IBP President Cadiz) furnishing this Court with the IBP's Resolution, dated 13 May 2005, removing Atty. De Vera as member of the IBP Board and as IBP EVP, for committing acts inimical to the IBP Board and the IBP in general.[2]

The controversy in Bar Matter No. 1227 and A.M. No. 05-5-15-SC arose from the regular meeting of the IBP Board of Governors held on 14 January 2005. In said meeting, by 2/3 vote (6 voting in favor and 2 against), the IBP Board approved the withdrawal of the Petition filed before this Court docketed as "Integrated Bar of the Philippines, Jose Anselmo I. Cadiz, et al. vs. Senate of the Philippines, et al. - Petition for Certiorari and Prohibition with Prayer for the Issuance of Temporary Restraining Order or Writ of Preliminary Injunction, SC-R165108." The Petition was intended to question the legality and/or constitutionality of Republic Act No. 9227, authorizing the increase in the salaries of judges and justices, and to increase filing fees.[3]

The two IBP Governors who opposed the said Resolution approving the withdrawal of the above-described Petition were herein respondent Governor and EVP de Vera and Governor Carlos L. Valdez.[4]

On 19 January 2005, IBP President Cadiz informed this Court of the decision taken by the IBP Board to withdraw the afore-mentioned Petition. Attached to his letter was a copy of the IBP Board's 14 January 2005 Resolution.[5]

On 15 April 2005, Bar Matter No. 1227, pertaining to Atty. de Vera's request for oathtaking as National President, was filed. The same was subsequently consolidated with A.C. No. 6697, the disbarment case filed against Atty. de Vera.[6]

On 22 April 2005, a plenary session was held at the 10th National IBP Convention at the CAP-Camp John Hay Convention Center, Baguio City. It was at this forum where Atty. de Vera allegedly made some untruthful statements, innuendos and blatant lies in connection with the IBP Board's Resolution to withdraw the Petition questioning the legality of Republic Act No. 9227.[7]

On 10 May 2005, this Court issued a Temporary Restraining Order (TRO) enjoining Atty. de Vera from assuming office as IBP National President.[8]

On 12 May 2005, IBP Gov. Romulo A. Rivera wrote IBP National President Cadiz a letter wherein he prayed for the removal of Atty. de Vera as member of the IBP Board for having committed acts which were inimical to the IBP Board and the IBP.[9]

On 13 May 2005, in the 20th Regular Meeting of the Board held at the Waterfront Hotel, Cebu City, the IBP Board, by 2/3 vote, resolved to remove Atty. de Vera as member of the IBP Board of Governors and as IBP Executive Vice President.[10] Quoted hereunder is the dispositive portion of said Resolution:

> NOW THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED, that Governor Leonard S. de Vera is REMOVED as a member of the IBP Board of Governors and Executive Vice President for committing acts inimical to the IBP Board of Governors and the IBP, to wit:
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> - For making untruthful statements, innuendos and blatant lies in public about the Supreme Court and members of the IBP Board of Governors, during the Plenary Session of the IBP 10th National Convention of Lawyers, held at CAP-Camp John Hay Convention Center on 22 April 2005, making it appear that the decision of the IBP Board of Governors to withdraw the PETITION docketed as "Integrated Bar of the Philippines, Jose Anselmo I. Cadiz, et al. vs. The Senate of the Philippines, et al., Petition for Certiorari and Prohibition With Prayer for the Issuance of A Temporary Restraining Order or Writ of Preliminary Injunction, S.C.-R. 165108", was due to influence and pressure from the Supreme Court of the Philippines;
>
> - For making said untruthful statements, innuendos and blatant lies that brought the IBP Board of Governors and the IBP as a whole in public contempt and disrepute;
>
> - For violating Canon 11 of the Code of Professional Responsibility for Lawyers which mandates that "A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others", by making untruthful statements, innuendos and blatant lies during the Plenary Session of the IBP 10th National Convention of Lawyers in Baguio City;
>
> - For instigating and provoking some IBP chapters to embarrass and humiliate the IBP Board of Governors in order to coerce and compel the latter to pursue the aforesaid PETITION;
>
> - For falsely accusing the IBP National President, Jose Anselmo I. Cadiz, during the Plenary Session of the 10th National Convention in Baguio City of withholding from him a copy of Supreme Court Resolution, dated 25 January 2005, granting the withdrawal of the PETITION, thereby creating the wrong impression that the IBP National President deliberately prevented him from taking the appropriate remedies with respect thereto, thus compromising the reputation and integrity of the IBP National President and the IBP as a whole.[11]

On 18 May 2005, Atty. de Vera aired his sentiments to this Court by writing the then Hon. Chief Justice Hilario G. Davide, Jr. a letter captioned as "Urgent Plea to Correct a Glaring Injustice of the IBP Board of Governors; Vehement Protest to the Board Resolution Abruptly Removing Atty. Leonard de Vera from the Board of Governors in Patent Violation of Due Process; Petition to Deny/Disapprove the Completely Unjustified and Highly Arbitrary Resolution Precipitately Ousting Atty. de Vera from the Board of Governors in Less Than Twenty Four (24) Hours from Notice and Judgment Without Formal Investigation."[12]

In the said letter, Atty. de Vera strongly and categorically denied having committed acts inimical to the IBP and its Board. He alleged that on the basis of an unverified letter-complaint filed by IBP Governor Rivera, the IBP Board voted to expel him posthaste, without just cause and in complete disregard of even the minimum standards of due process. Pertinent portions of his letter read:

> It is evident that the Board of Governors has committed a grave and serious injustice against me especially when, as the incumbent Executive Vice President of the IBP, I am scheduled to assume my position as National President of the IBP on July 1, 2005. x x x
>
> I was denied the very basic rights of due process recognized by the Supreme Court even in administrative cases:
>
> - The denial of the right to answer the charges formally or in writing. The complaint against me was in writing.

- The denial of the right to answer the charges within a reasonable period of time after receipt of the complaint.

- The denial of the right to a fair hearing.

- The denial of the right to confront the accuser and the witnesses against me. I challenged Gov. Rivera to testify under oath so I could question him. He refused. I offered to testify under oath so I could be questioned. My request was denied.

- The denial of my right to present witnesses on my behalf.

- The denial of my right to an impartial judge. Governor Rivera was my accuser, prosecutor, and judge all at the same time.

- Gov. Rivera's prejudgment of my case becomes even more evident because when his motion to expel me was lost in a 5-3 votes (due to his inhibition to vote), Gov. Rivera asked for another round of voting so he can vote to support his own complaint and motion to expel me.[13] (Emphasis and underscoring in original.)

On 27 May 2005, the IBP Board responded to the 18 May 2005 letter of Atty. de Vera.[14] In their Reply, the IBP Board explained to this Court that their decision to remove Atty. de Vera was based on valid grounds and was intended to protect itself from a recalcitrant member. Among the grounds cited and elucidated by the IBP Board were the following:

(i)

Atty. de Vera engaged himself in a negative media campaign and solicited resolutions from IBP Chapters to condemn the IBP Board of Governors for its decision to withdraw the PETITION, all with the end in view of compelling or coercing the IBP Board of Governors to reconsider the decision to withdraw the PETITION.

(ii)

Atty. de Vera embarrassed, humiliated and maligned the IBP Board of Governors and the IBP National President in public or during the Plenary Session at the 10th National Convention of Lawyers.

(iii)

Rather than pacify the already agitated "solicited" speakers (at the plenary session), Atty. de Vera "fanned the fire", so to speak, and went to the extent of making untruthful statements, innuendos and blatant lies about the Supreme Court and some members of the IBP Board of Governors. He deliberately and intentionally did so to provoke the members of the IBP Board of Governors to engage him in an acrimonious public debate and expose the IBP Board of Governors to public ridicule.

(iv)

Atty. de Vera uttered untruthful statements, innuendos and blatant lies, e.g., that some of the members of the IBP Board of Governors voted in favor of the withdrawal of the petition (without mentioning names) because "nakakahiya kasi sa Supreme Court, nakakaawa kasi ang Supreme Court, kasi may mga kaibigan tayo sa Court." He made it appear that the IBP Board of Governors approved the resolution, withdrawing the petition, due to "influence" or "pressure" from the Supreme Court.[15]

The IBP Board explained that Atty. de Vera's actuation during the Plenary Session was "the last straw that broke

the camel's back." He committed acts inimical to the interest of the IBP Board and the IBP; hence, the IBP Board decided to remove him.

On 3 June 2005, Atty. de Vera furnished the Court with copies of resolutions and a position paper coming from various IBP Chapters all condemning his expulsion from the IBP Board and as IBP EVP.[16]

On 15 June 2005, IBP President Cadiz informed Chief Justice Davide that in a special meeting of the IBP Board held at the EDSA Shangri-la Plaza on 13 June 2005, the IBP Board took note of the vacancy in the position of the IBP EVP brought about by Atty. de Vera's removal. In his stead, IBP Governor Pura Angelica Y. Santiago was formally elected and declared as IBP EVP.[17]

On 17 June 2005, Atty. de Vera protested against the election of Atty. Santiago.[18] On 20 June 2005, Atty. Santiago voluntarily relinquished the EVP position through a letter addressed to the IBP Board.[19] Thus, on 25 June 2005, during its last regular meeting, the IBP Board elected a new EVP in the person of IBP Governor Jose Vicente B. Salazar to replace Atty. Santiago.

On 28 June 2005, IBP National President Cadiz, through a letter addressed to Chief Justice Davide, reported to this Court Atty. Salazar's election.[20] IBP National President Cadiz also requested, among other things, that Atty. Salazar's election be approved and that he be allowed to assume as National President in the event that Atty. de Vera is disbarred or suspended from the practice of law or should his removal from the 2003-2005 Board of Governors and as EVP is approved by this Court.[21] Also on 28 June 2005, Atty. de Vera protested the election of Atty. Salazar.[22]

In his Extended Comment[23] dated 25 July 2005, Atty. de Vera maintained that there was absolutely no factual or legal basis to sustain the motion to remove him from the IBP Board because he violated no law. He argued that if the basis for his removal as EVP was based on the same grounds as his removal from the IBP Board, then his removal as EVP was likewise executed without due notice and without the least compliance with the minimum standards of due process of law.

Atty. de Vera strongly averred that, contrary to the utterly false and malicious charges filed against him, the speakers at the Plenary Session of the Baguio Convention, although undeniably impassioned and articulate, were respectful in their language and exhortations, not once undermining the stature of the IBP in general and the IBP Board of Governors in particular. He posited that speaking in disagreement with the Resolution of the Board during the Convention's Plenary Session is not a valid cause to remove or expel a duly-elected member of the IBP Board of Governors; and the decision to remove him only shows that the right to freedom of speech or the right to dissent is not recognized by the incumbent IBP Board.

Anent the charges that he accused the National President of withholding a copy of this Court's Resolution granting the withdrawal of the Petition questioning the legality of Republic Act No. 9227, Atty. de Vera avowed that he made no such remarks. As regards the election of a new IBP EVP, Atty. de Vera contended that the said election was illegal as it was contrary to the provisions of the IBP By-Laws concerning national officers, to wit:

> Section. 49. Term of office. - The President and the Executive Vice President shall hold office for a term of two years from July 1 following their election until 30 June of their second year in office and until their successors shall have been duly chosen and qualified.
>
> In the event the President is absent or unable to act, his functions and duties shall be performed by the Executive Vice President, and in the event of death, resignation, or removal of the President, the Executive Vice President shall serve as Acting President for the unexpired portion of the term. In the event of death, resignation, removal or disability of both the President and the Executive Vice President, the Board of Governors shall elect an Acting President to hold office for the unexpired portion of the term or during the

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period of disability.

Unless otherwise provided in these By-Laws, all other officers and employees appointed by the President with the consent of the Board shall hold office at the pleasure of the Board or for such term as the Board may fix.[24]

To bolster his position, Atty. de Vera stressed that when both the President and the EVP die, resign, are removed, or are disabled, the IBP By-Laws only provides for the election of an Acting President and that no mention for an election for EVP was made. Thus, when such election for EVP occurs, such is contrary to the express provision of the IBP By-Laws.

Atty. de Vera also argued that even if he were validly removed as IBP EVP, his replacement should come from Eastern Mindanao and not from any other region, due to the Rotation Rule embodied in par. 2, Section 47, Article VII of the IBP By-Laws.

In response to Atty. de Vera's averments, the 2003-2005 IBP Board, through its counsel, submitted a Reply dated 27 January 2006 and clarified as follows:

(i)

The IBP Board of Governors is vested with sufficient power and authority to protect itself from an intractable member by virtue of Article VI, Section 44 of the IBP By-Laws;

(ii)

Atty. de Vera was removed as a member of the IBP Board and as IBP EVP not because of his disagreement with the IBP Board's position but because of the various acts that he committed which the IBP Board determined to be inimical to the IBP Board and the IBP as a whole;

(iii)

Atty. de Vera cannot exculpate himself from liability by invoking his constitutional right to Free Speech because, as a member of the Bar, it is his sworn duty to observe and maintain the respect due to the courts and to judicial officers and to insist on similar conduct by others;

(iv)

The IBP Board, in effecting the removal of Atty. de Vera, observed the fundamental principles of due process. As the records would bear, Atty. de Vera was duly notified of the Regular Meeting of the IBP Board held on 13 May 2004; was furnished a copy of Governor Rivera's Letter-Complaint the day before the said meeting; was furnished a copy of the said Meeting's Agenda; and was allowed to personally defend himself and his accuser, Gov. Rivera;

(v) Atty. de Vera was validly removed because the required number of votes under Section 44 of the IBP By-Laws to remove Atty. de Vera as a member of the IBP Board and as IBP EVP was duly complied with;

(vi)

> Atty. de Vera's replacement as IBP EVP need not come from Eastern Mindanao Region because: (a) the rotation rule under Article VII, Section 47, par. 2 of the IBP By-Laws had already been complied with when Atty. de Vera, who hails from Eastern Mindanao, was elected IBP EVP; and (b) the rotation rule need not be enforced if the same will not be practicable, possible, feasible, doable or viable; and, finally, that -
>
> (vii)
>
> Atty. Salazar was validly elected as IBP EVP and, thus, should now be allowed to take his oath as IBP National President.[25]

The Court's Ruling

AC No. 6697

In his Memorandum[26] dated 20 June 2005, complainant tendered the following issues for the consideration of the Court:

> **I.**
>
> WHETHER OR NOT RESPONDENT ATTORNEY LEONARD S. DEVERA (sic) COMMITED MALPRACTICE WHICH AMOUNTED TO MORAL T[U]RPITUDE IN THE STATE BAR OF CALIFORNIA AND IN THE PHILIPPINES, IN THE COURSE OF HIS PRACTICE OF LAW.
>
> II.
>
> WHETHER OR NOT THE OATH OF OFFICE AS LAWYER IS ATTACHED TO THE PERSON OF ATTORNEY LEONARD S. DEVERA (sic) WHEREVER HE MAY GO AND NOT NECESSARILY BOUND BY THE TERRITORIAL JURISDICTION OF THE PHILIPPINES.
>
> III.
>
> WHETHER OR NOT THERE IS SUBSTANTIAL EVIDENCE TO PROVE THE MORAL T[U]RPITUDE, AS BASIS FOR DISBARMENT OF RESPONDENT IN AN ADMINISTRATIVE PROCEEDING.
>
> IV.
>
> WHETHER OR NOT RES JUDICATA APPLIES IN THIS CASE, DUE TO ADMIN. CASE NO. [6052][27]

The disposition of the first three related issues hinges on the resolution of the fourth issue. Consequently, we will start with the last issue.

A.C. No. 6052 is not a bar to the filing of
the present administrative case.

In disposing of the question of res judicata, the Bar Confidant opined:

> To reiterate, the instant case for suspension and/or disbarment against respondent Leonard De Vera is grounded on the following:
>
> 1) respondent's alleged misrepresentation in concealing the suspension order rendered against him by the State Bar in California; and
> 2) respondent's alleged violation of the so-called "rotation rule" enunciated in Administrative Matter No. 491 dated 06 October 1989 (In the Matter: 1989 IBP Elections).
>
> It appears that the complainant already raised the said issues in an earlier administrative case against the

respondent. Verily, these issues were already argued upon by the parties in their respective pleadings, and discussed and ruled upon by this Court in its Decision dated 11 December 2003 in Administrative Matter No. 6052 (In Re: Petition to Disqualify Atty. Leonard de Vera).

As such, with respect to the first issue, this Court held that:
"As for the administrative complaint filed against him by one of his clients when he was practicing law in California, which in turn compelled him to surrender his California license to practice law, he maintains that it cannot serve as basis for determining his moral qualification (or lack of it) to run for the position he is aspiring for. He explains that there is as yet no final judgment finding him guilty of the administrative charge, as the records relied upon by the petitioners are mere preliminary findings of a hearing referee which are recommendatory findings of an IBP Commissioner on Bar Discipline which are subject to the review of and the final decision of the Supreme Court. He also stresses that the complainant in the California administrative case has retracted the accusation that he misappropriated the complainant's money, but unfortunately the retraction was not considered by the investigating officer. xxx""On the administrative complaint that was filed against respondent De Vera while he was still practicing law in California, he explained that no final judgment was rendered by the California Supreme Court finding him guilty of the charge. He surrendered his license to protest the discrimination he suffered at the hands of the investigator and he found it impractical to pursue the case to the end. We find these explanations satisfactory in the absence of contrary proof. It is a basic rule on evidence that he who alleges a fact has the burden to prove the same. In this case, the petitioners have not shown how the administrative complaint affects respondent De Vera's moral fitness to run for governor.On the other hand, as regards the second issue:"Petitioners contend that respondent de Vera is disqualified for the post because he is not really from Eastern Mindanao. His place of residence is in Parañaque and he was originally a member of the PPLM IBP Chapter. He only changed his IBP Chapter membership to pave the way for his ultimate goal of attaining the highest IBP post, which is the national presidency. Petitioners aver that in changing his IBP membership, respondent De Vera violated the domicile rule.The contention has no merit. Under the last paragraph of Section 19, Article II, a lawyer included in the Roll of Attorneys of the Supreme Court can register with the particular IBP Chapter of his preference or choice, thus:xxxIt is clearly stated in the aforequoted section of the By-Laws that it is not automatic that a lawyer will become a member of the chapter where his place of residence or work is located. He has the discretion to choose the particular chapter where he wishes to gain membership. Only when he does not register his preference that he will become a member of the Chapter of the place where he resides or maintains office. The only proscription in registering one's preference is that a lawyer cannot be a member of more than one chapter at the same time.The same is provided in Section 29-2 of the IBP By-Laws. In fact, under this Section, transfer of IBP membership is allowed as long as the lawyer complies with the conditions set forth therein, thus:xxxThe only condition required under the foregoing rule is that the transfer must be made not less than three months prior to the election of officers in the chapter to which the lawyer wishes to transfer.In the case at bar, respondent De Vera requested the transfer of his IBP membership to Agusan del Sur on 1 August 2001. One month thereafter, IBP National Secretary Jaime M. Vibar wrote a letter addressed to Atty. Amador Z. Tolentino, Jr., Secretary of IBP PPLM Chapter and Atty. Lyndon J. Romero, Secretary of IBP Agusan del Sur Chapter, informing them of respondent de Vera's transfer and advising them to make the necessary notation in their respective records. This letter is a substantial compliance with the certification mentioned in Section 29-2 as aforequoted. Note that de Vera's transfer was made effective sometime between 1 August 2001 and 3 September 2001. On 27 February 2003, the elections of the IBP Chapter Officers were simultaneously held all over the Philippines, as mandated by Section 29.a of the IBP By-Laws which provides that elections of Chapter Officers and Directors shall be held on the last Saturday of February of every other year. Between 3 September 2001 and 27 February 2003, seventeen months had elapsed. This makes respondent de Vera's transfer valid as it was done more than three months ahead of the chapter elections held on 27 February 2003.

In the case of Romulo G. Dinsay vs. Atty. Leopoldo D. Cioco (Administrative Case No. 2995, 27 November 1996), this Court declared that:"The doctrine of res judicata applies only to judicial or quasi-judicial proceedings

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and not to the exercise of the [Court's] administrative powers."
In the said case, respondent Clerk of Court Cioco was dismissed from service for grave misconduct highly prejudicial to the service for surreptitiously substituting the bid price in a Certificate of Sale from P3,263,182.67 to only P730,000.00. Thereafter a complaint for disbarment was filed against the respondent on the basis of the same incident. Respondent, interposing res judicata, argued that he may no longer be charged on the basis of the same incident. This Court held that while the respondent is in effect being indicted twice for the same misconduct, this does not amount to double jeopardy as both proceedings are admittedly administrative in nature. This Court qualified that, in the first case, the respondent was proceeded against as an erring court personnel under the Court's supervisory power over courts while, in the second case, he was disciplined as a lawyer under the Court's plenary authority over membersof the legal profession.

In subsequent decisions of this Court, however, it appears that res judicata still applies in administrative cases. Thus, in the case of Atty. Eduardo C. De Vera vs. Judge William Layague (Administrastive Matter No. RTJ-93-986), this Court ruled that:

> "While double jeopardy does not lie in administrative cases, it would be contrary to equity and substantial justice to penalize respondent judge a second time for an act which he had already answered for."

Likewise, in the recent case of Executive Judge Henry B. Basilia vs. Judge Amado L. Becamon, Lolita Delos Reyes and Eddie Delos Reyes (Administrative Matter No. MTJ-02-1404, 14 December 2004), this Court held that:

"Applying the principle of res judicata or bar by prior judgment, the present administrative case becomes dismissible.xxxUnder the said doctrine, a matter that has been adjudicated by a court of competent jurisdiction must be deemed to have been finally and conclusively settled if it arises in any subsequent litigation between the same parties and for the same cause. It provides that[a] final judgment on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies; and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action. Res judicata is based on the ground that the party to be affected, or some other with whom he is in privity, has litigated the same matter in the former action in a court of competent jurisdiction, and should not be permitted to litigate it again.This principle frees the parties from undergoing all over again the rigors of unnecessary suits and repetitious trials. At the same time, it prevents the clogging of court dockets. Equally important, res judicata stabilizes rights and promotes the rule of law."
In the instant administrative case, it is clear that the issues raised by the complainant had already been resolved by this Court in an earlier administrative case. The complainant's contention that the principle of res judicata would not apply in the case at bar as the first administrative case was one for disqualification while the instant administrative complaint is one for suspension and/or disbarment should be given least credence. It is worthy to note that while the instant administrative complaint is denominated as one for suspension and/or disbarment, it prayed neither the suspension nor the disbarment of the respondent but instead merely sought to enjoin the respondent from assuming office as IBP National President.[28]

Contrary to the findings of the Bar Confidant, Adm. Case No. 6052 entitled, "In Re: Petition to Disqualify Atty. Leonard de Vera, on Legal and Moral Grounds, From Being Elected IBP Governor for Eastern Mindanao in the May 31 IBP Election" and promulgated on 11 December 2003 does not constitute a bar to the filing of Adm. Case No. 6697. Although the parties in the present administrative case and in Adm. Case No. 6052 are identical, their capacities in these cases and the issues presented therein are not the same, thereby barring the application of res judicata.

In order that the principle of res judicata may be made to apply, four essential conditions must concur, namely: (1)

the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment or order on the merits, and (4) there must be between the first and second action identity of parties, identity of subject matter, and identity of causes of action.[29] In the absence of any one of these elements, Atty. de Vera cannot argue res judicata in his favor.

It is noteworthy that the two administrative cases involve different subject matters and causes of action. In Adm. Case No. 6052, the subject matter was the qualification of Atty. de Vera to run as a candidate for the position of IBP Governor for Eastern Mindanao. In the present administrative complaint, the subject matter is his privilege to practice law. In the first administrative case, complainants' cause of action was Atty. de Vera's alleged violation or circumvention of the IBP By-laws. In the present administrative case, the primary cause of action is Atty. de Vera's alleged violation of lawyer's oath and the Code of Professional Responsibility.

Finally, the two administrative cases do not seek the same relief. In the first case, the complainants sought to prevent Atty. de Vera from assuming his post as IBP Governor for Eastern Mindanao. In the present case, as clarified by complainant in his Memorandum, what is being principally sought is Atty. de Vera's suspension or disbarment.

The distinctions between the two cases are far from trivial. The previous case was resolved on the basis of the parties' rights and obligations under the IBP By-laws. We held therein that Atty. de Vera cannot be disqualified from running as Regional Governor as there is nothing in the present IBP By-laws that sanctions the disqualification of candidates for IBP governors. Consequently, we stressed that the petition had no firm ground to stand on. Likewise, we held that the complainants therein were not the proper parties to bring the suit as the IBP By-laws prescribes that only nominees - which the complainants were not - can file with the IBP President a written protest against the candidate. The Court's statement, therefore, that Atty. de Vera cannot be disqualified on the ground that he was not morally fit was mere obiter dictum. Precisely, the IBP By-laws do not allow for pre-election disqualification proceedings; hence, Atty. de Vera cannot be disqualified on the basis of the administrative findings of a hearing officer of the State Bar of California suspending him from the practice of law for three years. We held in that case that -

> There is nothing in the By-Laws which explicitly provides that one must be morally fit before he can run for IBP governorship. For one, this is so because the determination of moral fitness of a candidate lies in the individual judgment of the members of the House of Delegates. Indeed, based on each member's standard of morality, he is free to nominate and elect any member, so long as the latter possesses the basic requirements under the law. For another, basically the disqualification of a candidate involving lack of moral fitness should emanate from his disbarment or suspension from the practice of law by this Court, or conviction by final judgment of an offense which involves moral turpitude.[30]

What this simply means is that absent a final judgment by the Supreme Court in a proper case declaring otherwise, every lawyer aspiring to hold the position of IBP Regional Director is presumed morally fit. Any person who begs to disagree will not be able to find a receptive audience in the IBP through a petition for disqualification but must first file the necessary disbarment or suspension proceeding against the lawyer concerned.

And this is precisely what complainant has chosen to do in the instant case. As his petition is sufficient in form and substance, we have given it due course pursuant to Rule 138 of the Rules of Court. And, considering that this case is not barred by the prior judgment in Adm. Case No. 6052, the only issue left for consideration is whether or not Atty. de Vera can be suspended or disbarred under the facts of the case and the evidence submitted by complainant.

The recommendation of the hearing officer of the State Bar of California, standing alone, is not proof of malpractice.

In the case of the Suspension From The Practice of Law In The Territory of Guam of Atty. Leon G. Maquera,[31] we were confronted with the question of whether or not a member of the Philippine Bar, who is concomitantly an attorney in a foreign jurisdiction and who was suspended from the practice of law in said foreign jurisdiction, can be sanctioned as member of the Philippine Bar for the same infraction committed in the foreign jurisdiction.

We take the issue in Atty. Maquera one notch higher in the case of Atty. de Vera who was admitted to the practice of law in a foreign jurisdiction (State Bar of California, U.S.A.) and against whom charges were filed in connection with his practice in said jurisdiction. However, unlike the case of Atty. Maquera, no final judgment for suspension or disbarment was meted against Atty. de Vera despite a recommendation of suspension of three years as he surrendered his license to practice law before his case could be taken up by the Supreme Court of California.

In Maquera, we emphasized that the judgment of suspension against a Filipino lawyer in a foreign jurisdiction does not automatically result in his suspension or disbarment in the Philippines as the acts giving rise to his suspension are not grounds for disbarment and suspension in this jurisdiction. Judgment of suspension against a Filipino lawyer may transmute into a similar judgment of suspension in the Philippines only if the basis of the foreign court's action includes any of the grounds for disbarment or suspension in this jurisdiction. We likewise held that the judgment of the foreign court merely constitutes prima facie evidence of unethical acts as lawyer.

The Maquera ruling is consistent with Rule 39, Section 48, of the Rules of Court which provides:

> Sec. 48. Effect of foreign judgments or final orders. - The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:
>
> x x x x
>
> (b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.
>
> In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

In Philippine Aluminum Wheels, Inc. v. Fasgi Enterprises, Inc.,[32] we explained that "[a] foreign judgment is presumed to be valid and binding in the country from which it comes, until a contrary showing, on the basis of a presumption of regularity of proceedings and the giving of due notice in the foreign forum."

In herein case, considering that there is technically no foreign judgment to speak of, the recommendation by the hearing officer of the State Bar of California does not constitute prima facie evidence of unethical behavior by Atty. de Vera. Complainant must prove by substantial evidence the facts upon which the recommendation by the hearing officer was based. If he is successful in this, he must then prove that these acts are likewise unethical under Philippine law.

There is substantial evidence of malpractice on the part of Atty. de Vera independent of the recommendation of suspension by the hearing officer of the State Bar of California

Section 27 of Rule 138 of our Rules of Court states:

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> SEC. 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. - A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.
>
> The disbarment or suspension of a member of the Philippine Bar by a competent court or other disciplinary agency in a foreign jurisdiction where he has also been admitted as an attorney is a ground for his disbarment or suspension if the basis of such action includes any of the acts hereinabove enumerated.
>
> The judgment, resolution or order of the foreign court or disciplinary agency shall be prima facie evidence of the ground for disbarment or suspension.[33]

Disciplinary action against a lawyer is intended to protect the court and the public from the misconduct of officers of the court and to protect the administration of justice by requiring that those who exercise this important function shall be competent, honorable and reliable men in whom courts and clients may repose confidence.[34] The statutory enunciation of the grounds for disbarment on suspension is not to be taken as a limitation on the general power of courts to suspend or disbar a lawyer. The inherent power of the court over its officers cannot be restricted.[35]

Malpractice ordinarily refers to any malfeasance or dereliction of duty committed by a lawyer. Section 27 gives a special and technical meaning to the term "Malpractice."[36] That meaning is in consonance with the elementary notion that the practice of law is a profession, not a business.[37]

Unprofessional conduct in an attorney is that which violates the rules on ethical code of his profession or which is unbecoming a member of that profession.[38]

Now, the undisputed facts:

- An administrative case against Atty. de Vera was filed before the State Bar of California, docketed then as Adm. Case No. 86-0-18429. It arose from an insurance case Atty. de Vera handled involving Julius Willis, III who figured in an automobile accident in 1986. Atty. de Vera was authorized by the elder Willis (father of Julius who was given authority by the son to control the case because the latter was then studying in San Diego California) for the release of the funds in settlement of the case. Atty. de Vera received a check in settlement of the case which he then deposited to his personal account;[39]

- The Hearing referee in the said administrative case recommended that Atty. de Vera be suspended from the practice of law for three years;[40] and

- Atty. de Vera resigned from the California Bar which resignation was accepted by the Supreme Court of California.[41]

Atty. de Vera vehemently insists that the foregoing facts do not prove that he misappropriated his client's funds as the latter's father (the elder Willis) gave him authority to use the same and that, unfortunately, the hearing officer did not consider this explanation notwithstanding the fact that the elder Willis testified under oath that he "expected de Vera might use the money for a few days."

By insisting that he was authorized by his client's father and attorney-in-fact to use the funds, Atty. de Vera has impliedly admitted the use of the Willis funds for his own personal use.

In fact, Atty. de Vera did not deny complainant's allegation in the latter's memorandum that he (de Vera) received US$12,000.00 intended for his client and that he deposited said amount in his personal account and not in a separate trust account and that, finally, he spent the amount for personal purposes.[42]

At this point, it bears stressing that in cases filed before administrative and quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[43] It means such evidence which affords a substantial basis from which the fact in issue can be reasonably inferred.[44]

Beyond doubt, the unauthorized use by a lawyer of his client's funds is highly unethical. Canon 16 of the Code of Professional Responsibility is emphatic about this, thus:

> CANON 16. A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME TO HIS POSSESSION.
>
> Rule 16.01. A lawyer shall account for all money or property collected or received for or from the client.
>
> Rule 16.02. A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

In Espiritu v. Ulep[45] we held that -

> The relation between attorney and client is highly fiduciary in nature. Being such, it requires utmost good faith, loyalty, fidelity and disinterestedness on the part of the attorney. Its fiduciary nature is intended for the protection of the client.
>
> The Code of Professional Responsibility mandates every lawyer to hold in trust all money and properties of his client that may come into his possession. Accordingly, he shall account for all money or property collected or received for or from the client. Even more specific is the Canon of Professional Ethics:
> The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.
>
> Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly and should not under any circumstances be commingled with his own or be used by him.

Consequently, a lawyer's failure to return upon demand the funds or property held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use to the prejudice of, and in violation of the trust reposed in him by, his client. It is a gross violation of general morality as well as of professional ethics; it impairs the public confidence in the legal profession and deserves punishment.

Lawyers who misappropriate the funds entrusted to them are in gross violation of professional ethics and are guilty of betrayal of public confidence in the legal profession. Those who are guilty of such infraction may be disbarred or suspended indefinitely from the practice of law. (Emphases supplied.)

In herein case, as it is admitted by Atty. de Vera himself that he used his client's money for personal use, he has unwittingly sealed his own fate since this admission constitutes more than substantial evidence of malpractice. Consequently, Atty. de Vera now has the burden of rebutting the evidence which he himself supplied.

In his defense, Atty. de Vera claims that he was duly authorized by the elder Willis to use the funds intended for the latter's son. Atty. de Vera also points out that he had restituted the full amount of US$12,000.00 even before the filing of the administrative case against him in the State Bar of California.[46]

Aside from these self-serving statements, however, we cannot find anywhere in the records of this case proof that

indeed Atty. de Vera was duly authorized to use the funds of his client. In Radjaie v. Atty. Alovera[47] we declared that -

> When the integrity of a member of the bar is challenged, it is not enough that he denies the charges against him; he must meet the issue and overcome the evidence against him. He must show proof that he still maintains that degree of morality and integrity which at all times is expected of him.

Atty. de Vera cannot rely on the statement made by the hearing officer that the elder Willis had indeed testified that he "expected de Vera might use the money for a few days." As Atty. de Vera had vigorously objected to the admissibility of the document containing this statement, he is now estopped from relying thereon. Besides, that the elder Willis "expected de Vera might use the money for a few days" was not so much an acknowledgment of consent to the use by Atty. de Vera of his client's funds as it was an acceptance of the probability that Atty. de Vera might, indeed, use his client's funds, which by itself did not speak well of the character of Atty. de Vera or the way such character was perceived.

In the instant case, the act of Atty. de Vera in holding on to his client's money without the latter's acquiescence is conduct indicative of lack of integrity and propriety. It is clear that Atty. de Vera, by depositing the check in his own account and using the same for his own benefit is guilty of deceit, malpractice, gross misconduct and unethical behavior. He caused dishonor, not only to himself but to the noble profession to which he belongs. For, it cannot be denied that the respect of litigants to the profession is inexorably diminished whenever a member of the profession betrays their trust and confidence.[48] Respondent violated his oath to conduct himself with all good fidelity to his client.

Nevertheless, we do not agree with complainant's plea to disbar respondent from the practice of law. The power to disbar must be exercised with great caution.[49] Where any lesser penalty can accomplish the end desired, disbarment should not be decreed.

In Mortera v. Pagatpatan,[50] we imposed upon Atty. Pagatpatan two years suspension from his practice of law for depositing the funds meant for his client to his personal account without the latter's knowledge. In Reyes v. Maglaya;[51] Castillo v. Taguines;[52] Espiritu v. Atty. Cabredo IV,[53] the respondents were meted one year suspension each for failing to remit to their clients monies in the amounts of P1,500.00; P500.00, and P51,161.00, respectively, received by them for their clients without the latter's permission. In Dumadag v. Atty. Lumaya,[54] we indefinitely suspended respondent for failure to remit to his client the amount of the measly sum of P4,344.00 representing the amount received pursuant to a writ of execution. Considering the amount involved here - US$12,000.00, we believe that the penalty of suspension for two (2) years is appropriate.

Transferring IBP membership to a chapter
where the lawyer is not a resident of is not
a ground for his suspension or disbarment

Complainant insists that Atty. de Vera's transfer of membership from the Pasay, Parañaque, Las Piñas and Muntinlupa (PPLM) Chapter to the Agusan del Sur IBP Chapter is a circumvention of the rotation rule as it was made for the sole purpose of becoming IBP National President. Complainant stresses that Atty. de Vera is not a resident of Agusan del Sur nor does he hold office therein.

In Adm. Case No. 6052, we held that Atty. de Vera's act of transferring to another IBP Chapter is not a ground for his disqualification for the post of IBP Governor as the same is allowed under Section 19 of the IBP By-Laws with the qualification only that the transfer be made not less than three months immediately preceding any chapter election.

As it was perfectly within Atty. de Vera's right to transfer his membership, it cannot be said that he is guilty of unethical conduct or behavior. And while one may incessantly argue that a legal act may not necessarily be ethical, in herein case, we do not see anything wrong in transferring to an IBP chapter that --based on the rotation rule - will produce the next IBP EVP who will automatically succeed to the National Presidency for the next term. Our Code of Professional Responsibility as well as the Lawyer's Oath do not prohibit nor punish lawyers from aspiring to be IBP National President and from doing perfectly legal acts in accomplishing such goal.

Bar Matter No. 1227Administrative Matter No. 05-5-15-SC
To resolve Bar Matter No. 1227 and Administrative Matter No. 05-5- 15-SC, the following issues must be addressed:

> - Whether the IBP Board of Governors acted with grave abuse of discretion in removing Atty. de Vera as Governor and EVP of the IBP on 13 May 2005.
>
> - Whether the IBP Board of Governors complied with administrative due process in removing Atty. de Vera.
>
> - Whether the IBP removed Atty. De Vera for just and valid cause.
>
> - Whether Governor Salazar was validly elected as EVP of the IBP on 25 June 2005, and can consequently assume the Presidency of the IBP for the term 2005-2007.

The IBP Board observed due process in its
removal of Atty. de Vera as IBP Governor

We start the discussion with the veritable fact that the IBP Board is vested with the power to remove any of its members pursuant to Section 44, Article VI of the IBP By-Laws, which states:

> Sec. 44. Removal of members. - If the Board of Governors should determine after proper inquiry that any of its members, elective or otherwise, has for any reason become unable to perform his duties, the Board, by resolution of the Majority of the remaining members, may declare his position vacant, subject to the approval of the Supreme Court.
>
> Any member of the Board, elective or otherwise, may be removed for cause, including three consecutive absences from Board meetings without justifiable excuse, by resolution adopted by two-thirds of the remaining members of the Board, subject to the approval of the Supreme Court.
> In case of any vacancy in the office of Governor for whatever cause, the delegates from the region shall by majority vote, elect a successor from among the members of the Chapter to which the resigned governor is a member to serve as governor for the unexpired portion of the term. (Emphasis supplied)

Under the aforementioned section, a member of the IBP Board may be removed for cause by resolution adopted by two-thirds (2/3) of the remaining members of the Board, subject to the approval of this Court.

In the main, Atty. de Vera questions his removal from the Board of Governors on procedural and substantive grounds. He argues that he was denied "very basic rights of due process recognized by the Honorable Court even in administrative cases" like the right to answer formally or in writing and within reasonable time, the right to present witnesses in his behalf, the right to a fair hearing. Atty. de Vera protests the fact that he was not able to cross-examine the complainant, IBP Gov. Romulo H. Rivera (Atty. Rivera) and that Atty. Rivera voted as well for his expulsion which made him accuser, prosecutor and judge at the same time. Atty. de Vera emphasized the fact that Atty. Rivera initially inhibited himself from voting on his own motion. However, when his inhibition resulted in the defeat of his motion as the necessary 2/3 votes could not be mustered, Atty. Rivera asked for another round of voting so he could vote to support his own motion.

The IBP Board counters that since its members were present during the plenary session, and personally witnessed

and heard Atty. de Vera's actuations, an evidentiary or formal hearing was no longer necessary. Since they all witnessed and heard Atty. de Vera, it was enough that he was given an opportunity to refute and answer all the charges imputed against him. They emphasized that Atty. de Vera was given a copy of the complaint and that he was present at the Board Meeting on 13 May 2005 wherein the letter-complaint against him was part of the agenda. Therein, he was given the opportunity to be heard and that, in fact, Atty. de Vera did argue his case.

We are in agreement with the IBP Board.

First, it needs stressing that the constitutional provision on due process safeguards life, liberty and property.[55] It cannot be said that the position of EVP of the IBP is property within the constitutional sense especially since there is no right to security of tenure over said position as, in fact, all that is required to remove any member of the board of governors for cause is a resolution adopted by 2/3 of the remaining members of the board.

Secondly, even if the right of due process could be rightfully invoked, still, in administrative proceedings, the essence of due process is simply the opportunity to explain one's side.[56] At the outset, it is here emphasized that the term "due process of law" as used in the Constitution has no fixed meaning for all purposes due "to the very nature of the doctrine which, asserting a fundamental principle of justice rather than a specific rule of law, is not susceptible of more than one general statement."[57] The phrase is so elusive of exact apprehension,[58] because it depends on circumstances and varies with the subject matter and the necessities of the situation.[59]

Due process of law in administrative cases is not identical with "judicial process" for a trial in court is not always essential to due process. While a day in court is a matter of right in judicial proceedings, it is otherwise in administrative proceedings since they rest upon different principles. The due process clause guarantees no particular form of procedure and its requirements are not technical. Thus, in certain proceedings of administrative character, the right to a notice or hearing are not essential to due process of law. The constitutional requirement of due process is met by a fair hearing before a regularly established administrative agency or tribunal. It is not essential that hearings be had before the making of a determination if thereafter, there is available trial and tribunal before which all objections and defenses to the making of such determination may be raised and considered. One adequate hearing is all that due process requires. What is required for "hearing" may differ as the functions of the administrative bodies differ.[60]

The right to cross-examine is not an indispensable aspect of due process.[61] Nor is an actual hearing always essential[62] especially under the factual milieu of this case where the members of the IBP Board -- upon whose shoulders the determination of the cause for removal of an IBP governor is placed subject to the approval of the Supreme Court - all witnessed Atty. de Vera's actuations in the IBP National Convention in question.

It is undisputed that Atty. de Vera received a copy of the complaint against him and that he was present when the matter was taken up. From the transcript of the stenographic notes of the 13 May 2005 meeting wherein Atty. de Vera was removed, it is patent that Atty. de Vera was given fair opportunity to defend himself against the accusations made by Atty. Rivera.

Atty. de Vera, however, additionally questions the fact that Atty. Rivera, who authored the complaint against him, also voted for his expulsion making him accuser, prosecutor and judge at the same time. Atty. de Vera likewise laments the fact that Atty. Rivera initially inhibited himself from voting but when this resulted in the defeat of his motion for lack of the necessary 2/3 vote, he agreed to another round of voting and that, this time, he voted in favor of his motion.

For the record, of the nine governors comprising the IBP Board, six voted for Atty. de Vera's expulsion (including Atty. Rivera) while 3 voted against it (including Atty. de Vera).

Section 44 (second paragraph) of the IBP By-Laws provides:

> Any member of the Board, elective or otherwise, may be removed for cause, including three consecutive absences from Board meetings without justifiable excuse, by resolution adopted by two-thirds of the remaining members of the Board, subject to the approval of the Supreme Court. (Emphasis supplied.)

Under the rules, a resolution for expulsion of an IBP Governor is done via a resolution adopted by 2/3 of the remaining members. The phrase "remaining members" refers to the members exclusive of the complainant member and the respondent member. The reason therefore is that such members are interested parties and are thus presumed to be unable to resolve said motion impartially. This being the case, the votes of Attys. Rivera and de Vera should be stricken-off which means that only the votes of the seven remaining members are to be counted. Of the seven remaining members, five voted for expulsion while two voted against it which still adds up to the 2/3 vote requirement for expulsion.

The IBP Board removed Atty. de Vera as
IBP Governor for just and valid cause

All the concerned parties to this case agree that what constitutes cause for the removal of an IBP Governor has not been defined by Section 44 of the IBP By-Laws albeit it includes three consecutive absences from Board meetings without justifiable excuse. Thus, the IBP Board argues that it is vested with sufficient power and authority to protect itself from an intractable member whose removal was caused not by his disagreement with the IBP Board but due to various acts committed by him which the IBP Board considered as inimical to the IBP Board in particular and the IBP in general.

Atty. de Vera, on the other hand, insists that speaking in disagreement with the Resolution of the Board during the Convention's Plenary Session is not a valid cause to remove or expel a duly-elected member of the IBP Board of Governors and the decision to remove him only shows that the right to freedom of speech or the right to dissent is not recognized by the IBP Board.

After weighing the arguments of the parties and in keeping with the fundamental objective of the IBP to discharge its public responsibility more effectively, we hereby find that Atty. de Vera's removal from the IBP Board was not capricious or arbitrary.

Indubitably, conflicts and disagreements of varying degrees of intensity, if not animosity, are inherent in the internal life of an organization, but especially of the IBP since lawyers are said to disagree before they agree.

However, the effectiveness of the IBP, like any other organization, is diluted if the conflicts are brought outside its governing body for then there would be the impression that the IBP, which speaks through the Board of Governors, does not and cannot speak for its members in an authoritative fashion. It would accordingly diminish the IBP's prestige and repute with the lawyers as well as with the general public.

As a means of self-preservation, internecine conflicts must thus be adjusted within the governing board itself so as to free it from the stresses that invariably arise when internal cleavages are made public.

The doctrine of majority rule is almost universally used as a mechanism for adjusting and resolving conflicts and disagreements within the group after the members have been given an opportunity to be heard. While it does not efface conflicts, nonetheless, once a decision on a contentious matter is reached by a majority vote, the dissenting minority is bound thereby so that the board can speak with one voice, for those elected to the governing board are deemed to implicitly contract that the will of the majority shall govern in matters within the authority of the board.[63]

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The IBP Board, therefore, was well within its right in removing Atty. de Vera as the latter's actuations during the 10th National IBP Convention were detrimental to the role of the IBP Board as the governing body of the IBP. When the IBP Board is not seen by the bar and the public as a cohesive unit, it cannot effectively perform its duty of helping the Supreme Court enforce the code of legal ethics and the standards of legal practice as well as improve the administration of justice.

In view of the importance of retaining group cohesiveness and unity, the expulsion of a member of the board who insists on bringing to the public his disagreement with a policy/resolution approved by the majority after due discussion, cannot be faulted. The effectiveness of the board as a governing body will be negated if its pronouncements are resisted in public by a board member.

Indeed, when a member of a governing body cannot accept the voice of the majority, he should resign therefrom so that he could criticize in public the majority opinion/decision to his heart's content; otherwise, he subjects himself to disciplinary action by the body.

The removal of Atty. de Vera as member of
the Board of Governors ipso facto meant
his removal as EVP as well

The removal of Atty. de Vera as member of the Board of Governors ipso facto meant his removal as EVP as well. Section 47, Article VII of the By-Laws of the IBP provides:

> SEC. 47. National Officers. - The Integrated Bar of the Philippines shall have a President and Executive Vice President to be chosen by the Board of Governors from among nine (9) regional governors, as much as practicable, on a rotation basis. x x x

Thus, to be EVP of the IBP, one must necessarily be a member of IBP Board of Governors. Atty. de Vera's removal from the Board of Governors, automatically disqualified him from acting as IBP EVP. To insist otherwise would be contrary to Section 47 of the IBP By-Laws.

The Court will not interfere with the
Resolution of the IBP Board to remove
Atty. de Vera since it was rendered without
grave abuse of discretion

While it is true that the Supreme Court has been granted an extensive power of supervision over the IBP,[64] it is axiomatic that such power should be exercised prudently. The power of supervision of the Supreme Court over the IBP should not preclude the IBP from exercising its reasonable discretion especially in the administration of its internal affairs governed by the provisions of its By-Laws. The IBP By-Laws were precisely drafted and promulgated so as to define the powers and functions of the IBP and its officers, establish its organizational structure, and govern relations and transactions among its officers and members. With these By-Laws in place, the Supreme Court could be assured that the IBP shall be able to carry on its day-to-day affairs, without the Court's interference.

It should be noted that the general charge of the affairs and activities of the IBP has been vested in the Board of Governors. The members of the Board are elective and representative of each of the nine regions of the IBP as delineated in its By-Laws.[65] The Board acts as a collegiate body and decides in accordance with the will of the majority. The foregoing rules serve to negate the possibility of the IBP Board acting on the basis of personal interest or malice of its individual members. Hence, the actions and resolutions of the IBP Board deserve to be accorded the disputable presumption[66] of validity, which shall continue, until and unless it is overcome by

substantial evidence and actually declared invalid by the Supreme Court. In the absence of any allegation and substantial proof that the IBP Board has acted without or in excess of its authority or with grave abuse of discretion, we shall not be persuaded to overturn and set aside the Board's action or resolution.

There is no question that the IBP Board has the authority to remove its members as provided in Article VI, Section 44[67] of the IBP By-Laws. Issue arises only as to whether the IBP Board abused its authority and discretion in resolving to remove Atty. de Vera from his post as an IBP Governor and EVP. As has been previously established herein, Atty. de Vera's removal from the IBP Board was in accordance with due process and the IBP Board acted well within the authority and discretion granted to it by its By-Laws. There being no grave abuse of discretion on the part of the IBP Board, we find no reason to interfere in the Board's resolution to remove Atty. de Vera.

The election of Atty. Salazar by the IBP
Board as IBP EVP in replacement of Atty.
De Vera was conducted in accordance with
the authority granted to the Board by the
IBP By-Laws

In the same manner, we find no reason to disturb the action taken by the 2003-2005 IBP Board of Governors in holding a special election to fill-in the vacant post resulting from the removal of Atty. de Vera as EVP of the IBP since the same is a purely internal matter, done without grave abuse of discretion, and implemented without violating the Rules and By-Laws of the IBP.

With the removal of Atty. de Vera from the Board, by virtue of the IBP Board Resolution dated 13 May 2005, he was also removed from his post as EVP; thus, there was a resultant vacancy in the position of IBP EVP.

Article VI, Section 41(g) of the IBP By-Laws expressly grants to the Board the authority to fill vacancies, however arising, in the IBP positions, subject to the provisions of Section 8 of the Integration Rule,[68] and Section 11 (Vacancies),[69] Section 44 (Removal of members),[70] Section 47 (National officers),[71] Section 48 (other officers),[72] and Section 49 (Terms of Office)[73] of the By-Laws. The IBP Board has specific and sufficient guidelines in its Rules and By-Laws on how to fill-in the vacancies after the removal of Atty. de Vera. We have faith and confidence in the intellectual, emotional and ethical competencies of the remaining members of the 2005-2007 Board in dealing with the situation within the bounds of the IBP Rules and By-Laws.

The election by the 2003-2005 IBP Board of Governors of a new EVP, who will assume the Presidency for the term 2005-2007, was well within the authority and prerogative granted to the Board by the IBP By-Laws, particularly Article VII, Section 47, which provides that "[t]he EVP shall automatically become President for the next succeeding term." The phrase "for the next succeeding term" necessarily implies that the EVP that should succeed Atty. Cadiz as IBP President for the next succeeding term (i.e., 2005-2007) should come from the members of the 2003-2005 IBP Board of Governors. Hence, in A.M. No. 05-7-19-SC, we restrained now IBP EVP Feliciano Bautista from assuming the position of Acting President because we have yet to resolve the question as to who shall succeed Atty. Cadiz from the 2003-2005 IBP Board of Governors.

Accordingly, the elections of Governor Santiago on 13 June 2005 as IBP EVP, and thereafter, Governor Salazar on 25 June 2005, as the new IBP EVP, upon the relinquishment of Gov. Santiago of the position, were valid.

Neither can this Court give credence to the argument of Atty. De Vera that, assuming his removal as IBP Governor and EVP was valid, his replacement as IBP EVP should come from Eastern Mindanao Region pursuant to the rotation rule set forth in Article VII, Section 47, of the IBP By-Laws.

According to Article VII, Section 47, of the IBP By-Laws, the EVP shall be chosen by the Board of Governors from among the nine Regional Governors, as much as practicable, on a rotation basis. This is based on our pronouncements in Bar Matter 491, wherein we ruled:

"ORDER

x x x x

> - The former system of having the IBP President and Executive Vice-President elected by the Board of Governors (composed of the governors of the nine [9] IBP regions) from among themselves (as provided in Sec. 47, Art. VII, Original IBP By-Laws) should be restored. The right of automatic succession by the Executive Vice-President to the presidency upon the expiration of their two-year term (which was abolished by this Court's resolution dated July 9, 1985 in Bar Matter No. 287) should be as it is hereby restored.
>
> - At the end of the President's two-year term, the Executive Vice-President shall automatically succeed to the office of president. The incoming board of governors shall then elect an Executive Vice-President from among themselves. The position of Executive Vice-President shall be rotated among the nine (9) IBP regions. One who has served as president may not run for election as Executive Vice-President in a succeeding election until after the rotation of the presidency among the nine (9) regions shall have been completed; whereupon, the rotation shall begin anew.
>
> x x x x
>
> (Emphasis Supplied)"

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

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

Moreover, the application of the rotation rule is not a license to disregard the spirit and purpose of the automatic succession rule, but should be applied in harmony with the latter. The automatic succession rule affords the IBP leadership transition seamless and enables the new IBP National President to attend to pressing and urgent matters without having to expend valuable time for the usual adjustment and leadership consolidation period. The time that an IBP EVP spends assisting a sitting IBP President on matters national in scope is in fact a valuable and indispensable preparation for the eventual succession. It should also be pointed out that this wisdom is further underscored by the fact that an IBP EVP is elected from among the members of the IBP Board of Governors, who are serving in a national capacity, and not from the members at large. It is intrinsic in the IBP By-Laws that one who is to assume the highest position in the IBP must have been exposed to the demands and responsibilities of national leadership.

It would therefore be consistent with the purpose and spirit of the automatic succession rule for Governor Salazar to assume the post of IBP President. By electing the replacement EVP from among the members of the 2003-2005 Board of Governors, the IBP benefits from the experience of the IBP EVP of 2003-2005 - in this case, Governor

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Salazar - who would have served in a national capacity prior to his assumption of the highest position.

It will also be inconsistent with the purpose and spirit of the automatic succession rule if the EVP for the term 2003-2005 will be elected exclusively by the members of the House of Delegates of the Eastern Mindanao region. This Court notes that the removal of Atty. De Vera in 13 May 2005 was about a month before the expiration of the term of office of the 2003-2005 Board of Governors. Hence, the replacement Governor would not have been able to serve in a national capacity for two years prior to assuming the IBP Presidency.

In any case, Section 47 of the IBP Rules uses the phrase "as much as practicable" to clearly indicate that the rotation rule is not a rigid and inflexible rule as to bar exceptions in compelling and exceptional circumstances.

It is in view of the foregoing that the argument advanced by Atty. De Vera that the IBP national presidency should be assumed by a nominee from Eastern Mindanao region from where he comes, can not hold water. It would go against the intent of the IBP By-Laws for such a nominee would be bereft of the wealth of experience and the perspective that only one who is honed in service while serving in a national post in the IBP would have.

We therefore rule that the IBP Board of Governors acted in accordance with the IBP By-Laws, in electing Atty. Salazar as IBP EVP and in ensuring a succession in the leadership of the IBP. Had the Board of Governors not done so, there would have been no one qualified to assume the Presidency of the IBP on 1 July 2005, pursuant to Section 47 of the IBP By-Laws.

WHEREFORE, in view of the foregoing, we rule as follows:

> 1) SUSPEND Atty. Leonard de Vera in A.C. No. 6697 from the practice of law for TWO (2) YEARS, effective from the finality of this Resolution. Let a copy of this Resolution be attached to the personal record of Atty. Leonard de Vera and copies furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for dissemination to all courts;
>
> 2) DISMISS the letter-complaint of Atty. Leonard de Vera, dated 18 May 2005, in A.M. No. 05-5-15-SC, praying for the disapproval of the Resolution, dated 13 May 2005, of the Board of Governors of the Integrated Bar of the Philippines removing him from his posts as Governor and Executive Vice President of the Integrated Bar of the Philippines, the said Resolution having been rendered without grave abuse of discretion;
>
> 3) AFFIRM the election by the Board of Governors of Atty. Jose Vicente B. Salazar as Executive Vice President of the Integrated Bar of the Philippines for the remainder of the term 2003-2005, such having been conducted in accordance with its By-Laws and absent any showing of grave abuse of discretion; and
>
> 4) DIRECT Atty. Jose Vicente B. Salazar to immediately take his oath of office and assume the Presidency of the Integrated Bar of the Philippines for the term 2005-2007 in accordance with the automatic succession rule in Article VII, Section 47 of the IBP By-Laws, upon receipt of this Resolution.

SO ORDERED.

Puno, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Chico-Nazario, Garcia, and Velasco, Jr. JJ., concur.
Panganiban, C.J., and Tinga, J., in the result
Ynares-Santiago, J., no part.
Azcuna, J., on sick leave.

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[1] Records (A.C. No. 6697), Report and Recommendation, pp. 1-3.

[2] Rollo (A.M. No. 05-5-15-SC), pp. 1-9.

[3] Id.

[4] Id.

[5] Id.

[6] Records (B.M. No. 1227), p. 3.

[7] Rollo (A.M. No. 05-5-15-SC), pp. 1-9.

[8] Records (A.C. No. 6697), pp. 177-178.

[9] Rollo (A.M. No. 05-5-15-SC), pp. 8-9.

[10] Id. at 2.

[11] Id. at 5-6.

[12] Id. at 16-21.

[13] Id. at 19-20.

[14] Id. at 35-204.

[15] Id. at 36-37.

[16] Id. at 205-248.

[17] Id. at 307-309.

[18] Id. at 281-306.

[19] Id. at 344-346.

[20] Id. at 356-358.

[21] Id.

[22] Id. at 393-396.

[23] Id. at 489-524.

[24] Id. at 516.

[25] Id. Reply dated 27 January 2006.

[26] Records of A.C. No. 6697, pp. 239-252.

[27] Id. at 245.

[28] Records, pp. 368-371.

[29] Bachrach Corporation v. Court of Appeals, 357 Phil. 483, 491 (1998).

[30] Atty. Garcia v. Atty. De Vera, 463 Phil. 385, 413 (2003).

[31] B.M. No. 793, 30 July 2004, 435 SCRA 417.

[32] G.R. No. 137378, 12 October 2000, 342 SCRA 722, 734.

[33] As amended by SC Res. dated 13 February 1992.

[34] De Jesus Paras v. Vailoces, 111 Phil. 569, 572 (1961).

[35] Royong v. Oblena, 117 Phil. 865, 875 (1963); Quingwa v. Puno, 125 Phil. 831, 838 (1967).

[36] Act No. 2828, amending Sec. 21 of Act No. 190.

[37] 2 R-CL. 1097 cited in In re Tagorda, 23 March 1929, 53 Phil. 37, 42; Malcolm, J., Jayme v. Bualan, 58 Phil. 422, 425 (1933); Arce v. National Bank, 62 Phil. 569, 571 (1935).

[38] Note 14, 7 C.S.S. 743.

[39] Records, pp. 38-39.

[40] Records (A.E. 6697), pp. 292.

[41] Id. at 276.

[42] See complainant's Memorandum and compare the same with Atty. de Vera's Reply Memorandum (Records, pp. 239-240 and pp. 254-255).

[43] Ang Tibay v. Court of Industrial Relations, 69 Phil. 635, 640 (1940).

[44] Rubberworld (Phils.) Inc. v. National Labor Relations Commission, G.R. No. 75704, 19 July 1989, 175 SCRA 450.

[45] A.C. No. 5808, 4 May 2005, 458 SCRA 1, 8-9.

[46] "Respondent's Manifestation," Records, pp. 302-303.

[47] 392 Phil. 1, 17 (2000).

[48] Busiños v. Atty. Ricafort, 347 Phil. 687, 694 (1997).

[49] Alitagtag v. Atty. Garcia, 451 Phil. 420, 426 (2003).

[50] A.C. No. 4562, 15 June 2005, 460 SCRA 99.

[51] 313 Phil. 1 (1995).

[52] 325 Phil. 1 (1996).

[53] 443 Phil. 24 (2003).

[54] 390 Phil. 1 (2000).

[55] Section 1, Article III, Constitution - "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the law." See also Lumiqued v. Hon. Exevea, 346 Phil. 807, 828 (1997).

[56] Lumiqued v. Hon. Exevea, id.

[57] W.W. Willowby, THE CONSTITUTIONAL LAW OF THE UNITED STATES, Sec. 1113.

[58] Turning v. New Jersey, 211 U.S. 78.

[59] Forbes v. Chuoco Tiaco, 16 Phil. 534, 572 (1910), citing Moyer v. Peabody, 212 U.S. 78.

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[60] See Juan F. Rivera, LAW OF PUBLIC ADMINISTRATION, p. 822.

[61] Guzman v.National University, 226 Phil. 596, 603 (1986).

[62] Lumiqued v. Hon. Exevea, supra note 55.

[63]Gokongwei, Jr. v. Securites and Exchange Commission, G.R. No. L-45911, 11 April 1979, 89 SCRA 336, applicable by analogy.

[64] As recognized in In Re: Petition to Disqualify Atty. Leonard de Vera on Legal and Moral Grounds, From Being Elected IBP Governor for Eastern Mindanao in the May 31 IBP Election, Adm. Case No. 6052, 418 SCRA 27, 39-42.

[65] Article VI, Section 37 of the IBP By-Laws.

[66] Rule 131, Section 3 defines disputable presumptions as presumptions that "are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence."

[67] Sec. 44. Removal of members. - If the Board of Governors should determine after proper inquiry that any of its members, elective or otherwise, has for any reason become unable to perform his duties, the Board, by resolution of the Majority of the remaining members, may declare his position vacant, subject to the approval of the Supreme Court.
Any member of the Board, elective or otherwise, may be removed for cause, including three consecutive absences from Board meetings without justifiable excuse, by resolution adopted by two-thirds of the remaining members of the Board, subject to the approval of the Supreme Court.

x x x

[68] Sec. 8. Delegates. - The President shall concurrently be the Delegate of the Chapter to the House of Delegates. The Vice President shall be his alternate, unless the chapter is entitled to have more than one Delegate, in which case the Vice President shall also be a Delegate. Additional Delegates and alternates shall in proper cases be elected by the Board.

[69] Sec. 11. Vacancies. - Except as otherwise provided in these By-Laws, whenever the term of an office or position, whether elective or appointive, is for a fixed period, the person chosen to fill the vacancy therein shall serve only for the unexpired portion of the term.

[70] Sec. 44. Removal of members. - If the Board of Governors should determine after proper inquiry that any of its members, elective or otherwise, has for any reason become unable to perform his duties, the Board, by resolution of the Majority of the remaining members, may declare his position vacant, subject to the approval of the Supreme Court.
Any member of the Board, elective or otherwise, may be removed for cause, including three consecutive absences from Board meetings without justifiable excuse, by resolution adopted by two-thirds of the remaining members of the Board, subject to the approval of the Supreme Court.
In case of any vacancy in the office of Governor for whatever cause, the delegates from the region shall by majority vote, elect a successor from among the members of the Chapter to which the resigned governor is a member to serve as governor for the unexpired portion of the term.

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

consent of the Board.
The Executive Vice President shall automatically become President for the next succeeding term. The Presidency shall rotate among the nine Regions.

[72] Sec. 48. Other officers. - Other officers and employees as the Board may require shall be appointed by the President with the consent of the Board. Such officers and employees need not be members of the Integrated Bar.

[73] Sec. 49. Terms of office. - The President and the Executive Vice President shall hold office for a term of two years from July 1 following their election until June 30 of their second year in office and until their successors shall have been duly chosen and qualified.

In the event the President is absent or unable to act, his functions and duties shall be performed by the Executive Vice President, and in the event of the death, resignation, or removal of the President, the Executive Vice President shall serve as Acting President for the unexpired portion of the term. In the event of the death, resignation, removal or disability of both the President and the Executive Vice President, the Board of Governors shall elect an Acting President to hold office for the unexpired portion of the term or during the period of disability.
Unless otherwise provided in these By-Laws, all other officers and employees appointed by the President with the consent of the Board shall hold office at the pleasure of the Board or for such term as the Board may fix.

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