Republic of the Philippines
Supreme Court
Baguio City

EN BANC

INTEGRATED BAR OF THE PHILIPPINES,
Petitioner,

PHILIPPINE COLLEGE OF PHYSICIANS, PHILIPPINE MEDICAL ASSOCIATION, INC., and PHILIPPINE DENTAL ASSOCIATION,
Petitioners-in-Intervention;

-versus-

SECRETARY CESAR V. PURISIMA OF THE DEPARTMENT OF FINANCE and COMMISSIONER KIM S. JACINTO-HENARES OF THE BUREAU OF INTERNAL REVENUE,
Respondents.

G.R. No. 211772

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ASSOCIATION OF SMALL ACCOUNTING PRACTITIONERS IN THE PHILIPPINES, INC.,
Petitioner,

-versus-

HON. SECRETARY OF FINANCE CESAR V. PURISIMA and HON. COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO-HENARES,
Respondents.

G.R. No. 212178

Present:

GESMUNDO, *Chief Justice,*
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, *JJ.*

Promulgated:

April 18, 2023

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DECISION

LEONEN, *J.*:

The appointment books of professionals, such as lawyers, doctors, accountants, or dentists, contain their clients' names and the date and time of consultation—information over which they reasonably expect privacy. Mandating the registration of appointment books to monitor tax compliance would be an unreasonable State intrusion into their right to privacy.

This Court resolves the consolidated Petitions for Prohibition and *Mandamus* challenging the constitutionality of Revenue Regulations No. 4-2014, or the Guidelines and Policies for the Monitoring of Service Fees of Professionals. The Integrated Bar of the Philippines and the Association of Small Accounting Practitioners in the Philippines filed the Petitions, with the Philippine College of Physicians, Philippine Medical Association, and Philippine Dental Association as petitioners-in-intervention. The Office of the Solicitor General, as the People's Tribune, joined petitioners' cause.

Petitioners implead then Finance Secretary Cesar V. Purisima (Secretary Purisima) and Commissioner of Internal Revenue Kim S. Jacinto-

Henares (Commissioner Jacinto-Henares) as respondents.

Secretary Purisima, upon Commissioner Jacinto-Henares's recommendation, issued Revenue Regulations No. 4-2014 on March 3, 2014. It required all self-employed professionals to: (a) submit to the Bureau of Internal Revenue an affidavit of rates, manner of billing, and the factors that they consider in determining service fees; (b) register with the Bureau their books of account and appointment books containing the names of their clients, and their meeting date and time; and (c) issue a receipt registered with the Bureau showing the 100% discount if no professional fees are charged. Its full text reads:

REVENUE REGULATIONS NO. 4-2014

SUBJECT: Guidelines and Policies for the Monitoring of Service [F]ees of Professionals

TO: All Internal Revenue Officers and Others Concerned

SECTION 1. Background —

In line with the Bureau of Internal Revenue's (BIR) campaign to promote transparency and to eradicate tax evasion among self-employed professionals, the BIR has consistently enjoined them to comply with the BIR's requirements on registration pursuant to Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended and issuance of official receipts and invoices under Sections 113 and 237 of the same Code. In order to complement these efforts, there is a pressing need to monitor the service fees charged by self-employed professionals.

Pursuant to Section 244 of the NIRC of 1997, as amended, these regulations are issued for the purpose of monitoring the fees charged by the professionals, aid the BIR personnel in conducting tax audit and boost revenue collections in such sectors.

SECTION 2. Policies and Guidelines —

1. Self-employed professionals shall register and pay the annual registration fee (ARF) with the RDO/LTDO having jurisdiction over them. In addition to the requirements for annual registration, all self-employed professionals shall submit an affidavit indicating the rates, manner of billings and the factors they consider in determining their service fees upon registration and every year thereafter on or before January 31.

2. Self-employed professionals are obligated to register the books of accounts and official appointment books of their practice of profession /occupation/calling before using the same. The official appointment books shall contain only the names of the client and the date/time of the meeting. They are likewise obligated to register their sales invoices and official receipts (VAT or non-VAT) before using them in any transactions.

3. In cases when no professional fees are charged by the professional and

> paid by client, a BIR registered receipt, duly acknowledged by the latter, shall be issued showing a discount of 100% as substantiation of the "*pro-bono*" service.
>
> SECTION 3. Transitory Provision. — All existing and registered self-employed professionals at the time these Regulations became effective are required to submit the required affidavit and register its official appointment books within thirty (30) days from date of effectivity of these Regulations.
>
> SECTION 4. Penalty Clause. — Any violation of the provisions of these Regulations shall be subject to the penalties provided for in Sections 254 and 275, and other pertinent provisions of the NIRC of 1997, as amended.
>
> SECTION 5. Repealing Clause. — Any rules and regulations or parts thereof inconsistent with the provisions of these Regulations are hereby repealed, amended, or modified accordingly.
>
> SECTION 6. Effectivity. —The provisions of these Regulations shall take effect after fifteen (15) days following publication in any newspaper of general circulation.

Revenue Regulations No. 4-2014 took effect on April 5, 2014.[1] Three days later, the Integrated Bar of the Philippines, invoking its status as "the official national body of all persons whose names appear in the Roll of Attorneys,"[2] assailed the regulation's validity in a Petition for Prohibition and *Mandamus*[3] filed before this Court, docketed as G.R. No. 211772.

The Integrated Bar of the Philippines prays that this Court: (a) issue a temporary restraining order enjoining the implementation of Revenue Regulations No. 4-2014; (b) issue a writ of preliminary injunction enjoining the named respondents from disbursing funds and implementing Revenue Regulations No. 4-2014; (c) declare Revenue Regulations No. 4-2014 unconstitutional; and (d) make the injunction permanent.[4]

In its April 22, 2014 Resolution, this Court issued a Temporary Restraining Order[5] enjoining Secretary Purisima, Commissioner Jacinto-Henares, the Department of Finance, the Bureau of Internal Revenue, and their officers, agents, and employees, from implementing Revenue Regulations No. 4-2014, "but only with respect to lawyers who are herein represented by petitioner Integrated Bar of the Philippines."[6] In the same Resolution, Secretary Purisima and Commissioner Jacinto-Henares were required to file their comment on the petition within 10 days from notice.[7]

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1 *Rollo* (G.R. No. 211772), p. 5.
2 *Id.* at 6. (Citation omitted)
3 *Id.* at 3–38.
4 *Id.* at 33–34.
5 *Id.* at 45–46.
6 *Id.* at 46.
7 *Id.* at 43.

On May 8, 2014, the Association of Small Accounting Practitioners in the Philippines, representing certified public accountants, assailed the revenue regulation through a Petition for Prohibition and *Mandamus*, also praying for injunctive reliefs.[8] This was docketed as G.R. No. 212178.

Moving to intervene, with similar reliefs prayed for, are the Philippine College of Physicians,[9] the "professional organization of internists";[10] the Philippine Medical Association,[11] the "umbrella organization of medical organizations and societies in the Philippines";[12] and the Philippine Dental Association,[13] the duly constituted organization of professional dentists.[14]

On June 17, 2014, this Court consolidated the Petitions in G.R. Nos. 211772 and 212178.[15]

Later, this Court granted the Motions to Intervene and issued the same Temporary Restraining Orders prohibiting Revenue Regulations No. 4-2014's implementation as to physicians[16] and certified public accountants represented by petitioner organizations.

This Court also granted Secretary Purisima and Commissioner Jacinto-Henares's request for additional time and their prayer to dispense with the filing of separate comments.[17] Then, through the Office of the Solicitor General, they filed their Consolidated Comment,[18] which was noted in this Court's August 5, 2014 Resolution.[19] Petitioner organizations were directed to file a reply.

The Replies of petitioners Integrated Bar of the Philippines,[20] Philippine Medical Association,[21] Philippine College of Physicians,[22] Association of Small Accounting Practitioners in the Philippines,[23] and Philippine Dental Association[24] were noted in this Court's October 21,

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8 *Rollo* (G.R. No. 212178), pp. 3–35.
9 *Rollo* (G.R. No. 211772), pp. 50–76.
10 *Id.* at 55–56.
11 *Id.* at 99–110.
12 *Id.* at 100.
13 *Id.* at 148–170.
14 *Id.* at 151.
15 *Id.* at 288 & 378.
16 *Id.* at 94–97, 136–140, 188–192.
17 Respondents Secretary Purisima and Commissioner Jacinto-Henares, through the Office of the Solicitor General, moved for extension on May 2, 2014, requesting an additional 30 days to file their comment, which this Court granted in its June 3, 2014 Resolution. Respondents filed another Motion for Extension on June 2, 2014, requesting for an additional period of 30 days. This was likewise granted in this Court's June 10, 2014 Resolution.
18 *Rollo* (G.R. No. 211772), pp. 207–284.
19 *Id.* at 285–286.
20 *Id.* at 296–315.
21 *Id.* at 327–343.
22 *Id.* at 349–365.
23 *Id.* at 391–423.
24 *Id.* at 437–444.

2014,[25] November 11, 2014,[26] November 25, 2014,[27] November 16, 2015,[28] and July 26, 2016[29] Resolutions, respectively.

Considering the allegations and issues that the parties raised, this Court on July 26, 2016 gave due course to the Petitions and Petitions-in-Intervention, and treated the Consolidated Comment as an answer. It required all parties to file their memoranda within 30 days from notice.[30]

Several motions for extension of time to file memoranda[31] were granted.[32] Accordingly, petitioners Philippine Medical Association,[33] Philippine College of Physicians,[34] Integrated Bar of the Philippines,[35] Philippine Dental Association,[36] Association of Small Accounting Practitioners in the Philippines,[37] as well as the Office of the Solicitor General,[38] Department of Finance,[39] and Commissioner of Internal Revenue[40] filed their respective Memoranda. These were noted in this Court's September 27, 2016,[41] October 18, 2016,[42] November 15, 2016,[43] November 22, 2016,[44] January 17, 2017,[45] March 7, 2017,[46] and June 20, 2017[47] Resolutions.

Petitioner Integrated Bar of the Philippines argues that it has legal standing, being "the official national body of all persons whose names appear in the Roll of Attorneys,"[48] as its member-lawyers will sustain direct and personal injury under Revenue Regulations No. 4-2014, which penalizes noncompliance. It likewise files this case as a Filipino taxpayer and citizen, on behalf of clients whose rights to privacy will be violated. It also stresses

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25 *Id.* at 293-D.
26 *Id.* at 344–345.
27 *Id.* at 366–367.
28 *Id.* at 424–425.
29 *Id.* at 445–447.
30 *Id.* at 445.
31 *Id.* at 464–468 (Office of the Solicitor General), 493–496 (Philippine Dental Association), 532–538 (Office of the Solicitor General), 568–575 (Office of the Solicitor General), 658–662 (Department of Finance), 681–685 (Commissioner of Internal Revenue), 726–733 (Commissioner of Internal Revenue), and 736–741 (Commissioner of Internal Revenue).
32 *Id.* at 527–A (Office of the Solicitor General and Philippine Dental Association), 566 (Office of the Solicitor General), 576 (Office of the Solicitor General), p. 671 (Department of Finance), 725 (Commissioner of Internal Revenue), 734 (Commissioner of Internal Revenue), and 743 (Commissioner of Internal Revenue).
33 *Id.* at 448–463.
34 *Id.* at 470–492.
35 *Id.* at 497–527 and 780–825.
36 *Id.* at 539–565.
37 *Id.* at 578–611.
38 *Id.* at 613–655.
39 *Id.* at 688–724.
40 *Id.* at 745–776.
41 *Id.* at 527–A.
42 *Id.* at 566–567.
43 *Id.* at 612–A.
44 *Id.* at 656.
45 *Id.* at 725.
46 *Id.* at 778.
47 *Id.* at 826.
48 *Id.* at 6.

the transcendental importance of the issues here.[49]

Petitioner Integrated Bar of the Philippines claims that respondents gravely abused their discretion in issuing Revenue Regulations No. 4-2014. It asserts that complying with it violates ethical standards on lawyer-client privilege and other duties of a lawyer. In imposing penalties, it allegedly forces lawyers to violate their code of ethics, which this Court promulgated.[50]

Specifically, it alleges that the revenue regulation encroaches on this Court's rule-making power to protect and enforce constitutional rights and regulate the legal practice.[51] It also avers that the Tax Code does not require professionals to submit an affidavit of fixed service fees and to register their appointment books, making Revenue Regulations No. 4-2014 *ultra vires* for being outside the scope of the administrative agencies' rule-making power.[52]

It also claims that the publication of rates is inconsistent with Canon 20 of the Code of Professional Responsibility, which enumerates the factors in imposing fees and makes room for flexibility. It notes that these fees vary per client and were not meant to be standardized.[53]

Finally, it underscores that the revenue regulation infringes on the lawyers and their clients' right to privacy.[54]

Similarly, petitioner Philippine College of Physicians assails Revenue Regulations No. 4-2014 as it violates ethical practices and norms on physician-patient confidentiality, altruism, and non-advertisement.[55] It posits that the mandated disclosure of patient names and appointments will produce a chilling effect on access to medical care. It points out that its member-physicians treat individuals with leprosy, tuberculosis, and HIV, whose identities the law explicitly prohibits disclosure. It cautions that their names' disclosure would dissuade them from seeking a physician's services, violating the constitutionally guaranteed right to health.[56]

Like the legal profession, the determination of physician's fees is incapable of absolute estimation. The Philippine Medical Association Code of Ethics forbids physicians from charging doctors and their next of kin, and for other patients, determinants include their capacity to pay for the services.

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49 *Id.* at 6–9.
50 *Id.* at 24–27.
51 *Id.* at 15.
52 *Id.* at 27–30.
53 *Id.* at 17–27.
54 *Id.* at 31–33.
55 *Id.* at 480.
56 *Id.* at 478–486.

They charge on a case-to-case basis.[57]

In addition, petitioner Philippine Medical Association states that the Tax Code does not grant respondents power to monitor rates and require professionals to register their appointment books.[58] Petitioners Philippine Dental Association[59] and the Association of Small Accounting Practitioners of the Philippines[60] raise similar arguments.

Petitioners pray that this Court declare Revenue Regulations No. 4-2014 void and permanently enjoin the Department of Finance and the Bureau of Internal Revenue from implementing it.

Initially, the Office of the Solicitor General filed its Consolidated Comment on behalf of respondents. Later, invoking its mandate to uphold the people's best interests, it changed tune in its Memorandum, now arguing that portions of Revenue Regulations No. 4-2014 are unconstitutional.[61] It underscores that requiring "the submission of an affidavit indicating the rates, manner of billing and the factors to consider in determining the 'service fees' and the registration of official appointment books," are invalid exercises of quasi-legislative power.[62]

With the Office of the Solicitor General taking a different stance, respondents each filed a Memorandum.

Respondent Secretary Purisima[63] counters that petitioners failed to show any compelling reason for this Court to entertain the Petitions.[64] He stresses that under the Tax Code, the commissioner of internal revenue can examine any book, paper, record, or data relating to a taxpayer, and may summon any person who has its custody to determine tax compliance. It also allegedly empowers the commissioner to promulgate rules to effectively enforce the law and operationalize tax collection.[65]

He also brands as "imagined fears" petitioners' allegations that the tax measure violates ethical rules of self-employed professionals and that disclosing the names of their patients or clients would raise dangers. He claims that a general invocation of confidentiality conceals the taxable transactions and defeats the government's legitimate claims.[66]

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57 *Id.* at 70–72.
58 *Id.* at 459–461.
59 *Id.* at 553–557.
60 *Id.* at 590–596.
61 *Id.* at 619–620.
62 *Id.* at 634–642.
63 *Id.* at 688–724.
64 *Id.* at 700.
65 *Id.* at 702.
66 *Id.* at 704–705.

Respondent Commissioner Jacinto-Henares[67] maintains that there is no genuine constitutional issue here.[68] She adds that submitting an affidavit of fees to the government is not advertising, which lawyers would have been prohibited from doing.[69] She also alleges that the Petitions failed to exhaust administrative remedies, disregarded the principle of hierarchy of courts, and are not the proper vehicles to assail the regulation.[70]

Respondents pray that the Petitions be denied for lack of merit.[71]

This Court shall resolve the following issues:

First, whether petitioners have sufficiently shown that this case is justiciable. Under this are the following issues:

1. whether the Petitions presented an actual case or controversy;
2. whether petitioners have the requisite standing to file the Petitions;
3. whether the constitutionality of Revenue Regulations No. 4-2014 is the *lis mota* of the cases;
4. whether the Petitions were filed in violation of the principle of hierarchy of courts, primary jurisdiction, and exhaustion of administrative remedies; and
5. whether a resort to filing the Petitions for Prohibition and *Mandamus* is proper;

Second, whether respondents gravely abused their discretion in issuing Revenue Regulations No. 4-2014. Subsumed here are the following issues:

1. whether the implementation of Revenue Regulations No. 4-2014 is a valid exercise of the State's power of taxation;
2. whether it was issued outside the mandates of the Tax Code;
3. whether requiring professionals to submit affidavits containing rates and their appointment books is contemplated under Sections 113 and 236 of the Tax Code;
4. whether requiring professionals to issue receipts to *pro bono* cases

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67 *Id.* at 745–772.
68 *Id.* at 759.
69 *Id.* at 767–768.
70 *Id.* at 761–767.
71 *Id.* at 719 and 772.

violates Section 237 of the Tax Code;

5. whether respondent Secretary Purisima had the authority to issue Revenue Regulations No. 4-2014;

6. whether the penalty clause in Revenue Regulations No. 4-2014 is invalid; and

7. whether respondents usurped this Court's regulatory power over lawyers, as well as that of the Professional Regulatory Commission over physicians, dentists, and certified public accountants through Revenue Regulations No. 4-2014.

Third, whether Revenue Regulations No. 4-2014 violates the right to privacy of the professionals involved and their clients; and

Finally, whether Revenue Regulations No. 4-2014 contravenes professional ethical standards and norms on confidentiality among self-employed professionals.

We partly grant the Petitions and declare portions of Sections 2(1) and 2(2) of Revenue Regulations No. 4-2014 as unconstitutional.

I

Petitioners present a justiciable controversy.

Although not explicit in our laws, the principle of separation of powers is fundamental in our legal system.[72] The Constitution has delineated powers among the legislative, executive, and judicial branches of the government. Each enjoys autonomy and supremacy within its sphere,[73] with one's official acts being tempered only by the others under the doctrine of checks and balances.[74]

Among the three branches, the Judiciary serves as the arbiter in allocating constitutional boundaries.[75] Article VIII, Section 1 of the Constitution provides:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
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> Judicial power includes the duty of the courts of justice to settle

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72 *Angara v. Electoral Commission*, 63 Phil. 139 (1936) [Per J. Laurel, *En Banc*].
73 *Id.*
74 *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 863 (2003) [Per J. Carpio Morales, *En Banc*].
75 *Angara v. Electoral Commission*, 63 Phil. 139 (1936) [Per J. Laurel, *En Banc*].

> actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

Courts exercise judicial power in settling actual controversies involving legally demandable and enforceable rights, and in determining whether any government branch or instrumentality gravely abused its discretion amounting to a lack or excess of jurisdiction.

Angara v. Electoral Commission[76] underscored that when the Judiciary, through the courts, allocates constitutional boundaries, it does not assert supremacy, but simply carries out its constitutional mandate. In its exercise of judicial power in the traditional sense, the Judiciary does not annul the other branches' acts:

> The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.[77]

Jurisprudence refers to a latter conception of judicial power, an import of the 1987 Constitution,[78] known as the "expanded *certiorari* jurisdiction."[79] *Tañada v. Angara*[80] characterized this as a constitutional duty, and not only a judicial power:

> It is an innovation in our political law. As explained by former Chief Justice Roberto Concepcion, the judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. *This is not only a judicial power but a duty to pass judgment on matters of this nature.*
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> As this Court has repeatedly and firmly emphasized in many cases, it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion

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76 63 Phil. 139 (1936) [Per J. Laurel, *En Banc*].
77 *Id.* at 158.
78 *See Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116 (2016) [Per J. Brion, *En Banc*].
79 *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 883 (2003) [Per J. Carpio Morales, *En Banc*].
80 338 Phil. 546 (1997) [Per J. Panganiban, *En Banc*].

> brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government.[81] (Emphasis supplied, citations omitted)

Whether in its traditional or expanded scope, the exercise of judicial power requires the concurrence of these requisites for justiciability:

> (a) there must be an actual case or controversy calling for the exercise of judicial power;
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> (b) the person challenging the act must have the standing to question the validity of the subject act or issuance;
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> (c) the question of constitutionality must be raised at the earliest opportunity; and
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> (d) the issue of constitutionality must be the very *lis mota* of the case.[82]

I (A)

In exercising its expanded *certiorari* jurisdiction, this Court requires an existing case or controversy,[83] albeit in a simplified manner. When this power is invoked—as in this case—a *prima facie* showing that the government act being assailed was committed with grave abuse of discretion establishes an actual case or controversy.[84]

Further, in the recent case of *Executive Secretary v. Pilipinas Shell*,[85] this Court recognized that there is an actual case or controversy when there is "contrariety of legal rights" and the parties established that there is no way to interpret the assailed law, issuance, or governmental act as constitutional. Here, the assailed law is not susceptible to an interpretation by this Court that it may possibly be constitutional. *Pilipinas Shell* elaborated:

> Thus, in asserting contrariety of rights, it is not enough to merely allege an incongruence of rights between the parties. The party availing of the remedy must demonstrate that *the statue is so contrary to his or her rights that there is no other interpretation other than that there is a factual breach of rights*. There can be no clearly demonstrable contrariety of rights when there are possible ways to interpret the statutory provision, ordinance or a regulation that will save its constitutionality. In other words, the party must clearly demonstrate contrariety of rights by showing

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81 *Id.* at 574–575.

82 *Ocampo v. Enriquez*, 798 Phil. 227, 288 (2016) [Per J. Peralta, *En Banc*], *citing Belgica v. Ochoa, Jr.*, 721 Phil. 416, 518–519 (2013) [Per J. Perlas-Bernabe, *En Banc*]. *See also Imbong v. Ochoa*, 732 Phil. 1 (2014) [Per J. Mendoza, *En Banc*], *citing Biraogo v. Philippine Truth Commission*, 651 Phil. 374 (2010) [Per J. Mendoza, *En Banc*]; *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010) [Per J. Carpio Morales, *En Banc*]; *Senate v. Ermita*, 522 Phil. 1, 27 (2006) [Per J. Carpio Morales, *En Banc*]; *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 892 (2003) [Per J. Carpio Morales, *En Banc*].

83 *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 140–142 (2016) [Per J. Brion, *En Banc*].

84 *Id.* at 141.

85 G.R. No. 209216, February 21, 2023 [Per J. Leonen, En Banc].

> that the only possible way to interpret the provision is unconstitutional, that it is the very *lis mota* of the case, and therefore, ripe for adjudication.[86] (Emphasis supplied)

Here, there is an actual case or controversy warranting this Court's exercise of discretion. While Revenue Regulations No. 4-2014 is presumed constitutional, we find a *prima facie* showing of respondents' grave abuse of discretion. Petitioners raise respondents' serious constitutional violation in mandating the registration of professionals' appointment books, which violates the fundamental right to privacy of professionals and their clients. In addition, they contain what this Court has considered privileged information.

To stress, before us are the representative organizations of professionals whose members, patients, clients' fundamental right to privacy are supposedly violated. They assail a regulation issued by agents of fiscal policy and tax collection who mandate the disclosure of their patients' and clients' names and appointments. The competing rights and the *prima facie* showing of grave abuse of discretion call for proper adjudication.

Thus, petitioners present an actual case or controversy, which merits this Court's exercise of judicial review.

Likewise, petitioners have established their legal standing.

The Constitution requires parties to show their *locus standi* when they seek judicial review of an actual case or controversy.[87] Having the standing to sue means that the parties stand to benefit if the case is resolved in their favor, or suffer if it is decided against them.[88] This is reinforced in Rule 3, Section 2 of the Rules of Court, which states that an action must be prosecuted or defended by a real party in interest:

> SECTION 2. Parties in interest. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

Falcis III v. Civil Registrar General[89] explained how "legal standing ensures that a party is seeking a concrete outcome or relief that may be granted by courts":[90]

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86 Id.

87 In *Lozano v. Nograles*, 607 Phil. 334, 343 (2009) [Per J. Puno, *En Banc*], this Court said: "The rule on *locus standi* is not a plain procedural rule but a constitutional requirement derived from Section 1, Article VIII of the Constitution, which mandates courts of justice to settle **only** 'actual controversies involving rights which are legally demandable and enforceable.'"

88 *Kilosbayan v. Morato*, 320 Phil. 171, 184-189 (1995) [Per J. Mendoza, *En Banc*].

89 861 Phil. 388 (2019) [Per J. Leonen, *En Banc*].

90 *Id.* at 531.

> The requirement of direct injury guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."
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> The requirements of legal standing and the recently discussed actual case and controversy are both "built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government." In addition, economic reasons justify the rule. Thus:
>
> A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.
>
> Standing in private suits requires that actions be prosecuted or defended in the name of the real party-in-interest, interest being "material interest or an interest in issue to be affected by the decree or judgment of the case[,] [not just] mere curiosity about the question involved." Whether a suit is public or private, the parties must have "a present substantial interest," not a "mere expectancy or a future, contingent, subordinate, or consequential interest." Those who bring the suit must possess their own right to the relief sought.
>
> Even for exceptional suits filed by taxpayers, legislators, or concerned citizens, this Court has noted that the party must claim some kind of injury-in-fact.[91] (Citations omitted)

Here, petitioners sue on behalf of their members and as citizens and taxpayers.

Associations may bring suits representing their members,[92] or based

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91 *Id.* at 531–532.

92 RULES OF COURT, Rule 3, sec. 3 provides:
SECTION 3. Representatives as parties. — Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of a case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

on third-party standing established in jurisprudence.[93] To do so, however, they must show that they have identifiable members who authorized them to sue on their members' behalf, and that the challenged governmental acts would directly injure them as well.[94]

Pharmaceutical and Health Care Association of the Philippines v. Secretary of Health[95] justified how an association "has the legal personality to represent its members because the results of the case will affect their vital interests."[96] This Court said:

> With regard to the issue of whether petitioner may prosecute this case as the real party-in-interest, the Court adopts the view enunciated in *Executive Secretary v. Court of Appeals*, to wit:
>
> > *The modern view is that an association has standing to complain of injuries to its members. This view fuses the legal identity of an association with that of its members. An association has standing to file suit for its workers despite its lack of direct interest if its members are affected by the action.* An organization has standing to assert the concerns of its constituents.
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> > . . . .
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> > . . . We note that, under its Articles of Incorporation, the respondent was organized . . . to act as the representative of any individual, company, entity or association on matters related to the manpower recruitment industry, and to perform other acts and activities necessary to accomplish the purposes embodied therein. The respondent is, thus, the appropriate party to assert the rights of its members, because it and its members are in every practical sense identical. . . . The respondent [association] is but the medium through which its individual members seek to make more effective the expression of their voices and the redress of their grievances.[97] (Emphasis supplied, citations omitted)

The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment[98] saw this Court disallow an association of bus operators from filing the petition on behalf of its members. We found no proof of such authority to sue, such as a board resolution or articles of incorporation—a fact made worse by some members having had their certificates of incorporation revoked. This Court held that

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93 *See White Light Corporation v. City of Manila*, 596 Phil. 444 (2009) [Per J. Tinga, *En Banc*].

94 *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205 (2018) [Per J. Leonen, *En Banc*].

95 561 Phil. 386 (2007) [Per J. Austria-Martinez, *En Banc*].

96 *Id.* at 396.

97 *Id.* at 395–396, *citing Executive Secretary v. Court of Appeals*, 473 Phil. 27 (2004) [Per J. Callejo, Sr., Second Division].

98 836 Phil. 205 (2018) [Per J. Leonen, *En Banc*].

it was insufficient to generally invoke representation and direct injury:

> The associations in *Pharmaceutical and Health Care Association of the Philippines, Holy Spirit Homeowners Association, Inc.*, and *The Executive Secretary* were allowed to sue on behalf of their members because they sufficiently established who their members were, that their members authorized the associations to sue on their behalf, and that the members would be directly injured by the challenged governmental acts.
>
> The liberality of this Court to grant standing for associations or corporations whose members are those who suffer direct and substantial injury depends on a few factors.
>
> In all these cases, there must be *an actual controversy.* Furthermore, there should also be a *clear and convincing demonstration of special reasons why the truly injured parties may not be able to sue.*
>
> Alternatively, there must be a similarly clear and convincing demonstration that the representation of the association is more efficient for the petitioners to bring. They must further show that it is more efficient for this Court to hear only one voice from the association. In other words, the association should show special reasons for bringing the action themselves rather than as a class suit, allowed when the subject matter of the controversy is one of common or general interest to many persons. In a class suit, a number of the members of the class are permitted to sue and to defend for the benefit of all the members so long as they are sufficiently numerous and representative of the class to which they belong.
>
> In some circumstances similar to those in *White Light*, the third parties represented by the petitioner would have special and legitimate reasons why they may not bring the action themselves. Understandably, the cost to patrons in the *White Light* case to bring the action themselves—*i.e.*, the amount they would pay for the lease of the motels—will be too small compared with the cost of the suit. But viewed in another way, whoever among the patrons files the case even for its transcendental interest endows benefits on a substantial number of interested parties without recovering their costs. This is the free rider problem in economics. It is a negative externality which operates as a disincentive to sue and assert a transcendental right.[99] (Emphasis supplied, citation omitted)

Similarly, in the more recent case of *Pangilinan v. Cayetano*,[100] this Court found that the Philippine Coalition for the International Criminal Court had no standing to sue as an organization advocating for human rights. Indeed, it is crucial that "parties bringing the suit are sufficiently and substantially possessed of individual interest and capability" as can readily be seen in their allegations "so that they can properly shape the issues brought before this [C]ourt."[101]

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[99] *Id.* at 255–256.

[100] G.R. Nos. 238875 et al., March 16, 2021 [Per J. Leonen, *En Banc*].

[101] *See* J. Leonen, Concurring Opinion in *Arigo v. Swift*, 743 Phil. 8, 72 (2014) [Per J. Villarama, Jr., *En Banc*].

Here, we find that petitioners and petitioners-in-intervention sufficiently alleged how their members are readily identifiable. They likewise presented their authority to sue on behalf of their member-professionals. The standing of future generations or an unborn population is not being invoked; instead, petitioners, in suing before us, represent identifiable members suffering imminent injury.

As these professionals may be held liable under the assailed regulation, they stand to be directly injured if it will be implemented. Petitioners correctly posited how it is efficient and economical for this Court to entertain their Petitions on their members' behalf, instead of having each self-employed professional going to the courts. This representative suit shows a genuine cause of action, warranting this Court's exercise of its constitutional mandate to protect citizens' rights.

I (B)

The consolidated Petitions violated the principle of hierarchy of courts. However, petitioners raised important constitutional issues that may be resolved sans a factual determination, warranting this Court's exercise of discretion. Petitioners are, therefore, justified in seeking remedies before this Court.

This Court shares original jurisdiction[102] over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus* with the regional trial courts[103] and the Court of Appeals.[104] Because of this, a direct resort to this Court is generally discouraged. The doctrine of hierarchy of courts and its exceptions have already been extensively discussed:

> The original jurisdiction shared with the lower courts, however, does not warrant an unbridled discretion as to the parties' forum of choice. The doctrine on hierarchy of courts dictates the proper venue where petitions for extraordinary writs shall be brought. Accordingly, "[p]arties cannot randomly select the court or forum to which their actions will be directed."
>
> As a matter of judicial policy, the doctrine on hierarchy of courts prevents the over-clogging of this Court's dockets and precludes any unwarranted demands upon its time and consideration. In *Aala v. Uy*:

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[102] CONST., art. VIII, sec. 5 partly provides:
SECTION 5. The Supreme Court shall have the following powers:
(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*....

[103] Batas Pambansa Blg. 129 (1980), sec. 21.

[104] Batas Pambansa Blg. 129 (1980), sec. 9.

> *The doctrine on hierarchy of courts is a practical judicial policy designed to restrain parties from directly resorting to this Court when relief may be obtained before the lower courts. The logic behind this policy is grounded on the need to prevent "inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction," as well as to prevent the congestion of the Court's dockets.* Hence, for this Court to be able to "satisfactorily perform the functions assigned to it by the fundamental charter[,]" it must remain as a "court of last resort." This can be achieved by relieving the Court of the "task of dealing with causes in the first instance."

The doctrine is a filtering mechanism which, according to *Gios-Samar, Inc. v. Department of Transportation and Communication*, allows the Court "to focus on more fundamental and essential tasks assigned to it by the highest law of the land." Corollary, it works to:

> . . . (3) prevent the inevitable and resultant delay, intended or otherwise, in the adjudication of cases which often have to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as the court better equipped to resolve factual questions.

The doctrine guarantees that courts in every level efficiently and effectively carry out their designated roles according to their competencies. In *Diocese of Bacolod v. COMELEC*:

> *The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner.* Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
>
> The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has

> original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.
>
> This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these *doctrinal devices* in order that it truly performs that role.

Nonetheless, the doctrine on hierarchy of courts "may be relaxed when the redress desired cannot be obtained in the appropriate courts or where exceptional and *compelling* circumstances justify availment of the remedy within and calling the exercise of this Court's primary jurisdiction." Simply put, it is "not an iron clad rule" and admits of the following exceptions:

> In a fairly recent case, we summarized other well-defined exceptions to the doctrine on hierarchy of courts. Immediate resort to this Court may be allowed when any of the following grounds are present: *(1) when genuine issues of constitutionality are raised that must be addressed immediately*; (2) when the case involves transcendental importance; (3) when the case is novel; (4) *when the constitutional issues raised are better decided by this Court*; (5) *when time is of the essence*; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy.[105] (Emphasis supplied, citations omitted)

Pemberton v. De Lima[106] instructs that a direct invocation of this Court's jurisdiction may only be done "when there are special and important reasons clearly and specifically set out in the petition."[107]

To recall, respondents submit that petitioners violated the doctrine of hierarchy of courts, and that they should have filed a petition for declaratory relief before the lower courts, since Rule 65 of the Rules of Court does not apply. They state that petitioners availed of the wrong remedy as no compelling constitutional issues exist here that deserve this Court's attention. They point out that the finance secretary has the exclusive original

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[105] *See* J. Leonen, Dissenting Opinion in *De Leon v. Duterte*, G.R. No. 252118, May 8, 2020 [Notice, *En Banc*].

[106] 784 Phil. 918 (2016) [Per J. Leonen, Second Division].

[107] *Id.* at 935–936.

jurisdiction over the review of issuances in the exercise of the Bureau of Internal Revenue's quasi-legislative functions.

Respondents are mistaken.

Rule 65, Sections 2 and 3 of the Rules of Court provide:

> Section 2. *Petition for Prohibition.* — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.
>
> . . . .
>
> Section 3. *Petition for Mandamus.* — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
>
> The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

"Prohibition is an extraordinary remedy available to compel any tribunal, corporation, board, or person *exercising judicial or ministerial functions*, to desist from further [proceeding] in an action or matter when the proceedings in such tribunal, corporation, board or person are without or in excess of jurisdiction or with grave abuse of discretion[.]"[108]

Lihaylihay v. Treasurer of the Philippines[109] explained the nature of a writ of *mandamus*:

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[108] *Delfin v. Court of Appeals*, 121 Phil. 346, 348–349 (1965) [Per J. J.P. Bengzon, *En Banc*]. (Citation omitted)

[109] 836 Phil. 400 (2018) [Per J. Leonen, Third Division].

> A writ of *mandamus* may issue in either of two (2) situations: first, "when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station"; second, "when any tribunal, corporation, board, officer or person . . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled."
>
> . . . .
>
> The duty subject of *mandamus* must be ministerial rather than discretionary. A court cannot subvert legally vested authority for a body or officer to exercise discretion. In *Sy Ha v. Galang*:
>
> > *[M]andamus* will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any matter in which he is required to act, because it is his judgment that is to be exercised and not that of the court.
>
> This Court distinguished discretionary functions from ministerial duties, and related the exercise of discretion to judicial and quasi-judicial powers. In *Samson v. Barrios*:
>
> > Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others. A purely ministerial act or duty, in contradistinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment. . . . *Mandamus* will not lie to control the exercise of discretion of an inferior tribunal . . . , when the act complained of is either judicial or quasi-judicial. . . . It is the proper remedy when the case presented is outside of the exercise of judicial discretion.
>
> *Mandamus*, too, will not issue unless it is shown that "there is no other plain, speedy and adequate remedy in the ordinary course of law." This is a requirement basic to all remedies under Rule 65, i.e., *certiorari*, prohibition, and *mandamus*.[110] (Citations omitted)

Respondents are indeed correct that the extraordinary writs of prohibition and *mandamus* generally cannot lie against an officer who issued

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[110] *Id.* at 412–414.

a regulation within their quasi-legislative power.[111] Moreover, the finance secretary may review the commissioner of internal revenue's interpretation of tax laws before courts intervention is needed.[112] Likewise true, Rule 65 petitions per se are not proper remedies to resolve constitutional issues.

However, the Petitions before this Court do not seek ordinary prayers for the writs of prohibition and *mandamus*. What petitioners invoke is this Court's power of expanded judicial review under Article VIII, Section 1 of the Constitution. In enforcing this provision, jurisprudence has recognized Rule 65 of the Rules of Court as the apt procedural vehicle,[113] availed when the government or any of its instrumentalities allegedly gravely abused its discretion, be it in the exercise of quasi-legislative, quasi-judicial, or ministerial duties.[114]

Alas, no specific court rule yet governs constitutional cases in the exercise of this Court's expanded *certiorari* power. This constitutional provision was a response to a reclusive court during the dictatorship, and Rule 65 does not fully operationalize the expansive nature of this judicial power.

In any case, petitioners raised constitutional issues here that may be properly adjudicated. There is an alleged invasion of the right to privacy and an incursion into this Court's power to regulate rules on pleading, practice of law, and procedure in courts, raised by parties who have sufficient standing. These serious constitutional concerns need no factual bases, allowing this Court's exercise of original jurisdiction. If true, these allegations are grave abuses of discretion of the Department of Finance and the Bureau of Internal Revenue, which this Court ought to fully resolve.

Finally, "the doctrines of primary jurisdiction and exhaustion of administrative remedies may only be invoked in matters involving the exercise of *quasi-judicial power*."[115] They do not apply here, where, as respondents argue[116] and this Court acknowledges, the assailed revenue regulation was issued in the exercise of the finance secretary's quasi-legislative power.[117]

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111 *Holy Spirit Homeowners Association, Inc. v. Defensor*, 529 Phil. 573 (2006) [Per J. Tinga, *En Banc*].

112 TAX CODE, sec. 4 provides in part:
SECTION 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

113 *Araullo v. Aquino*, 752 Phil. 716 (2014) [Per J. Bersamin, *En Banc*].

114 *Id.*

115 *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 237 (2018) [Per J. Leonen, *En Banc*].

116 *Rollo* (G.R. No. 211772), p. 703. Respondent Secretary Purisima contends that under the Tax Code, the commissioner of internal revenue has the power to promulgate rules and regulations to effectively enforce tax collection and operationalize it.

117 TAX CODE, sec. 244 provides:
SECTION 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations.* — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules

II

Petitioners raised several interesting points on Revenue Regulations No. 4-2014's requirement of submission of affidavits of fees and issuance of receipts for *pro bono* services.

First, petitioner Integrated Bar of the Philippines contends that requiring lawyers to submit affidavits of their fee structures and to issue receipts for *pro bono* services add regulations to the practice of law, which respondents have no jurisdiction to do. Respondent Secretary Purisima counters that the regulation does not affect the practice of law, but merely enforces the Bureau of Internal Revenue's primary jurisdiction to determine the amount and the manner of collection of internal revenue taxes.

Respondent Secretary Purisima is correct.

Article VIII, Section 5(5) of the Constitution places the promulgation of rules on the practice of law within this Court's exclusive domain. "Practice of law" means "any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience."[118]

A regulation on the practice of law pertains to regulating activities relevant to the dispensation of justice. It concerns a lawyer's actions on the protection and enforcement of rights, which extend beyond court litigation.

Here, the requirements outlined in Revenue Regulations No. 4-2014 are not the activities that may be deemed as practice of law. Mere disclosure of how much a lawyer charges has nothing to do with the orderly administration of justice. Lawyers may charge fees or none at all. Generally, this Court does not interfere in the matter of lawyer's fees, except when deemed unconscionable. Lawyers have sufficient leeway to structure payment arrangements with their clients, and the Bureau of Internal Revenue simply asks that they furnish its office with its considerations. Although, as discussed in the next section, the affidavit is superfluous, and the revenue regulation lacks statutory basis in requiring it.

For the same reasons, respondents did not usurp the supervisory and regulatory powers of the Professional Regulatory Commission over physicians, dentists, and certified public accountants, in issuing Revenue Regulations No. 4-2014.

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and regulations for the effective enforcement of the provisions of this Code.

[118] *Cayetano v. Monsod*, 278 Phil. 235 (1991) [Per J. Paras, *En Banc*].

Second, petitioner Integrated Bar of the Philippines alleges that Revenue Regulations No. 4-2014 reduces the practice of law, the public service aspects of it, into a bargain counter business. It equates submitting an affidavit describing a lawyer's rates to publicizing their practice, which would violate their code of ethics.

Petitioner's concerns are misplaced. An affidavit of fees is not the "unethical advertisement" that violates norms in petitioners' professions.

The Code of Professional Responsibility states:

> CANON 3 — A LAWYER IN MAKING KNOWN HIS LEGAL SERVICES SHALL USE ONLY TRUE, HONEST, FAIR, DIGNIFIED AND OBJECTIVE INFORMATION OR STATEMENT OF FACTS.
>
> Rule 3.01 A lawyer shall not use or permit the use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or legal services.
>
> Rule 3.04 A lawyer shall not pay or give anything of value to representatives of the mass media in anticipation of, or in return for, publicity to attract legal business.

Law is a profession, not a trade. This Court has, in *Ulep v. Legal Clinic*,[119] found it highly unethical for a lawyer to advertise their talents or skills akin to a merchant that advertises their wares.[120] Indeed, producing infomercials and advertisements in traditional and social media, crafted to advertise their talents to the public and packaged as campaigns to solicit cases for personal gain, goes against a lawyer's ethics.

Respondents correctly pointed out that executing a public document does not equate to publicly advertising one's trade. Notarization converts a private document into a public document, rendering it admissible in evidence even without proof of its authenticity.[121] By itself, having a lawyer's schedule of fees notarized and submitted to the Bureau of Internal Revenue is not the self-aggrandizing behavior that the Code of Professional Responsibility proscribes.

Third, petitioner Integrated Bar of the Philippines and petitioners-in-intervention assert that the issuance of receipts for *pro bono* services is baseless. They point out that under the Tax Code, receipts, sales invoices, or commercial invoices for each sale or transfer of merchandise are issued for services worth PHP 100.00 or more, not when services are rendered for free.

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[119] 295 Phil. 295 (1993) [Per J. Regalado, *En Banc*].

[120] *Id.*

[121] *Vda. de Rosales v. Ramos*, 433 Phil. 8 (2002) [Per J. Bellosillo, Second Division].

Section 237 of the Tax Code, as amended,[122] reads:

> SECTION 237. Issuance of Receipts or Sales or Commercial Invoices. —
>
> (A) Issuance. — All persons subject to an internal revenue tax *shall, at the point of each sale and transfer of merchandise or for services rendered valued at One hundred pesos (P100) or more,* issue duly registered receipts or sales or commercial invoices, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. (Emphasis supplied)

For entities that may be subject to value-added tax, like self-employed professionals who choose to register under this, their tax base is the gross selling price, or more appropriately, the gross fees that they charge the client. When professionals render services *pro bono*, this does not mean their services have no value; it means they are offering them at a 100% discount, making the gross selling price zero.

Every *pro bono* service is taxed at 12%. Since the tax base is the gross selling price, i.e., zero, then the tax due on the service is 12% of zero, which is zero.

Indeed, the value of the services of self-employed professionals varies. In any case, respondents may validly require them to issue receipts for services rendered *pro bono* to monitor their tax compliance. We note the Bureau of Internal Revenue's manifestation that it was reviewing the assailed revenue regulation in view of the arguments raised in these consolidated Petitions.[123]

In sum, the directive to submit an affidavit describing payment schedules does not equate to regulating the practice of profession and does not raise serious ethical concerns. Requiring the issuance of receipts is a valid measure that the tax collector may employ to ascertain the correct amount of taxes payable by self-employed professionals.

III

Although requiring professionals to submit affidavits of rates, manner of billing, and considerations regarding fees neither encroaches this Court's rule-making power nor violates ethical norms, Section 2(1) of Revenue Regulations No. 4-2014 is unconstitutional for going beyond the mandates of the Tax Code.

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[122] Republic Act No. 10963 (2018), sec. 73. Tax Reform for Acceleration and Inclusion (TRAIN).
[123] *Rollo* (G.R. No. 211772), p. 771.

Petitioners uniformly assail Revenue Regulations No. 4-2014 as an *ultra vires* act. They stress that the Tax Code did not grant the Bureau of Internal Revenue power to compel professionals to charge and publish a schedule of rates. Respondents counter that they simply complemented existing methods currently employed in determining tax compliance, as provided in the Tax Code.

A valid exercise of subordinate legislation entails that it be germane to the purposes of the law it implements.[124] Administrative agencies may fill in the details of laws, as presumably, they have the expertise in enforcing laws and regulations within their functions.[125]

However, an administrative issuance must not contradict or go beyond, but must conform to the standards that the law prescribed.[126]

To recall, Section 2(1) of Revenue Regulations No. 4-2014 obligates self-employed professionals to register and annually pay the registration fee, and to "submit an affidavit indicating the rates, manner of billings, and the factors they consider in determining their service fees upon registration."

Further, Section 2(2) mandates self-employed professionals to register their books of account and official appointment books with their clients' names and the date and time of the meeting.

We find that respondents were well within their powers in issuing certain portions of Sections 2(1) and 2(2).

Section 2(1) is valid in that it mandates self-employed professionals, as proper subjects of taxation, to *register and pay annual registration fees* in the revenue district office that has jurisdiction over them. As stated in Revenue Regulations No. 4-2014, it finds support in Section 236 of the Tax Code, which states:

> SECTION 236. *Registration Requirements.* —
>
> (A) *Requirements.* — *Every person subject to any internal revenue tax shall register once with the appropriate Revenue District Officer*:
>
> (1) Within ten (10) days from date of employment; or
> (2) On or before the commencement of business, or
> (3) Before payment of any tax due, or
> (4) Upon filing of a return, statement or declaration as required

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[124] *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*, 533 Phil. 590, 607 (2006) [Per J. Chico-Nazario, First Division].

[125] *Id.*

[126] *Id.*

in this Code.

The registration shall contain the taxpayer's name, style, place of residence, business, and such other information as may be required by the Commissioner in the form prescribed therefor; *Provided, That the Commissioner shall simplify the business registration and tax compliance requirements of self-employed individuals and/or professionals.*

A person maintaining a head office, branch or facility shall register with the Revenue District Officer having jurisdiction over the head office, branch or facility. For purposes of this Section, the term "*facility*' may include but not be limited to sales outlets, places of production, warehouses or storage places.

B) *Annual Registration Fee.— An annual registration fee* in the amount of Five hundred pesos (P500) for every separate or distinct establishment or place of business, including facility types where sales transactions occur, *shall be paid upon registration and every year thereafter on or before the last day of January*: *Provided, however*, That cooperatives, individuals earning purely compensation income, whether locally or abroad, and overseas workers are not liable to the registration fee herein imposed.

The registration fee shall be paid to an authorized agent bank located within the revenue district, or to the Revenue Collection Officer, or duly authorized Treasurer of the city or municipality where each place of business or branch is registered.

(C) *Registration of Each Type of Internal Revenue Tax. — Every person who is required to register with the Bureau of Internal Revenue under Subsection (A) hereof, shall register each type of internal revenue tax for which he is obligated, shall file a return and shall pay such taxes*, and shall update such registration of any changes in accordance with Subsection (E) hereof. (Emphasis supplied)

The registration and payment mandates execute the revenue regulation's objective to "promote transparency and to eradicate tax evasion among self-employed professionals,"[127] as they shall be registered taxpayers that will come under the government's regulation.

Likewise, obligating the registration of books of accounts under Section 2(2) simply implements the Tax Code. Respondents include Sections 5 and 244 of the Tax Code as their statutory bases in issuing Revenue Regulations No. 4-2014. They read:

SECTION 5. *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* — In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any

[127] Revenue Regulations No. 4-2014 (2014), sec. 1.

internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

> (A) *To examine any book, paper, record, or other data which may be relevant or material to such inquiry;*
>
> (B) *To obtain on a regular basis from any person* other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or - controlled corporations, *any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers*, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members[.]
>
> . . . .
>
> SECTION 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations.* — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code. (Emphasis supplied)

Section 237 of the Tax Code, as amended,[128] reads:

> SECTION 237. *Issuance of Receipts or Sales or Commercial Invoices.* —
>
> (A) *Issuance. — All persons subject to an internal revenue tax shall*, at the point of each sale and transfer of merchandise *or for services rendered valued at One hundred pesos (P100) or more, issue duly registered receipts or sale or commercial invoices,* showing the date of transaction, quantity, unit cost and description of merchandise or nature of service . . .
>
> . . . .
>
> *The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period: Provided,* That in case of electronic receipts or sales or commercial invoices, the digital records of the same shall be kept by the purchaser, customer or client and the issuer for the same period above stated.
>
> The Commissioner may, in meritorious cases, exempt any person

[128] Republic Act No. 10963 (2018), sec. 73. Tax Reform for Acceleration and Inclusion (TRAIN).

> subject to internal revenue tax from compliance with the provisions of this Section. (Emphasis supplied)

As provided above, the Tax Code empowers the finance secretary to promulgate rules to effectively enforce the Tax Code. The finance secretary may also "examine any book, paper, record, or other data which may be relevant or material to such inquiry"; and to regularly obtain "from any person . . . any information such as . . . costs and volume of production[.]"

Tax collectors may obtain regular information on the production cost from taxable persons through receipts, which issuance is also directed under the assailed regulation. A receipt is, as respondents describe, the written evidence of the value of services and its corresponding tax due *after* the service is performed. The Tax Code requires that its issuance for services be rendered at a certain value, and that its original be "kept and preserved by the issuer in [the] place of business, for [three years]."

Thus, this Court upholds the validity of Section 2(2) of Revenue Regulations No. 4-2014, insofar as it obligates *the registration of books of accounts*. It finds justification in the Tax Code, and thus, is within respondents' scope of authority. It is germane to the purpose of the Tax Code, as it guides the agents of tax collection in "monitoring the fees charged by the professionals," in assessing taxable income, and "in conducting tax audit [to] boost revenue collections in such sectors."

However, Revenue Regulations No. 4-2014 went beyond the Tax Code when it compelled self-employed professionals to submit an affidavit of schedule of fees.

As stressed by our esteemed colleagues, Associate Justices Alfredo Benjamin S. Caguioa, Rodil V. Zalameda, Jose Midas P. Marquez, and Maria Filomena D. Singh (Justice Singh), Section 2(1) is void for being issued in excess of respondents' authority. They explain that respondents may obtain information only on *concluded* transactions, which are the taxable services. Requiring professionals to submit affidavits containing their fee structures and considered factors in assessing fees is irrelevant in respondents' primary duty of *assessment and collection of tax due*.

The affidavit that the issuance requires may be akin to receipts, which are written evidence of the value of services. However, it is *indicative* only, and the supposed fee is determined *before* the service is performed. The affidavit does not bind professionals to the disclosures in their affidavits, and it appears to allow them to ultimately charge higher or lower. It is vague how the affidavit aids the tax collector in ascertaining the payable tax.

Thus, there appears no compelling need for sworn statements of the rates and manner of billing among professionals. It is irrelevant, baseless, and serves no legitimate purpose. This is not a proper exercise of subordinate legislation. This is unconstitutional.

As for lawyers, Canon 20 of the Code of Professional Responsibility lists the factors in determining professional fees, making it superfluous to require it in affidavit form to be submitted to agents of tax collectors.

On April 13, 2023, this Court approved A.M. No. 22-09-01-SC, which revised the Code of Professional Responsibility. Canon III, Section 41 of the Code of Professional Responsibility and Accountability provides:

> SECTION 41. *Fair and reasonable fees.* — A lawyer shall charge only fair and reasonable fees.
>
> Attorney's fees shall be deemed fair and reasonable if determined based on the following factors:
>
> (a) The time spent and the extent of the service rendered or required;
> (b) The novelty and difficulty of the issues involved;
> (c) The skill or expertise of the lawyer, including the level of study and experience required for the engagement;
> (d) The probability of losing other engagements as a result of acceptance of the case;
> (e) The customary charges for similar services and the recommended schedule of fees, which the IBP chapter shall provide;
> (f) The quantitative or qualitative value of the client's interest in the engagement, or the benefits resulting to the client from the service;
> (g) The contingency or certainty of compensation;
> (h) The character of the engagement, whether limited, seasonal, or otherwise; and
> (i) Other analogous factors.

This Court takes judicial notice that petitioner Integrated Bar of the Philippines, through its Cebu City chapter, has recently published a "Standard Minimum Attorney's Fees Schedule."[129] This appears to be an example of the information that the revenue regulation aims to collect, which the Code of Professional Responsibility and Accountability now requires. It notes the following:

> 1. *The foregoing Standard Attorney's Fees Schedule are the minimum fees and shall not be construed as fixing the standard fee or the*

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[129] *See* Integrated Bar of the Philippines Cebu City Chapter, *Standard Minimum Attorney's Fees*, *available at* https://www.facebook.com/ibpcebucity/posts/pfbid02JPfSofRbXA2ML4UML9y9yN3RtCKjyx4qUWQirqL1BHK4YomSVhRNd4kHwXx4PVg4l (last accessed on February 22, 2023).

reasonable fee to be charged in any given case or situation.

2. An Attorney shall be entitled to have and recover from his client reasonable compensation for his services with a view to the importance of the subject matter or controversy, the extent of the services rendered, and the professional standing of the attorney.

3. A contract for a contingent fee, where sanctioned by law should be reasonable under all the circumstances of the case including the risk and uncertainty of the compensation but should always be subject to the supervision of the Court, as to its reasonableness. The IPO standard fee rate is also included as Annex for referral.

4. The client shall bear all the expenses and cost of litigation. A lawyer may not properly agree with a client that the lawyer shall pay or bear the expenses of litigation; he may in good faith advance expenses as a matter of convenience, but subject to reimbursement.

5. *In fixing fees, it should not be forgotten that the legal profession is a branch in the administration of [j]ustice, not a mere money-getting trade.*

6. A member who stubbornly refuses to follow the foregoing standard fee schedule shall be reported to the IBP National Office for appropriate disciplinary action and shall be recorded as a member not in good standing for purposes of obtaining their respective IBP Chapter Certifications.

7. *Pro Bono* or legal aid cases may allow the lawyer to receive payment from the client to cover for the office expenses and other actual costs incurred by the lawyer.

8. The foregoing Standard Attorney's Fees Schedule supersedes all previous Attorney's Fees Schedule[s].

9. This Standard Minimum Attorney's Fees Schedule shall be effective on the 15th day of January 2023.[130] (Emphasis supplied)

As Justice Singh aptly underscores, Canon III, Section 41 of the Code of Professional Responsibility and Accountability will better aid in achieving the transparency sought by the Bureau of Internal Revenue, a noble purpose which this Court very much shares. The information that the Bureau seeks through Revenue Regulations No. 4-2014, as Justice Singh opines, "can be more reliably obtained through a schedule of fees published by impartial actors such as the [Integrated Bar of the Philippines] Chapter."[131]

IV

The mandatory registration of *appointment* books under Section 2(2)

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[130] *Id.*

[131] J. Singh, Concurring Opinion, p. 10.

of Revenue Regulations No. 4-2014 is an unconstitutional intrusion into the fundamental rights of professionals and their patients and clients. It violates privacy rights and the ethical norms in petitioners' professions.

Petitioners uniformly assail Revenue Regulations No. 4-2014 for violating their patients' and clients' privacy rights, and for encroaching on their codes of ethics on confidentiality. Respondents counter that only the client's name and appointment schedule will be disclosed, which are not privileged information. They reason that the nature of the consultation, condition of the client or the patient, and other surrounding circumstances need not be stated; hence, no privacy rights are violated.

No less than the Constitution guarantees the right to privacy:

> ARTICLE III
> BILL OF RIGHTS
>
> . . . .
>
> SECTION 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.
>
> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

Under the Constitution, the privacy of communication and correspondence is inviolable except only when there is a court order, or as the law prescribes when public safety or order requires otherwise.

Jurisprudence has since pointed out that the right to privacy enjoyed in this jurisdiction does not only concern correspondence and communication. Certain fundamental rights create penumbras where corresponding privacy rights lie, otherwise known as "zones of privacy." *Morfe v. Mutuc*[132] introduced these values into our legal regime:

> [I]n the leading case of *Griswold v. Connecticut*, Justice Douglas, speaking for five members of the Court, stated: "Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers 'in any house' in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' The Fifth Amendment in its Self-Incrimination clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment

[132] 130 Phil. 415 (1968) [Per J. Fernando, *En Banc*].

provides: 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.'" After referring to various American Supreme Court decisions, Justice Douglas continued: "These cases bear witness that the right of privacy which presses for recognition is a legitimate one."

The *Griswold* case invalidated a Connecticut statute which made the use of contraceptives a criminal offense on the ground of its amounting to an unconstitutional invasion of the right of privacy of married persons; rightfully it stressed "a relationship lying within the zone of privacy created by several fundamental constitutional guarantees." It has wider implication though. The constitutional right to privacy has come into its own.

So it is likewise in our jurisdiction. The right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection. The language of Prof. Emerson is particularly apt: "The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector — protection, in other words, of the dignity and integrity of the individual — has become increasingly important as modern society has developed. All the forces of a technological age — industrialization, urbanization, and organization — operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society."[133] (Citations omitted)

Ople v. Torres[134] pointed to specific provisions not only in the Constitution, but also in statutes, that guarantee other facets of the right to privacy:

Indeed, if we extend our judicial gaze we will find that the right of privacy is recognized and enshrined in several provisions of our Constitution. It is expressly recognized in Section 3(1) of the Bill of Rights:

> "Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law."

Other facets of the right to privacy are protected in various provisions of the *Bill of Rights*, viz:

> "Sec. 1. No person shall be deprived of life, liberty,

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[133] *Id.* at 435–436.

[134] 354 Phil. 948 (1988) [Per J. Puno, *En Banc*].

> or property without due process of law, nor shall any person be denied the equal protection of the laws.
>
> Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.
>
> . . . .
>
> Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.
>
> . . . .
>
> Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.
>
> . . . .
>
> Sec. 17. No person shall be compelled to be a witness against himself."

Zones of privacy are likewise recognized and protected in our *laws*. The *Civil Code* provides that "[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons" and punishes as actionable torts several acts by a person of meddling and prying into the privacy of another. It also holds a public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications. The *Revised Penal Code* makes a crime the violation of secrets by an officer, the revelation of trade and industrial secrets, and trespass to dwelling. Invasion of privacy is an offense in *special laws* like the Anti-Wiretapping Law, the Secrecy of Bank Deposits Act and the Intellectual Property Code. The *Rules of Court* on privileged communication likewise recognize the privacy of certain information.[135] (Emphasis in the original, citations omitted)

Enriching this are three strands of the right to privacy, as retired Chief Justice Reynato Puno propounded:[136] (1) locational privacy; (2) informational privacy; and (3) decisional privacy. To expound:

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[135] *Id.* at 972–974.

[136] *See Vivares v. St. Theresa's College*, 744 Phil. 451, 467 (2014) [Per J. Velasco, Jr., Third Division].

> Locational privacy, also known as situational privacy, pertains to privacy that is felt in a physical space. It may be violated through an act of trespass or through an unlawful search. Meanwhile, informational privacy refers to one's right to control "the processing—i.e., acquisition, disclosure, and use—of personal information."
>
> Decisional privacy, regarded as the most controversial among the three, refers to one's right "to make certain kinds of fundamental choices with respect to their personal and reproductive autonomy."[137] (Citations omitted)

Further on informational privacy:

> Informational privacy has two aspects: the right not to have private information disclosed, and the right to live freely without surveillance and intrusion. In determining whether or not a matter is entitled to the right to privacy, this Court has laid down a two-fold test. The first is a subjective test, where one claiming the right must have an actual or legitimate expectation of privacy over a certain matter. The second is an objective test, where his or her expectation of privacy must be one society is prepared to accept as objectively reasonable.[138] (Citations omitted)

In re Sabio[139] laid down the standard in assessing whether the State impermissibly intrudes into these zones of privacy:

> Zones of privacy are recognized and protected in our laws. Within these zones, any form of intrusion is impermissible unless excused by law and in accordance with customary legal process. The meticulous regard we accord to these zones arises not only from our conviction that the right to privacy is a "constitutional right" and "the right most valued by civilized men," but also from our adherence to the Universal Declaration of Human Rights which mandates that, "no one shall be subjected to arbitrary interference with his privacy" and "everyone has the right to the protection of the law against such interference or attacks."
>
> Our Bill of Rights, enshrined in Article III of the Constitution, provides at least two guarantees that explicitly create zones of privacy. It highlights a person's "right to be let alone" or the "right to determine what, how much, to whom and when information about himself shall be disclosed." Section 2 guarantees "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose." Section 3 renders inviolable the "privacy of communication and correspondence" and further cautions that "any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."
>
> In evaluating a claim for violation of the right to privacy, a court must determine whether a person has exhibited a reasonable expectation of

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137 J. Leonen, Separate Opinion in *Verzosa v. People*, 861 Phil. 230, 299 (2019) [*Per Curiam, En Banc*].

138 *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 132–133 (2014) [Per J. Abad, *En Banc*].

139 *In the Matter of the Petition for Issuance of Writ of Habeas Corpus of Camilo L. Sabio v. Gordon*, 535 Phil. 687 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].

> privacy and, if so, whether that expectation has been violated by unreasonable government intrusion.[140] (Citations omitted)

Accordingly, this Court shall determine whether in setting appointments with a lawyer, doctor, accountant, dentist, or any other professional, a person may reasonably expect privacy, and if so, whether the government intrusion is unreasonable, violating that expectation.

In arguing that privacy rights are not intruded on, respondents claim to find nothing wrong with the Bureau of Internal Revenue knowing whom the self-employed professional met and when they did so.

This is unacceptable.

In *Disini v. Secretary of Justice*,[141] this Court weighed the right to privacy against government authority to monitor data traffic under the Cybercrime Prevention Act. This Court noted that the law did not permit authorities to look into the contents of the messages and uncover the identities of the sender and the recipient. However, it also acknowledged the reality that "[*w*]*hen seemingly random bits of traffic data are gathered in bulk, pooled together, and analyzed, they reveal patterns of activities which can then be used to create profiles of the persons under surveillance.*"[142] This Court continued:

> With enough traffic data, analysts may be able to determine a person's close associations, religious views, political affiliations, even sexual preferences. Such information is likely beyond what the public may expect to be disclosed, and clearly falls within matters protected by the right to privacy.[143] (Emphasis supplied)

Clients and patients have a reasonable expectation of privacy when they set appointments with the professionals that petitioners represent here.

As petitioner Integrated Bar of the Philippines underscored:

> A battered wife who is deathly afraid of her husband may not want to be known to be consulting a lawyer. An employee who has a grievance against his superior may not like to be identified seeking the advice of a labor lawyer. A public figure, accused of a serious crime, may prefer to consult a lawyer in secret.[144]

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140 *Id.* at 714–715.
141 727 Phil. 28 (2014) [Per J. Abad, *En Banc*].
142 *Id.* at 135.
143 *Id.*
144 *Rollo* (G.R. No. 211772), p. 866.

Similarly, when patients consult with doctors who specialize in specific medical conditions, they can reasonably expect privacy that their identities will not be in some government record. Listing one's name in a book of appointments of a particular specialist, to be submitted to the State, potentially divulges information that need not be publicized.[145] An exhaustive list of these conditions is not necessary; anyone consulting a doctor may reasonably expect privacy especially as to their health.

Granted, by themselves, names and appointment dates of patients and clients paint no picture. But as *Disini* teaches, bundling together all the times a person consults with a professional may illustrate a general pattern of behavior, from which information about a person could be revealed, or inferences from information that should have remained private may be drawn. It is this pattern of behavior, which can be extracted from the appointment book, that a person has a reasonable expectation of privacy over and which must be protected.

Respondents stress that appointment books need to be *registered* only and are not automatically subject to the prying eyes of the Bureau of Internal Revenue. They add that the registered appointment books may be viewed only when the self-employed professional is suspected of not paying the correct taxes.

Respondents strangely made a case against their own regulation. Nonetheless, the mere *chance* that a person's information may be subject to the State's prying eyes is an unreasonable intrusion. Considering the risks, this information must not be readily and publicly knowable. That clients and patients may think twice about consulting with professionals, if the government can create a dossier on them based on sensitive information extracted from the appointment book, is more than just an imagined fear.

Mandating a registered appointment book violates the ethical standards[146] of petitioners' professions. The nature of their profession requires strict adherence to confidentiality rules. On this score, petitioners' argument on their codes of ethics is well taken.

V

Attorney-client communication is declared privileged under Rule 130, Section 24(b) of the Revised Rules on Evidence and Rule 138, Section 20(e) of the Revised Rules of Court. They state:

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[145] *Rollo* (G.R. No. 211772), p. 105, Petition-in-Intervention, Philippine Medical Association.

[146] Code of Professional Responsibility for Lawyers; Code of Ethics for Professional Accountants, PRC Resolution No. 83, Series of 2003 for Accountants; Code of Ethics of the Philippine Medical Association for Physicians; Code of Ethics of the Philippine Dental Association for Dentists.

of the Revised Rules of Court. They state:

> SECTION 24. *Disqualification by reason of privileged communication.* — The following persons cannot testify as to matters learned in confidence in the following cases:
>
> . . . .
>
> (a) An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment, nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity[.]
>
> . . . .
>
> SECTION 20. *Duties of attorneys.* — It is the duty of an attorney:
>
> (a) . . . .
>
> (e) To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client, and to accept no compensation in connection with his client's business except from him or with his knowledge and approval[.]

This privilege is reinforced in many other statutes. The Code of Professional Responsibility likewise mandates lawyers to safeguard information divulged to them, borne out of lawyer-client relations:

> CANON 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client.
>
> . . . .
>
> CANON 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.
>
> . . . .
>
> CANON 21 — A lawyer shall preserve the confidences or secrets of his client even after the attorney-client relation is terminated.
>
> RULE 21.01 A lawyer shall not reveal the confidences or secrets of his client except:
>
> (a) when authorized by the client after acquainting him of the consequences of the disclosure;
>
> (b) when required by law;
>
> (c) when necessary to collect his fees or to defend himself, his employees or associates or by judicial action.

> RULE 21.02 A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.
>
> RULE 21.03 A lawyer shall not, without the written consent of his client, give information from his files to an outside agency seeking such information for auditing, statistical, bookkeeping, accounting, data processing, or any similar purpose.
>
> RULE 21.04 A lawyer may disclose the affairs of a client of the firm to partners or associates thereof unless prohibited by the client.
>
> RULE 21.05 A lawyer shall adopt such measures as may be required to prevent those whose services are utilized by him, from disclosing or using confidences or secrets of the client.
>
> RULE 21.06 A lawyer shall avoid indiscreet conversation about a client's affairs even with members of his family.
>
> RULE 21.07 A lawyer shall not reveal that he has been consulted about a particular case except to avoid possible conflict of interest.

The Data Privacy Act generally prohibits "the processing of sensitive personal and privileged information."[147] This includes "any and all forms of data which under the Rules of Court and other pertinent laws constitute privileged communication."[148] Section 13 states:

> SECTION 13. Sensitive Personal Information and Privileged Information. — The processing of sensitive personal information and privileged information shall be prohibited, except in the following cases:
>
> (a) The data subject has given his or her consent, specific to the purpose prior to the processing, or in the case of privileged information, all parties to the exchange have given their consent prior to processing;
>
> (b) The processing of the same is provided for by existing laws and regulations: Provided, That such regulatory enactments guarantee the protection of the sensitive personal information and the privileged information: Provided, further, That the consent of the data subjects are not required by law or regulation permitting the processing of the sensitive personal information or the privileged information;
>
> (c) The processing is necessary to protect the life and health of the data subject or another person, and the data subject is not legally or physically able to express his or her consent prior to the processing;
>
> (d) The processing is necessary to achieve the lawful and noncommercial objectives of public organizations and their associations: Provided, That such processing is only confined and related to the bona fide members of these organizations or their associations: Provided,

[147] Republic Act No. 10173 (2012), sec. 13.
[148] Republic Act No. 10173 (2012), sec. 3(k).

> further, That the sensitive personal information are not transferred to third parties: Provided, finally, That consent of the data subject was obtained prior to processing;
>
> (e) The processing is necessary for purposes of medical treatment, is carried out by a medical practitioner or a medical treatment institution, and an adequate level of protection of personal information is ensured; or
>
> (f) The processing concerns such personal information as is necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings, or the establishment, exercise or defense of legal claims, or when provided to government or public authority.

The Revised Penal Code penalizes a lawyer who reveals any client's secrets learned in their professional capacity:

> ARTICLE 209. *Betrayal of Trust by an Attorney or Solicitor — Revelation of Secrets.* — In addition to the proper administrative action, the penalty of *prision correccional* in its minimum period, or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon any attorney-at-law or solicitor (*procurador judicial*) who, by any malicious breach of professional duty or inexcusable negligence or ignorance, shall prejudice his client, or reveal any of the secrets of the latter learned by him in his professional capacity.
>
> The same penalty shall be imposed upon an attorney-at-law or solicitor (*procurador judicial*) who, having undertaken the defense of a client or having received confidential information from said client in a case, shall undertake the defense of the opposing party in the same case, without the consent of his first client.

In *Regala v. Sandiganbayan*,[149] this Court discussed the policy considerations in deeming communication between lawyers and their client as privileged:

> The nature of lawyer-client relationship is premised on the Roman Law concepts of *locatio conductio operarum* (contract of lease of services) where one person lets his services and another hires them without reference to the object of which the services are to be performed, wherein lawyers' services may be compensated by *honorarium* or for hire, and *mandato* (contract of agency) wherein a friend on whom reliance could be placed makes a contract in his name, but gives up all that he gained by the contract to the person who requested him. But the lawyer-client relationship is more than that of the principal-agent and lessor-lessee.
>
> In modern day perception of the lawyer-client relationship, an attorney is more than a mere agent or servant, because he possesses special powers of trust and confidence reposed on him by his client. A lawyer is also as independent as the judge of the court, thus his powers are

[149] 330 Phil. 678 (1996) [Per J. Kapunan, *En Banc*].

entirely different from and superior to those of an ordinary agent. Moreover, an attorney also occupies what may be considered as a "quasi-judicial office" since he is in fact an officer of the Court and exercises his judgment in the choice of courses of action to be taken favorable to his client.

Thus, in the creation of lawyer-client relationship, there are rules, ethical conduct and duties that breathe life into it, among those, the fiduciary duty to his client which is of a very delicate, exacting and confidential character, requiring a very high degree of fidelity and good faith, that is required by reason of necessity and public interest based on the hypothesis that abstinence from seeking legal advice in a good cause is an evil which is fatal to the administration of justice.

It is also the strict sense of fidelity of a lawyer to his client that distinguishes him from any other professional in society. This conception is entrenched and embodies centuries of established and stable tradition. In *Stockton v. Ford*, the U.S. Supreme Court held:

> There are few of the business relations of life involving a higher trust and confidence than that of attorney and client, or generally speaking, one more honorably and faithfully discharged; few more anxiously guarded by the law, or governed by the sterner principles of morality and justice; and it is the duty of the court to administer them in a corresponding spirit, and to be watchful and industrious, to see that confidence thus reposed shall not be used to the detriment or prejudice of the rights of the party bestowing it.
>
> . . . .

Considerations favoring confidentiality in lawyer-client relationships are many and serve several constitutional and policy concerns. In the constitutional sphere, the privilege gives flesh to one of the most sacrosanct rights available to the accused, the right to counsel. If a client were made to choose between legal representation without effective communication and disclosure and legal representation with all his secrets revealed then he might be compelled, in some instances, to either opt to stay away from the judicial system or to lose the right to counsel. If the price of disclosure is too high, or if it amounts to self incrimination, then the flow of information would be curtailed thereby rendering the right practically nugatory. The threat this represents against another sacrosanct individual right, the right to be presumed innocent is at once self-evident.

Encouraging full disclosure to a lawyer by one seeking legal services opens the door to a whole spectrum of legal options which would otherwise be circumscribed by limited information engendered by a fear of disclosure. An effective lawyer-client relationship is largely dependent upon the degree of confidence which exists between lawyer and client which in turn requires a situation which encourages a dynamic and fruitful exchange and flow of information. It necessarily follows that in order to attain effective representation, the lawyer must invoke the privilege not as

> a matter of option but as a matter of duty and professional responsibility.[150] (Citations omitted)

Echoing *Regala*, this Court in *Pacana, Jr. v. Pascual-Lopez*[151] held that the lawyer-client relationship is imbued with trust and confidence of the highest degree:

> *In the course of a lawyer-client relationship, the lawyer learns all the facts connected with the client's case, including its weak and strong points. Such knowledge must be considered sacred and guarded with care.* No opportunity must be given to him to take advantage of his client; for if the confidence is abused, the profession will suffer by the loss thereof. It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is paramount in the administration of justice.[152] (Emphasis supplied)

Regala's significant import on the development of the privilege is its ruling that lawyers may not invoke the attorney-client privilege to refuse disclosing who their clients are.[153] This information would only be protected "when the client's name itself has an independent significance, such that disclosure would then reveal client confidences."[154] This Court said:

> [T]he content of any client communication to a lawyer lies within the privilege if it is relevant to the subject matter of the legal problem on which the client seeks legal assistance. Moreover, where the *nature* of the attorney-client relationship has been previously disclosed *and it is the identity which is intended to be confidential*, the identity of the client has been held to be privileged, since such revelation would otherwise result in disclosure of the entire transaction.[155] (Emphasis in the original)

"As a matter of public policy, a client's identity should not be shrouded in mystery."[156] Generally, "a lawyer may not invoke the privilege and refuse to divulge the name or identity of [their] client."[157]

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150 *Id.* at 698–702.

151 611 Phil. 399 (2009) [*Per Curiam, En Banc*].

152 *Id.* at 409–410, *citing United States v. Laranja*, 21 Phil. 500 (1912) [Per J. Trent, *En Banc*]; *Hilado v. David*, 84 Phil. 569, 579 (1949) [Per J. Tuason, *En Banc*].

153 *Regala v. Sandiganbayan*, 330 Phil. 678 (1996) [Per J. Kapunan, *En Banc*].

154 *Id.* at 709, *citing Hays v. Wood*, 25 Cal. 3d 770, 603 P.2d 19, 160 Cal. Rptr. 102 (1979); Ex parte McDonough, 180 Cal. 230, 149 P. 566 (1915); *In re* Grand Jury Proceedings, 600 F.2d 215, 218 (9th Cir. 1979); *United States v. Hodge & Zweig*, 548 F. 2d 1347, 1353 (9th Cir. 1977); In re Michaelson, 511 F.2d 882, 888 (9th Cir.), cert. denied, 421 U.S. 978, 95 S. Ct. 1979, 44 L. Ed.2d 469 (1975); *Baird v. Koerner*, 279 F. 2d 623, 634-35 (9th Cir. 1960) (applying California law); *United States v. Jeffers*, 532 F.2d 1101, 114 15 (7th Cir. 1976), *aff'd in part and vacated in part*, 432 U.S. 137, 97 S. Ct. 2207, 53 L.Ed.2d 168 (1977); In re Grand Jury Proceedings, 517 F.2d 666, 670 71 (5th Cir. 1975); *Tillotson v. Boughner*, 350 F.2d, 663, 665-66 (7th Cir. 1965); *NLRB v. Harvey*, 349 F.2d 900, 905 (4th Cir. 1965); *Colton v. United States*, 306 F.2d 633, 637 (2d Cir. 1962), cert. denied, 371 U.S. 951, 83 S.Ct. 505, 9 L. Ed.2d 499 (1963).

155 *Id.*, *citing Curtis v. Richards*, 95 Am St. Rep. 134, 257; R. ARONSON, PROFESSIONAL RESPONSIBILITY 203 (1991).

156 *Id.* at 702, *citing People v. Warden of County Jail*, 270 NYS 362 (1934).

157 *Id.*, *citing* 58 AmJur 2d Witnesses Secs. 507, 285. *Regala* listed the following reasons for this general rule:

However, *Regala* allows the client's identity to be privileged in exceptional instances: (1) "where a strong probability exists that revealing the client's name would implicate that client in the very activity for which [they] sought the lawyer's advice";[158] (2) "[w]here disclosure would open the client to civil liability, [their] identity is privileged";[159] and (3) "[w]here the government's lawyers have no case against an attorney's client unless, by revealing the client's name, the said name would furnish the only link that would form the chain of testimony necessary to convict an individual of a crime, the client's name is privileged."[160]

This Court explained:

> "Communications made to an attorney *in the course of any personal employment, relating to the subject thereof*, and which may be supposed to be drawn out in consequence of the relation in which the parties stand to each other, are under the seal of confidence and entitled to protection as privileged communications." Where the communicated information, which clearly falls within the privilege, would suggest possible criminal activity but there would be not much in the information known to the prosecution which would sustain a charge except that revealing the name of the client would open up other privileged information which would substantiate the prosecution's suspicions, then the client's identity is so inextricably linked to the subject matter itself that it falls within the protection. . . .
>
> There are, after all, alternative sources of information available to the prosecutor which do not depend on utilizing a defendant's counsel as a convenient and readily available source of information in the building of a case against the latter. Compelling disclosure of the client's name in circumstances such as the one which exists in the case at bench amounts to sanctioning fishing expeditions by lazy prosecutors and litigants which we cannot and will not countenance. When the nature of the transaction would be revealed by disclosure of an attorney's retainer, such retainer is obviously protected by the privilege. It follows that petitioner attorneys in the instant case owe their client(s) a duty and an obligation not to disclose the latter's identity which in turn requires them to invoke the privilege.
>
> In fine, the crux of petitioner's objections ultimately hinges on their expectation that if the prosecution has a case against their clients, the latter's case should be built upon evidence painstakingly gathered by them *from their own sources* and not from compelled testimony requiring them to reveal the name of their clients, information which unavoidably reveals

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First, the court has a right to know that the client whose privileged information is sought to be protected is flesh and blood.
Second, the privilege begins to exist only after the attorney-client relationship has been established. The attorney-client privilege does not attach until there is a client.
Third, the privilege generally pertains to the subject matter of the relationship.
Finally, due process considerations require that the opposing party should, as a general rule, know his adversary. "A party suing or sued is entitled to know who his opponent is." He cannot be obliged to grope in the dark against unknown forces. (Citations omitted)

158 *Id.* at 703.
159 *Id.* at 705.
160 *Id.* at 707.

> much about the nature of the transaction which may or may not be illegal. The logical nexus between name and nature of transaction is so intimate in this case that it would be difficult to simply dissociate one from the other. In this sense, the name is as much "communication" as information revealed directly about the transaction in question itself, a communication which is clearly and distinctly privileged. A lawyer cannot reveal such communication without exposing himself to charges of violating a principle which forms the bulwark of the entire attorney-client relationship.[161] (Citations omitted)

This Court in *Regala* acknowledged that there might be attempts to exploit the privilege, where a client takes on an attorney's services specifically to circumvent the law and commit crime.[162] But this Court assured that the privilege may not be invoked to shield an unlawful act, as "it is not within the professional character of a lawyer to give advice on the commission of a crime."[163] In any case, this Court underscored that it could not risk resolving this issue differently, lest it inadvertently allow the erosion of the *uberrimei fidei* relationship between a lawyer and their client, which subsists even when the attorney-client relationship is terminated.

Mercado v. Vitriolo[164] appeared to temper a general invocation of the lawyer-client privilege. There, this Court laid down factors that highlight the need for a proper appreciation of facts in cases invoking the privilege:

> In fine, the factors are as follows:
>
> (1) There exists an attorney-client relationship, or a prospective attorney-client relationship, and it is by reason of this relationship that the client made the communication.
>
> Matters disclosed by a prospective client to a lawyer are protected by the rule on privileged communication even if the prospective client does not thereafter retain the lawyer or the latter declines the employment. The reason for this is to make the prospective client free to discuss whatever he wishes with the lawyer without fear that what he tells the lawyer will be divulged or used against him, and for the lawyer to be equally free to obtain information from the prospective client.
>
> On the other hand, a communication from a (prospective) client to a lawyer for some purpose other than on account of the (prospective) attorney-client relation is not privileged. Instructive is the case of *Pfleider v. Palanca*, where the client and his wife leased to their attorney a 1,328-hectare agricultural land for a period of ten years. In their contract, the parties agreed, among others, that a specified portion of the lease rentals would be paid to the client-lessors, and the remainder would be delivered by counsel-lessee to client's listed creditors. The client alleged that the list of creditors which he had "confidentially" supplied counsel for the purpose of carrying out the terms of payment contained in the lease contract was disclosed by counsel, in violation of their lawyer-client

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161 *Id.* at 712–714.
162 *Id.* at 711–712.
163 *Id.*, *citing* 58 AmJur 515–517.
164 498 Phil. 49 (2005) [Per J. Puno, Second Division].

relation, to parties whose interests are adverse to those of the client. As the client himself, however, states, in the execution of the terms of the aforesaid lease contract between the parties, he furnished counsel with the "confidential" list of his creditors. We ruled that this indicates that client delivered the list of his creditors to counsel not because of the professional relation then existing between them, but on account of the lease agreement. We then held that a violation of the confidence that accompanied the delivery of that list would partake more of a private and civil wrong than of a breach of the fidelity owing from a lawyer to his client.

(2) The client made the communication in confidence.

The mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend the communication to be confidential.

A confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given.

Our jurisprudence on the matter rests on quiescent ground. Thus, a compromise agreement prepared by a lawyer pursuant to the instruction of his client and delivered to the opposing party, an offer and counter-offer for settlement, or a document given by a client to his counsel not in his professional capacity, are not privileged communications, the element of confidentiality not being present.

(3) The legal advice must be sought from the attorney in his professional capacity.

The communication made by a client to his attorney must not be intended for mere information, but for the purpose of seeking legal advice from his attorney as to his rights or obligations. The communication must have been transmitted by a client to his attorney for the purpose of seeking legal advice.

If the client seeks an accounting service, or business or personal assistance, and not legal advice, the privilege does not attach to a communication disclosed for such purpose.[165] (Emphasis supplied)

Recently, in *Minas v. Doctor, Jr.*,[166] this Court cautioned that a "mere relation of attorney and client does not raise a presumption of confidentiality."[167]

Thus, respondents are incorrect in arguing that the client's name is not privileged information. *Regala* decreed that the client's identity falls within the privilege, in proper cases.

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165 *Id.* at 58–60.
166 869 Phil. 530 (2020) [*Per Curiam, En Banc*].
167 *Id.* at 542.

Likewise, patient-physician communication is also deemed privileged under Rule 130 of the Revised Rules on Evidence:

> SECTION 24. *Disqualification by reason of privileged communic ation.* — The following persons cannot testify as to matters learned in confidence in the following cases:
>
> . . . .
>
> (c) A physician, psychotherapist or person reasonably believed by the patient to be authorized to practice medicine or psychotherapy cannot in a civil case, without the consent of the patient, be examined as to any confi dential communication made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition, including alcohol or drug addiction, between the patient and his or her physician or psychotherapist. This privilege also applies to persons, including members of the patient's family, who have participated in the diagnosis or treatment of the patient under the direction of the physician or psychotherapist.

As privileged communication, correspondence between physicians and their patients is likewise protected by the Data Privacy Act.[168] *Lim v. Court of Appeals*[169] instructs when this privilege may be invoked:

> This rule on the physician-patient privilege is intended to facilitate and make safe full and confidential disclosure by the patient to the physician of all facts, circumstances and symptoms, untrammeled by apprehension of their subsequent and enforced disclosure and publication on the witness stand, to the end that the physician may form a correct opinion, and be enabled safely and efficaciously to treat his patient. It rests in public policy and is for the general interest of the community.
>
> Since the object of the privilege is to protect the patient, it may be waived if no timely objection is made to the physician's testimony.
>
> In order that the privilege may be successfully claimed, the following requisites must concur:
>
> 1. the privilege is claimed in a civil case;
>
> 2. the person against whom the privilege is claimed is one duly authorized to practice medicine, surgery or obstetrics;
>
> 3. such person acquired the information while he was attending to the patient in his professional capacity;
>
> 4. the information was necessary to enable him to act in that capacity; and

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[168] Republic Act No. 10173 (2012), secs. 3(k), 13.
[169] 288 Phil. 1053 (1992) [Per J. Davide, Jr., Third Division].

> 5. the information was confidential, and, if disclosed, would blacken the reputation (formerly *character*) of the patient.
>
> These requisites conform with the four (4) fundamental conditions necessary for the establishment of a privilege against the disclosure of certain communications, to wit:
>
> 1. The communications must originate in a *confidence* that they will not be disclosed.
>
> 2. This element of *confidentiality must be essential* to the full and satisfactory maintenance of the relation between the parties.
>
> 3. The *relation* must be one which in the opinion of the community ought to be *sedulously fostered.*
>
> 4. The *injury* that would inure to the relation by the disclosure of the communications must be *greater than the benefit* thereby gained for the correct disposal of litigation.
>
> The physician may be considered to be acting in his professional capacity when he attends to the patient for curative, preventive, or palliative treatment. Thus, only disclosures which would have been made to the physician to enable him "safely and efficaciously to treat his patient" are covered by the privilege. It is to be emphasized that "it is the *tenor* only of the communication that is privileged. The *mere fact of making a communication*, as well as the *date* of a consultation and the *number of consultations*, are therefore not privileged from disclosure, so long as the subject communicated is not stated."
>
> One who claims this privilege must prove the presence of these aforementioned requisites.[170] (Emphasis in the original, citations omitted)

Gonzales v. Court of Appeals[171] ruled that the privilege extends even until death; to rule otherwise would thwart the privilege's purpose and defeat the public policy animating it. "After one has gone to [their] grave, the living are not permitted to impair [their] name and disgrace [their] memory by dragging to light communications and disclosures made under the seal of the statute."[172]

But the physician-patient privilege is not absolute, and a mode of discovery may be availed of in proper cases to divulge relevant information. In a separate opinion:[173]

> [T]he hospital records of respondent Johnny Chan may not be produced in court without his/her consent. Issuance of a subpoena *duces*

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170 *Id.* at 1061–1063.

171 358 Phil. 806 (1998) [Per J. Romero, Third Division].

172 *Id.* at 819.

173 J. Leonen, Concurring Opinion in *Chan v. Chan*, 715 Phil. 67 (2013) [Per J. Abad, Third Division].

tecum for its production will violate the physician-patient privilege rule under Rule 130, Sec. 24 (c) of the Rules of Civil Procedure.

However, this privilege is not absolute. The request of petitioner for a copy of the medical records has not been properly laid.

Instead of a request for the issuance of a subpoena *duces tecum*, Josielene Lara Chan should avail of the mode of discovery under Rule 28 of the Rules of Civil Procedure.

Rule 28 pertains to the physical or mental examination of persons. This may be ordered by the court, in its discretion, upon motion and showing of good cause by the requesting party, in cases when the mental and/or physical condition of a party is in controversy. Aside from showing good cause, the requesting party needs only to notify the party to be examined (and all other parties) and specify the time, place, manner, conditions, and scope of the examination, including the name of the physician who will conduct the examination.

The examined party may obtain a copy of the examining physician's report concerning his/her mental or physical examination. The requesting party shall deliver this report to him/her. After such delivery, however, the requesting party becomes entitled to any past or future medical report involving the same mental or physical condition. Upon motion and notice, the court may order the examined party to deliver those medical reports to the requesting party if the examined party refuses to do so.

Moreover, if the examined party requests a copy of the examining physician's report or if he/she takes the examining physician's deposition, the request waives the examined party's privileges when the testimony of any person who examined or will examine his/her mental of physical status is taken in the action or in any action involving the same controversy.

Discovery procedures provide a balance between the need of the plaintiff or claimant to fully and fairly establish her case and the policy to protect — to a certain extent — communications made between a patient and his doctor. Hence, the physician-patient privilege does not cover information discovered under Rule 28. This procedure is availed with the intention of making the results public during trial. Along with other modes of discovery, this would prevent the trial from being carried on in the dark.[174] (Citations omitted)

Finally, as Justice Amy C. Lazaro-Javier points out, "The right to privacy encompasses privileged information. But they do not proceed from the same source of responsibility. Privileged information cultivated in the course of professional relationship requires trust and confidence that compels the professional to 'shut up.' *For the [Bureau of Internal Revenue] to compel any professional at that, to divulge any information acquired in confidence is to force the professional to violate such trust.* And for the purpose of obtaining 'ready evidence' whenever the professional is

[174] *Id.* at 75–77.

suspected of violation of tax laws."[175]

In our jurisdiction, Republic Act No. 9298, or the Philippine Accountancy Act of 2004, requires certified public accountants to treat all working papers, schedules, and memoranda as generally confidential and privileged:

> SECTION 29. Ownership of Working Papers. — All working papers, schedules and memoranda made by a certified public accountant and his staff in the course of an examination, including those prepared and submitted by the client, incident to or in the course of an examination, by such certified public accountant, except reports submitted by a certified public accountant to a client *shall be treated confidential and privileged and remain the property of such certified public accountant in the absence of a written agreement between the certified public accountant and the client, to the contrary*, unless such documents are required to be produced through subpoena issued by any court, tribunal, or government regulatory or administrative body. (Emphasis supplied)

Under the same law, a violation of their ethical rules exposes accountants to suspension or revocation of their license:

> SECTION 24. Suspension and Revocation of Certificate of Registration and Professional Identification Card and Cancellation of Special Permit. — The Board shall have the power, upon due notice and hearing, to suspend or revoke the practitioner's certificate of registration and professional identification card or suspend him/her from the practice of his/her profession or cancel his/her special permit for any of the causes or grounds mentioned under Section 23 of this Act or for any unprofessional or unethical conduct, malpractice, violation of any of the provisions of this Act, and its implementing rules and regulations, the Certified Public Accountant's Code of Ethics and the technical and professional standards of practice for certified public accountants.

This Court concedes that if any of these professionals decide that certain aspects of their relationship with their clients ought to be publicized and made transparent, they themselves will, through their organization, draft and publish this in their code of ethics. Until then, this Court upholds the fundamental right to privacy of the professionals, their clients, and their patients.

As demonstrated by law and jurisprudence, the State policy in protecting the people's right to privacy is clear. In mandating the registration of appointment books of self-employed professionals, Revenue Regulations No. 4-2014 is an unconstitutional intrusion into this right.

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[175] J. Lazaro-Javier, Concurring Opinion, pp. 14–15.

ACCORDINGLY, the consolidated Petitions are **PARTIALLY GRANTED**.

Sections 2(1) and 2(2) of Revenue Regulation No. 4-2014, insofar as they require the submission of an affidavit indicating the rates, manner of billings and the factors that self-employed professionals consider in their service fees, and the mandatory registration of their appointment books, are declared **VOID**, being issued in excess of the Department of Finance's jurisdiction.

The Department of Finance and the Bureau of Internal Revenue, as with their officers, agents, and employees, are **PERMANENTLY ENJOINED** from implementing the unconstitutional provisions.

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

See Concurring Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

Ms. See Concurrence

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

With Concurring Opinion

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the court.

ALEXANDER G. GESMUNDO
Chief Justice

EN BANC

G.R. No. 211772 – INTEGRATED BAR OF THE PHILIPPINES, Petitioner, **AND PHILIPPINE COLLEGE OF PHYSICIANS, PHILIPPINE MEDICAL ASSOCIATION, INC., PHILIPPINE DENTAL ASSOCIATION,** Petitioners-in-intervention, ***versus*** **SECRETARY CESAR V. PURISIMA OF THE DEPARTMENT OF FINANCE AND COMMISSIONER KIM S. JACINTO-HENARES OF THE BUREAU OF INTERNAL REVENUE,** Respondents.

G.R. No. 212178 – ASSOCIATION OF SMALL ACCOUNTING PRACTITIONERS IN THE PHILIPPINES, INC., Petitioner, ***versus*** **HON. SECRETARY OF FINANCE CESAR V. PURISIMA AND HON. COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO-HENARES,** Respondents.

Promulgated:

April 18, 2023

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CONCURRING OPINION

CAGUIOA, *J.*:

In all, I concur that the subject case presents an actual case or controversy, and that portions of Section 2(1) and Section 2(2) of the assailed Revenue Regulations No. 4-2014 (RR 4-2014),[1] specifically the requirement for self-employed professionals (a) to submit an affidavit where they indicate their rates, manner of billings, as well as the factors considered in determining their service fees, and (b) to register their appointment books with the Bureau of Internal Revenue (BIR), should be struck down for being unconstitutional.

I.

The *ponencia* finds the subject case justiciable, to wit:

> To stress, before us are the representative organizations of professionals whose members, patients, clients' fundamental rights to privacy are supposedly violated. They assail a regulation issued by agents of fiscal policy and tax collection who mandate the disclosure of their patients' and clients' names and appointment. The competing rights and the *prima facie* showing of grave abuse of discretion call for proper adjudication.

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[1] Bureau of Internal Revenue, Guidelines and Policies for the Monitoring of Service Fees of Professionals, Revenue Regulations No. 4-2014 [RR 4-2014].

> Thus, petitioners present an actual case or controversy, which merits this Court's exercise of judicial review.[2]

As I had consistently put forward in several other cases, and finally adopted by the present members of the *en banc*, the latest of which being the recently decided *Executive Secretary v. Pilipinas Shell*[3] (*ES v. Pilipinas Shell*), and *Universal Robina Corporation v. Department of Trade and Industry*[4] (*URC v. DTI*), actual facts resulting from the assailed law, as applied, are not absolutely necessary in all cases in order for the Court to exercise its power of judicial review. Once and for all, with this case and that of *ES v. Pilipinas Shell* and *URC v. DTI*, it should now be definitively settled that **"mere contrariety of legal rights"** constitutes a justiciable controversy.

To be sure, this correct understanding of justiciability is entrenched in jurisprudence. As early as *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*[5] (*Province of North Cotabato*), the Court already ruled that "when an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right[,] but in fact the duty of the judiciary to settle the dispute."[6] In other words, it is sufficient that the questioned law has been enacted, or that the challenged action was approved for an actual case or controversy to exist. Stated differently, petitioners need not await the "implementing evil to befall on them",[7] or for them to actually suffer the injury or harm before challenging these acts as illegal or unconstitutional.[8]

As may be recalled, this was also the position taken by the Court in *SPARK v. Quezon City*,[9] where it upheld the constitutionality of the curfew ordinances in several cities in Metro Manila, even if there was no allegation that petitioners therein already violated said ordinances or that they already suffered actual harm or injury, which would then constitute the so-called "actual facts". The Court notably found the case already justiciable due to the "evident clash of the parties' legal claims."[10]

As well, in *Inmates of New Bilibid Prison v. De Lima*,[11] it was ruled that a judicial controversy already exists if "there is a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence."[12] Indeed, as succinctly stated by the majority in *Republic v. Maria Basa Express Jeepney Operators and Drivers Association, Inc.*[13]

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2 *Ponencia*, p. 13.
3 G.R. No. 209216, February 21, 2023.
4 G.R. No. 203353, February 14, 2023.
5 *Province of North Cotabato v. GRP Peace Panel on Ancestral Domain*, 589 Phil. 387 (2008) [Per J. Carpio Morales, *En Banc*].
6 *Id.* at 486.
7 *Pimentel, Jr. v. Aguirre*, 391 Phil. 84, 107 (2000) [Per J. Panganiban, *En Banc*].
8 *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1, 127 (2014) [Per J. Mendoza, *En Banc*].
9 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, *En Banc*].
10 *Id.* at 1091.
11 854 Phil. 675 (2019) [Per J. Peralta, *En Banc*].
12 *Id.* at 693–694.
13 G.R. Nos. 206486, 212604, 212682, and 212800, August 16, 2022 [Per J. Lopez, J., *En Banc*].

(*Maria Basa*), citing *Inmates of New Bilibid*, "the existence of an actual case or controversy does not call for concrete acts, as an actual case may exist even in the absence of 'tangible instances'."[14]

Thus, following the principle of *stare decisis et non quieta movere*—or to follow past precedents and do not disturb what has been settled—the Court should no longer recalibrate the meaning of the actual case or controversy requirement.

In the instant case, the present petition stemmed from consolidated petitions for prohibition and *mandamus* filed by petitioners before the Court to raise a question of law, i.e., the constitutionality of RR 4-2014. Here, the *ponencia* correctly finds petitioners' questions justiciable. Notably, this is notwithstanding the fact that the case is bereft of any contention whatsoever that petitioners already committed overt acts in violation of the assailed regulations or that they already suffered actual harm after its passage. In fact, shortly after RR 4-2014 took effect on April 5, 2014, the Court issued a Temporary Restraining Order against its implementation.[15] Verily, what existed when petitioners filed their petition was a mere contrariety of legal rights between petitioners and their patients and clients on the one hand, and the Department of Finance (DOF) and the BIR on the other. In other words, there were no "actual facts".

Again, I stress anew that justiciability and absence of overt acts constituting breach of a law or regulation are not mutually exclusive, especially in an action for prohibition which also prays for a preliminary injunction, such as the case herein. A petition for prohibition is a preventive remedy to restrain the doing of some act which is about to be done.[16] It cannot restrain acts that are already accomplished.[17] Similarly, an action for injunction, which has for its purpose the enjoinment of a defendant from the commission or continuance of a specific act, would be dismissed if the act sought to be restrained has been accomplished or fully executed.[18] Under these circumstances, the breach or the injury is merely imminent, and it would be incongruous for the Court to require further overt acts before ruling on the petition as by that time, the act sought to be enjoined would already be *fait accompli*.

II.

Section 2(1) of RR 4-2014 mandates the following:

> Self-employed professionals shall register and pay the annual registration fee (ARF) with the RDO/LTDO having jurisdiction over them. In addition to the requirements for annual registration, **all self-employed**

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14 *Id.* at 13. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.
15 *Ponencia*, p. 4.
16 *Agustin v. De la Fuente*, 84 Phil. 515, 517 (1949) [Per J. Reyes, *En Banc*].
17 *See Montes v. Court of Appeals*, 523 Phil. 98, 105 (2006) [Per J. Tinga, Third Division].
18 *Manila Banking Corp. v. Court of Appeals*, 265 Phil. 142, 149 (1990) [Per J. Narvasa, First Division].

> **professionals shall submit an affidavit indicating the rates, manner of billings and the factors they consider in determining their service fees** upon registration and every year thereafter on or before January 31. (Emphasis supplied)

According to the *ponencia*, while the requirement for self-employed professionals to register with the BIR and pay an annual registration fee are valid,[19] the BIR's power to require submission of the aforementioned affidavits lacks reasonable or statutory basis,[20] and is therefore, unconstitutional.[21] In line with this, the *ponencia* enunciates that:

> The affidavit that the issuances required may be akin to receipts, which are written evidence of the value of services. However, but it is indicative only, and the supposed fee is determined *before* the service is performed. It does not bind professionals to the disclosures in their affidavits, and it appears to allow them to ultimately charge higher or lower. It is vague how the affidavit aids the tax collector in the performance of her duties in ascertaining the payable tax.
>
> Thus, there appears no compelling need for sworn statements of the rates and manner of billing among professionals. It is irrelevant, baseless, and serves no legitimate purpose. This is not the proper exercise of delegated power of subordinate legislation in an administrative agency. This is unconstitutional.

Respondents herein harp that the assailed submission of an affidavit may find support from Sections 5 and 244 of the Tax Code, which read as follows:

> ***SEC. 5. Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.*** — In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
>
> (A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;
>
> (B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;

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19 *Ponencia*, pp. 26–27.
20 *Id.* p. 29.
21 *Id.* p. 30.

> ***SEC. 244. Authority of Secretary of Finance to Promulgate Rules and Regulations.*** — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

On this matter, I join the *ponencia,* as well as the opinions of Associate Justices Rodil V. Zalameda (Justice Zalameda), Jose Midas P. Marquez (Justice Marquez) and Maria Filomena D. Singh (Justice Singh).

Preliminarily, I point out that while Section 244 of the Tax Code authorizes the Secretary of Finance to promulgate rules and regulations for the effective implementation and enforcement of the Tax Code, this power is necessarily limited to what is provided for in the legislative enactment. As elucidated in *Department of Finance v. Asia United Bank*:[22]

> It is settled that administrative issuances must not override, supplant, or modify the law; they must remain consistent with the law they intend to carry out. **When the application of an administrative issuance modifies existing laws or exceeds the intended scope, the issuance becomes void, not only for being *ultra vires*, but also for being unreasonable.** Surely, courts will not countenance such administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement.
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> We underline that the power of administrative officials to promulgate rules in the implementation of a statute is necessarily limited to what is provided for in the legislative enactment. **The implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the legislature. It bears stressing, however, that administrative bodies are allowed under their power of subordinate legislation to implement the broad policies laid down in a statute by "filling in" the details.** All that is required is that the regulation be germane to the objectives and purposes of the law; that the regulation does not contradict but conforms with the standards prescribed by law.
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> Indeed, administrative issuances, such as revenue regulations, cannot simply amend the law it seeks to implement. **In *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, We held that a mere administrative issuance, like a BIR regulation, cannot amend the law; the former cannot purport to do any more than implement the latter.** To reiterate, the courts will not countenance an administrative regulation that overrides the statute it seeks to implement.
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> Ultimately, this Court once again clarifies that the function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying out the provisions of the law into effect. Hence, administrative regulations cannot extend the law or amend a legislative enactment, for settled is the rule that administrative regulations

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22 G.R. Nos. 240163 and 240168–69, December 1, 2021 [Per J. Zalameda, Third Division].

> must be in harmony with the provisions of the law. It cannot be stressed enough that administrative issuances must not override, but must remain consistent with the law they seek to apply and implement. They are intended to carry out, not to supplant nor to modify, the law. To underscore, it is only the Congress which has the power to repeal or amend the law.
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> To be sure, RR 4-2011 is anchored on Section 244 of the Tax Code which empowers the SOF, upon recommendation of the CIR, to promulgate rules and regulations for the effective enforcement of the provisions of the Tax Code. **As discussed by Associate Justice Japar B. Dimaampao, since RRs are mandated by the Tax Code itself, they are in the nature of a subordinate legislation that is as of the Tax Code it implements. Being products of a delegated power to create new and additional legal provisions that have the effect of law, RRs should be within the scope of the statutory authority granted by the legislature to the administrative agency.** It is required that the regulation be germane to the objects and purposes of the law, and that it be not in contravention to, but in conformity with, the standards prescribed by law.[23] (Emphasis supplied)

Here, the BIR clearly expanded Section 5 of the Tax Code, which allows the CIR to obtain information relative to the tax liability of taxpayers, by requiring self-employed professionals to submit the aforementioned affidavit. Without doubt, Section 2(1) of RR 4-2014 does not only modify, but also contravenes the law.

For one, I agree with the opinions of Justice Zalameda, Justice Marquez, and Justice Singh that Section 5 of the Tax Code pertains to powers of the CIR to properly assess and collect taxes **after a taxable transaction has already been made, or in case of service providers, once service has already been rendered**. To be sure, the authorities granted to the CIR pursuant to Section 5 of the Tax Code are limited to achieving the following purposes: (a) ascertaining the correctness of any return; (b) making a return when none has been made; (c) determining the liability of any person for any internal revenue tax; (d) collecting any such liability; or (e) in evaluating tax compliance. Clearly, these objectives become relevant ***only after* a taxable transaction is made or service is rendered**. Thus, any information prior to rendering the service, or even preceding the engagement of the professional, should be considered as outside the scope of Section 5.

As correctly pointed out by my esteemed colleagues, the affidavit required under Section 2(1) of RR 4-2014 is an example of a "pre-sale" information that is not covered by Section 5 of the Tax Code. As aptly observed by the *ponencia* as well, "[t]he affidavit that the issuance requires may be akin to receipts, which are written evidence of the value of services. However, it is *indicative* only, and the supposed fee is determined *before* the service is performed."[24] While it may be indicative of the value of services

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[23] *Id.* at 6–8. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[24] *Ponencia*, p. 29.

offered by self-employed professionals, the same is still irrelevant in achieving the purposes enumerated in Section 5 of the Tax Code since taxes will still be assessed and collected on the basis of the rates actually charged by the professionals ***after*** the rendition of services.

For another, I likewise agree with the observation of Justice Marquez that Section 5(B) of the Tax Code is carefully crafted to exclude taxpayers from the power of the CIR to demand "any information" for the purpose of properly assessing and collecting taxes. As such, Section 5 expressly provides that "any information" may only be obtained from any persons "other than the person whose internal revenue tax liability is subject to audit or investigation," i.e., the taxpayer. As aptly noted by Associate Justice Amy C. Lazaro-Javier, the deliberations of the Bicameral Conference Committee on Ways support the interpretation that the coercive power to obtain "any information" is directed only to third persons and not the taxpayers.[25] Therefore, to require submission of information not from third persons, but from taxpayers, unduly expands and modifies Section 5(B) of the Tax Code.

All told, I concur with the *ponencia* that that portion of Section 2(1) which requires self-employed professionals to submit their affidavits of rates, manner of billing, and factors considered in determining their service fees is unconstitutional.

III.

On the other hand, Section 2(2) of RR 4-2014 reads:

> Self-employed professionals are **obligated to register** the books of accounts and **official appointment books** of their practice of profession/occupation/calling before using the same. **The official appointment books shall contain only the names of the client and the date/time of the meeting.** They are likewise obligated to register their sales invoices and official receipts (VAT or non-VAT) before using them in any transactions. (Emphasis supplied)

I agree with the ruling of the *ponencia* that requiring self-employed professionals to register their appointment books, which contain their clients' name and appointment schedules, encroaches upon privacy rights. Aside from the grounds already exhaustively enumerated and comprehensively discussed by the *ponencia*, I would like to add that this requirement violates the general principle of proportionality that is espoused in Republic Act No. 10173 or the Data Privacy Act of 2012,[26] *viz:*

> ***SEC. 18. Principles of Transparency, Legitimate Purpose and Proportionality.*** — The processing of personal data shall be allowed

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25 Concurring Opinion of Associate Justice Amy C. Lazaro-Javier, pp. 7–10.

26 An Act Protecting Individual Personal Information in Information and Communications Systems in the Government and the Private Sector, Creating for this Purpose a National Privacy Commission, and for Other Purposes, Republic Act No. 10173 [Data Privacy Act], Section 11.

> subject to adherence to the principles of transparency, legitimate purpose, and proportionality.
>
> . . . .
>
> c. Proportionality. The processing of information shall be **adequate, relevant, suitable, necessary, and not excessive in relation to a declared and specified purpose.** Personal data shall be processed **only if the purpose of the processing could not reasonably be fulfilled by other means.**[27] (Emphasis supplied)

To my mind, requiring self-employed professionals to disclose their clients' names and their appointment schedules is already excessive *vis-à-vis* the declared purpose of RR 4-2014, which is to monitor the fees charged by these professionals, aid the BIR personnel in conducting tax audit, and boost revenue collections. To be sure, these objectives can be fulfilled even if the client names are anonymized and their appointment schedules not specified.

In light of the foregoing, I express my concurrence with finding portions of Section 2(2) of RR 4-2014 unconstitutional. While requiring self-employed professionals to register their books of accounts is valid because it finds statutory basis in the Tax Code, the same cannot be said for the requirement to register the appointment books of self-employed professionals.

IV.

A final word.

The main purpose of RR 4-2014 is to minimize tax evasion among self-employed professionals. By requiring taxpayers to submit a schedule of their rates and their appointment books, the BIR can more or less estimate or have an accurate baseline of a person's tax liability. This can be done by simply multiplying the number of paid appointments or consultations by the rates of services.

To my mind, however, with the requirement to register the appointment books being struck down for violating privacy rights, the objective of RR 4-2014 to aid the BIR in conducting tax audit can no longer be met. Standing alone, the requirement to submit an affidavit of schedule of fees, is irrelevant for purposes of tax assessment and collection. Verily, without the number of client appointments or patient consultations, the BIR is left with just a table of fees that a self-employed professional may charge his or her clients or patients. Evidently, the BIR cannot, with just this information, minimize tax evasion in the industry. Thus, for no longer being germane to the purpose of the Tax Code and RR 4-2014, the requirement to submit an affidavit of schedule of fees should definitely be invalidated as well.

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[27] National Privacy Commission, Implementing Rules and Regulations of the Data Privacy Act of 2012, Republic Act No. 10173, Rule IV, Section 18.

To this end, I would like to also point out that nothing in the Tax Code or in RR 4-2014 binds the professionals to the disclosure in their affidavits. If the affidavits are not binding to the professionals, then why require them in the first place? To be sure, RR 4-2014 is also silent as regards the possibility of charging a different rate once the affidavit is already submitted to the BIR. While neither the Tax Code nor RR 4-2014 penalizes professionals if they stray from their declared schedule of fees, I emphasize that Article 183 of the Revised Penal Code still penalizes perjury or the making of false testimony under oath. Stated simply, all that the submission of affidavit of fees does is to compel a taxpayer to furnish evidence that can be used against him or her—this is not only unreasonable, but completely unwarranted.

Thus, for the reasons above, I fully concur with the *ponencia.* Accordingly, I **VOTE** to declare as **VOID** portions of both Sections 2(1) and 2(2) of the Revenue Regulation No. 4-2014, insofar as they require self-employed professionals (a) to submit an affidavit where they indicate their rates, manner of billings, as well as the factors considered in determining their service fees, and (b) to register their appointment books with the BIR.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

EN BANC

G.R. No. 211772 – Integrated Bar of the Philippines, *Petitioner*; **Philippine College of Physicians, Philippine Medical Association, Inc., Philippine Dental Association,** *Petitioners-in-Intervention*, *v.* **Secretary Cesar V. Purisima of the Department of Finance and Commissioner Kim S. Jacinto-Henares of the Bureau of Internal Revenue,** *Respondents.*

G.R. No. 212178 – Association of Small Accounting Practitioners in the Philippines, Inc., *Petitioner*, *v.* **Hon. Secretary of Finance, Cesar V. Purisima and Hon. Commissioner of Internal Revenue, Kim. S. Jacinto-Henares,** *Respondents.*

Promulgated:

April 18, 2023

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CONCURRING OPINION

ZALAMEDA, *J.*:

In March 2014, then Secretary of Finance (SOF), upon recommendation of then Commissioner of Internal Revenue (CIR), issued Revenue Regulations No. (RR) 4-2014,[1] requiring all self-employed professionals to (1) submit to the Bureau of Internal Revenue (BIR) an affidavit of rates, manner of billing, and the factors that they consider in determining service fees; (2) register with the BIR their books of account and appointment books containing the names of their clients, and their meeting date and time; and (3) issue a BIR registered receipt showing the 100% discount if no professional fees are charged.

Consequently, petitioners filed the instant case seeking to declare said RR as unconstitutional. The *ponencia* partly granted the petitions, declaring void certain portions of paragraphs 1 and 2 of Section 2 of RR 4-2014.[2] The

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[1] Entitled: "GUIDELINES AND POLICIES FOR THE MONITORING OF SERVICE FEES OF PROFESSIONALS." Approved: 03 March 2014.

[2] Section 2. Policies and Guidelines —

1. Self-employed professionals shall register and pay the annual registration fee (ARF) with the RDO/LTDO having jurisdiction over them. In addition to the requirements for annual registration, all self-employed professionals shall submit an affidavit indicating the rates, manner of billings and the factors they consider in determining their service fees upon registration and every year thereafter on or

ponencia held that while requiring professionals to submit affidavit of rates, manner of billing, and consideration regarding fees neither encroaches on the Court's rule-making power nor violates ethical norms, Section 2(1) is unconstitutional for going beyond the mandates of the National Internal Revenue Code (NIRC).[3] As to Section 2(2), the *ponencia* found that the mandatory registration of appointment books is an unconstitutional intrusion into the fundamental rights of the professionals and their clients and patients.[4] It was ruled that the same violates privacy rights and ethical norms in petitioners' respective professions.[5]

I concur with the *ponencia*. Allow me to expound.

I.

Preliminarily, I underline that in *Banco de Oro v. Republic of the Philippines*, the Court has held that the Court of Tax Appeals (CTA) has jurisdiction to rule on the constitutionality or validity of a tax law or regulation or administrative issuance.[6] Indeed, in the 2021 case of *St. Mary's Academy of Caloocan City, Inc. v. Henares*,[7] this Court has reiterated that it is the CTA, and not the RTC, that has the jurisdiction to rule on the constitutionality and validity of revenue issuances by the CIR.[8] This is now the prevailing rule, as affirmed in *COURAGE v. Commissioner of Internal Revenue*.[9] Thus, pursuant to the rule on hierarchy of courts, petitioners should have initially filed their petitions with the CTA.[10]

To be sure, a direct invocation of this Court's jurisdiction should only be allowed when there are special, important and compelling reasons clearly and specifically spelled out in the petition.[11]

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before January 31.

2. Self-employed professionals are obligated to register the books of accounts and official appointment books of their practice of profession /occupation/calling before using the same. The official appointment books shall contain only the names of the client and the date/time of the meeting. They are likewise obligated to register their sales invoices and official receipts (VAT or non-VAT) before using them in any transactions.

3 *Ponencia*, p.25.

4 *Id.* at 31-32.

5 *Id.*

6 793 Phil. 97 (2016) [Per J. Leonen, *En Banc*].

7 G.R. No. 230138, 13 January 2021.

8 See *St. Mary's Academy of Caloocan City, Inc. v. Henares*, G.R. No. 230138, 13 January 2021 [Per J. Leonen, Third Division].

9 *Confederation for Unity, Recognition and Advancement of Government Employees v. Commissioner, Bureau of Internal Revenue*, 835 Phil. 297 (2018) [Per J. Caguioa, *En Banc*].

10 *See id.* at 316,

11 *Id.* at 323, citing *Dagan v. Office of the Ombudsman*, 721 Phil. 400, 413 (2013) [Per J. Perez, *En Banc*].

Nevertheless, following Our rulings in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*[12] and *COURAGE v. Commissioner of Internal Revenue*,[13] despite the procedural infirmity of the petitions that warrant their dismissal, it is prudent, if not crucial, to take cognizance of, and accordingly act on, the present petition as the validity of the actions of the Department of Finance (DOF) and BIR that affect numerous professionals is in issue. The Court may thus avail itself of its judicial prerogative in order not to delay the disposition of the case at hand and to promote the vital interest of justice.[14]

II.

I note that as regards the requirement of submitting an affidavit indicating the rates, manner of billings, and factors considered in determining service fees,[15] there is merit in the contention of petitioner IBP that there is no compelling necessity for the execution of the same.[16] One possible use of said affidavit is for the conduct of a reasonableness test. It is an audit tool which provides an analysis of an account balance that involves developing an expectation based on financial data, nonfinancial data, or both. For example, an expectation for hotel revenues may be developed using the average occupancy rate, average room rate for all rooms, or room rate by category or class of room.[17] However, this procedure is inherently imprecise, especially in cases where there are several variables that may affect the fees charged and the rates are not fixed, such as in the profession of herein petitioners. Particularly applying to lawyers, fees may in fact differ in every case. Notably, even the CPR lists the different factors, *i.e.*, novelty and difficulty of the questions involved, which may affect a lawyer's manner of billing.[18] Thus, it may be well to point out that the submission of the affidavit may be an empty requirement, since the BIR officers cannot accurately rely on it in the conduct of their audit.

The power to interpret tax laws and promulgate rules and regulations for their implementation lies with the CIR.[19] The CIR also has the power and

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[12] 792 Phil. 751 (2016) [Per J. Perez, Third Division].
[13] *Supra* note 6.
[14] *Id.*
[15] RR 4-2014, Sec. 2(1).
[16] *Ponencia*, p. 26.
[17] American Institute of Certified Public Accountants, Inc., Audit Guide - Analytical Procedures (2012), p. 9.
[18] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 20.01.
[19] Republic Act No. (RA) 8424, as amended, Secs. 4 and 244; See *Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil. 310 (2013) [Per J. Carpio, *En Banc*] and *The Philippine American Life and General Insurance Co. v. The Secretary of Finance*, 747 Phil. 811 (2014) [Per J. Velasco, Jr.,

duty to assess and collect all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, including judgments in all cases decided in its favor.[20] Accordingly, it was granted the power to obtain information and summon, examine and take the testimonies of persons,[21] as well as to make assessments and prescribe additional requirements for tax administration and enforcement.[22] However, these powers are not absolute.

The Court has consistently held that administrative issuances must not override, supplant, or modify the law, they must remain consistent with the law intended to carry out.[23] When the application of an administrative issuance modifies existing laws or exceeds the intended scope, the issuance becomes void, not only for being *ultra vires*, but also for being unreasonable.[24] Surely, courts will not countenance such administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement.[25]

It must be underlined that the power of administrative officials to promulgate rules in the implementation of a statute is necessarily limited to what is provided for in the legislative enactment. The implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the legislature. It bears stressing, however, that administrative bodies are allowed under their power of subordinate legislation to implement the broad policies laid down in a statute by "filling in" the details. All that is required is that the regulation be germane to the objectives and purposes of the law; that the regulation does not contradict but conforms with the standards prescribed by law.[26]

All this to say that the function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying out the provisions of the law into effect. Hence, administrative regulations cannot extend the law or amend a legislative enactment, for settled is the rule that administrative regulations must be in harmony with the provisions of the law.[27]

Third Division].

[20] RA 8424, as amended, Sec. 2.

[21] RA 8424, as amended, Sec. 5.

[22] RA 8424, as amended, Sec. 6.

[23] *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.*, 868 Phil. 517, 563 (2020) [Per J. Lazaro-Javier, First Division].

[24] *Executive Secretary v. Southwing Heavy Industries, Inc.*, 518 Phil. 103, 129 (2006) [Per J. Ynares-Santiago, *En Banc*].

[25] *Supra* note 23.

[26] *Public Schools District Supervisors Association v. De Jesus*, 524 Phil. 366, 386 (2006) [Per J. Callejo, *En Banc*], citing *Sigre v. Court of Appeals*, 435 Phil. 711, 719 (2002) [Per J. Austria-Martinez, First Division]

[27] *See Land Bank of the Phils. v. Court of Appeals*, 319 Phil. 246 (1995) [Per J. Francisco, Second Division].

It is, thus, imperative that We determine the limits of the power of the CIR to obtain information under Section 5 of the NIRC. The provision reads:

> SECTION 5. *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.*— In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
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> (A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;
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> (B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures or consortia and registered partnerships, and their members;
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> (C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;
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> (D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; and
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> (E) To cause revenue officers and employees to make a canvass from time to time of any revenue district or region and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care, management or possession of any object with respect to which a tax is imposed.
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> The provisions of the foregoing paragraphs notwithstanding, nothing in this Section shall be construed as granting the Commissioner the authority to inquire into bank deposits other than as provided for in Section 6(F) of this Code.

Applying the foregoing in the case at hand and upon examination of Section 5 of the NIRC, it is submitted that nothing therein may serve as basis for the requirement of submission of affidavit of schedule of fees.

The power of CIR to obtain information under Section 5 of the NIRC flows from its power and duty under Section 2 of said law, *i.e.*, the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith. Verily, Section 5 clearly states that the actions

enumerated therein are for the purpose of ascertaining the correctness of any return, making a return when none has been made, determining the liability of any person for any internal revenue tax, or collecting any such liability, or evaluating tax compliance.

While the powers of the CIR under Section 5 of the NIRC are arguably extensive, the law provides limitations. By way of example, under Section 5(a), the examination of the books and records are limited to the purposes enumerated in the opening paragraph of Section 5 and only to books and records "which may be relevant or material to such inquiry." These limitations are normally reflected in the Letter of Authority.[28] Moreover, under Section 235 of the NIRC, such examination must generally be done only once in a taxable year and in the taxpayer's office or place of business, or in the BIR's office.

Further, as aptly pointed out by Justice Amy C. Lazaro-Javier, Section 5(b) of the NIRC pertains to the CIR's power to obtain third party information.[29] This limitation is explicit in Section 5(b), which provides that the source is "from any person other than the person whose internal revenue tax liability is subject to audit or investigation." This is reiterated in Section 235, which states: "[i]n the exercise of the Commissioner's power under Section 5(B) to obtain information from other persons x x x."

As such, I join the position of Justice Maria Filomena D. Singh (Justice Singh) that Section 5 of the NIRC authorizes the CIR to obtain from a taxpayer information pertaining to taxable transactions *only* in relation to ascertaining the correctness of any return, determining - and collecting - the liability of any person for any internal revenue tax, or evaluating tax compliance. [30] Outside the mentioned grounds, any additional requirements issued by the BIR unduly extends its authority.

Under Section 1 of the RR, it was stated that the regulations were issued for the purpose of monitoring the fees charged by the professionals and aiding the BIR in its tax audit and revenue collection. However, the Court cannot accept the avowed purpose of the regulations as compliance with Section 5 when the requirement clearly does not support such objective. The required affidavit by Section 2(1) of the RR does not affect the assessment and collection functions of the BIR, and, as such, is beyond the delegated power of the BIR. As Justice Singh eloquently explained, the affidavit, which is merely indicative of the value of the services performed, is immaterial to the BIR's function.[31] In so declaring, We are not questioning

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[28] Eric R. Recalde, A Treatise on Tax Principles and Remedies (2016).
[29] Reflections of Justice Lazaro-Javier, pp.5-10.
[30] Reflections of Justice Singh, pp.4-6.
[31] Reflections of Justice Singh, p. 6.

the wisdom of the regulation. The Court is simply determining whether the BIR acted within the power granted to it under Section 5.

Ultimately, in case of doubt, tax laws must be construed strictly against the government and in favor of the taxpayer. Taxes, as burdens that must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares.[32] As such, it only follows that Section 5 be strictly construed against the BIR. To repeat, nothing in Section 5 empowers the BIR to require the submission of the subject affidavit.

III.

At the heart of the present case is Section 2(2) of RR 4-2014 in relation to the right to privacy of petitioners' clients.

Philippine jurisprudence on the right to privacy is at its infancy. There are very few occasions that Philippine courts are given the opportunity to resolve and expound on issues relating to the right to privacy as a constitutional guarantee.[33] In *Morfe v. Mutuc*,[34] the Court recognized that certain constitutional guarantees work together to create zones of privacy wherein governmental powers may not intrude, and that there exists an independent constitutional right of privacy. Such right to be left alone has been regarded as the beginning of all freedoms.[35] But that right is not unqualified.[36]

The concept of privacy has, through time, greatly evolved, with technological advancements having an influential part therein. This evolution was briefly recounted in former Chief Justice Reynato S. Puno's speech, *The Common Right to Privacy,* where he explained the three strands of the right to privacy, *viz.*: (1) locational or situational privacy, (2) informational privacy, and (3) decisional privacy.[37]

Locational privacy pertains to privacy that is felt in a physical space. It may be violated through an act of trespass or through an unlawful search. Decisional privacy refers to one's right "to make certain kinds of fundamental choices with respect to their personal and reproductive

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[32] *Supra note* 23, at 566, citing *Philacor Credit Corporation v. CIR*, 703 Phil. 26, 46 (2013) [Per J. Brion, Second Division].

[33] *See Kilusang Mayo Uno v. Director-General*, 521 Phil. 732, 745 (2006) [Per J. Carpio, *En Banc*].

[34] 130 Phil. 415 (1968) [Per J. Fernando, *En Banc*].

[35] *See id.* at 433-437.

[36] *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 132 (2014) [Per J. Abad, *En Banc*].

[37] *Vivares v. St. Theresa's College*, 744 Phil. 451, 467 (2014) [Per J. Velasco, Third Division].

autonomy."[38] Informational privacy, on the other hand, refers to the interest in avoiding disclosure of personal matters.[39] It is the right of individuals to control information about themselves[40] or control "the processing - *i.e.*, acquisition, disclosure, and use - of personal information."[41]

Of the three, what is relevant to the case at bar is the right to informational privacy. In this regard, informational privacy has two aspects: the right not to have private information disclosed, and the right to live freely without surveillance and intrusion. In determining whether or not a matter is entitled to the right to privacy, the Court has laid down a two-fold test. The first is a subjective text, where one claiming the right must have an actual or legitimate expectation of privacy over a certain matter. The second is an objective test, where his or her expectation of privacy must be one society is prepared to accept as objectively reasonable.[42]

Further to this, the test in ascertaining whether there is a violation of the right to privacy has been explained in the case of *Spouses Hing v. Choachuy, Sr.*, as follows:

> In ascertaining whether there is a violation of the right to privacy, courts use the "reasonable expectation of privacy" test. This test determines whether a person has a reasonable expectation of privacy and whether the expectation has been violated. In *Ople v. Torres*, we enunciated that "the reasonableness of a person's expectation of privacy depends on a **two-part test: (1) whether, by his conduct, the individual has exhibited an expectation of privacy; and (2) this expectation is one that society recognizes as reasonable**." Customs, community norms, and practices may, therefore, limit or extend an individual's "reasonable expectation of privacy." Hence, **the reasonableness of a person's expectation of privacy must be determined on a case-to-case basis since it depends on the factual circumstances surrounding the case.**[43] (Emphases and underscoring supplied.)

Indeed, the Court is tasked to evaluate claims of violation of right to privacy based on the factual circumstance of each case, as pleaded and proved by the one claiming such right.

Petitioners lawyers, physicians, dentists, and accountants advocate the right to privacy of their clients and patients. The expectation of privacy emanates from the very nature of the services offered by these professionals

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[38] *Id.*; *Versoza v. People*, 861 Phil. 230, 299 (2019) [Per Curiam, *En Banc*].
[39] *Supra* note 36.
[40] *See id.* at 104.
[41] *See supra* note 37.
[42] *Supra note* 36.
[43] *Cadajas v. People*, G.R. No. 247348, 16 November 2021 [Per J. JY Lopez, *En Banc*], citing *Spouses Hing v. Choachuy, Sr.*, 712 Phil. 337, 350 (2013) [Per J. Del Castillo, Second Division].

to their clients and patients.

In this regard, the *ponencia* has thoroughly discussed the basis of the "attorney-client communication" privilege and its corresponding repercussions to the expectation of privacy.[44] Under Rule 130, Section 24(b) of the Revised Rules on Evidence and Rule 138, Section 20(e) of the Revised Rules of Court, communication between a lawyer and their client is privileged. The Code of Professional Responsibility (CPR)[45] likewise mandates lawyers to safeguard information divulged to them borne out of lawyer-client relations. Section 209 of the Revised Penal Code also penalizes revelation of any client's secrets learned in the lawyer's professional capacity. Significantly, the *ponencia* has meticulously explained the policy considerations in deeming communication between lawyers and their clients as privileged.[46]

To reiterate, the lawyer-client relationship is of trust and confidence of the highest degree; the right to counsel encompasses effective communication and disclosure.[47] Thus, I agree with the *ponencia* that while a client's identity is not generally and absolutely privileged, the same may fall within said privilege in proper cases. Accordingly, there exists a reasonable expectation of privacy as regards the name of a lawyer's client. Section 2(2) of RR 4-2014, therefore, violates this right of privacy.

Anent physicians and dentists, the Revised Rules on Evidence similarly treat communication between them and their patients as privileged.[48] Hence, a physician who obtains information while attending to a patient in his or her professional capacity, cannot in a civil case be examined without the patient's consent as to facts which may blacken the latter's reputation.[49] The reason behind this rule is simple. Clearly, this is to encourage a patient to freely communicate with his or her physician, for the latter to arrive at a correct diagnosis and provide the appropriate cure for the ailment, if any.[50] Any fear that the physician may be forced in the future to testify in court and relay the communication with the patient may cause the latter to clam up during consultations, putting his or her health at risk.[51]

As mentioned in the *ponencia*, the privileged nature of communication between physician and patient is reiterated in Republic Act

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[44] *Ponencia*, pp. 37-40.

[45] *See* Canons 15, 17, and 21, and Rules 21.01 to 21.07.

[46] *Ponencia*, pp. 40-47.

[47] *See Regala v. Sandiganbayan*, 330 Phil. 678 (1996) [Per J. Kapunan, *En Banc*] and *Pacana, Jr. v. Pascual-Lopez*, 611 Phil. 399 (2009) [Per Curiam, *En Banc*].

[48] REVISED RULES OF EVIDENCE, Rule 130, Sec. 24.

[49] *See Chan v. Chan*, 715 Phil. 67, 72 (2013) [Per J. Abad, Third Division].

[50] *See id.*

[51] *Id.*, citing Francisco, The Revised Rules of Court of the Philippines, Volume VII, Part I, 1997 ed., p. 282; Will of Bruendi, 102 Wis. 47, 78 N.W. 169 and McRae v. Erickson, 1 Cal. App. 326.

No. (RA) 10173, otherwise known as the Data Privacy Act of 2012.[52] The said Act considers privileged communication under the Rules of Court and other pertinent laws as *privileged information*.[53] Verily, it prohibits the processing of privileged information except for certain instances under the law,[54] such as when the person providing the data has given his or her consent specific to the purpose prior to the processing of the information.[55]

Markedly, the privilege prevents physicians from revealing information which may result in humiliation, embarrassment, or disgrace to the patient.[56] Hence, case law confirms that certain types of information communicated during the physician-patient relationship fall within the constitutionally protected zone of privacy.[57]

As regards accountants, respect for the confidentiality of client information is one of the fundamental principles that professional accountants should live by.[58] Concededly, unlike lawyers and doctors, there is yet a case in our jurisdiction recognizing the confidentiality of an accountant's client information. However, the confidentiality and privileged nature of accountants' working papers is recognized under RA 9298 or the Philippine Accountancy Act of 2004, *viz*:

> SECTION 29. *Ownership of Working Papers*. — All working papers, schedules and memoranda made by a certified public accountant and his staff in the course of an examination, including those prepared and submitted by the client, incident to or in the course of an examination, by such certified public accountant, except reports submitted by a certified public accountant to a client shall be treated **confidential and privileged** and remain the property of such certified public accountant in the absence of a written agreement between the certified public accountant and the client, to the contrary, unless such documents are required to be produced through *subpoena* issued by any court, tribunal, or government regulatory or administrative body. (Emphasis supplied)

At this juncture, it bears noting that under the assailed RR, the information required to be disclosed in the required official appointment books are limited to the names of the clients or patients and the date and time of the meeting. The *ponencia* concedes that these details, by themselves, may not reveal anything relevant about the client or patient.[59] However, I agree that these may illustrate a *general pattern of behavior*

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[52] *Ponencia*, p. 46.
[53] RA 10173, Sec. 3(k).
[54] RA 10173, Sec. 13.
[55] RA 10173, Sec. 13(a).
[56] *Krohn v. Court of Appeals*, 303 Phil. 155 (1994) [Per J. Bellosillo, First Division].
[57] *Id.*
[58] CODE OF ETHICS FOR PROFESSIONAL ACCOUNTANTS IN THE PHILIPPINES, Part A.
[59] *Ponencia*, p. 37.

capable of revealing information about a person, which should have remained private.[60]

Contrary to the allegation of respondents, the information revealed about the clients or patients are not limited to their names and date and time of appointments with the lawyers, physicians, dentists, and accountants. For one, these professionals may specialize on a specific field, which already reveals something about the concern of the consulting client/patient. Inferences may likewise be made from the frequency of their appointments. Applying *Disini v. Secretary of Justice*, there is indeed a general pattern of behavior revealed when all these details are put together.[61] Consequently, there is an unreasonable intrusion into the right to privacy of the clients and patients of petitioners.

Considering the above, I submit that paragraphs 1 and 2 of Section 2 of RR 4-2014 are unconstitutional.

Thus, I vote to **PARTLY GRANT** the petitions in **G.R. Nos. 211772** and **212178**.

RODIL V. ZALAMEDA
Associate Justice

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[60] *Supra* note 36.
[61] *Id.*

EN BANC

G.R. No. 211772 – INTEGRATED BAR OF THE PHILIPPINES, *Petitioner*, **PHILIPPINE COLLEGE OF PHYSICIANS, PHILIPPINE MEDICAL ASSOCIATION, INC., AND PHILIPPINE DENTAL ASSOCIATION,** *Petitioners-in-Intervention* v. **SECRETARY CESAR V. PURISIMA OF THE DEPARTMENT OF FINANCE AND COMMISSIONER KIM S. JACINTO-HENARES OF THE BUREAU OF INTERNAL REVENUE,** *Respondents*.

G.R. No. 212178 – ASSOCIATION OF SMALL ACCOUNTING PRACTITIONERS IN THE PHILIPPINES, INC., *Petitioner* v. **HON. SECRETARY OF FINANCE CESAR V. PURISIMA AND HON. COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO-HENARES,** *Respondents*.

Promulgated:

April 18, 2023

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CONCURRING OPINION

SINGH, *J.*:

In these consolidated cases, the petitioners Integrated Bar of the Philippines (**IBP**) and Association of Small Accounting Practitioners in the Philippines, Inc. (**ASAPPI**), together with the petitioners-in-intervention Philippine College of Physicians (**PCP**), Philippine Medical Association, Inc. (**PMAI**), and the Philippine Dental Association (**PDA**) (collectively, **petitioners-in-intervention**), assail the constitutionality of Revenue Regulations (**RR**) No. 4-2014, issued on March 3, 2014 by the public respondent then Secretary of the Department of Finance (**DOF**) Cesar V. Purisima, upon the recommendation of the public respondent then Bureau of Internal Revenue (**BIR**) Commissioner Kim S. Jacinto-Henares.

RR No. 4-2014 states:

> Section 1. *Background* —
>
> In line with the Bureau of Internal Revenue's (BIR) campaign to promote transparency and to eradicate tax evasion among self-employed professionals, the BIR has consistently enjoined them to comply with the BIR's requirements on registration pursuant to Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended and issuance of official receipts and invoices under Sections 113 and 237 of the same Code. In order

to complement these efforts, there is a pressing need to monitor the service fees charged by self-employed professionals.

Pursuant to Section 244 of the NIRC of 1997, as amended, these regulations are issued for the purpose of monitoring the fees charged by the professionals, aid the BIR personnel in conducting tax audit and boost revenue collections in such sectors.

Section 2. *Policies and Guidelines* —

1. Self-employed professionals shall register and pay the annual registration fee (ARF) with the RDO/LTDO having jurisdiction over them. In addition to the requirements for annual registration, all self-employed professionals shall submit an affidavit indicating the rates, manner of billings and the factors they consider in determining their service fees upon registration and every year thereafter on or before January 31.

2. Self-employed professionals are obligated to register the books of accounts and official appointment books of their practice of profession /occupation/calling before using the same. The official appointment books shall contain only the names of the client and the date/time of the meeting. They are likewise obligated to register their sales invoices and official receipts (VAT or non-VAT) before using them in any transactions.

3. In cases when no professional fees are charged by the professional and paid by client, a BIR registered receipt, duly acknowledged by the latter, shall be issued showing a discount of 100% as substantiation of the "pro-bono' service.

SECTION 3. Transitory Provision. — All existing and registered self-employed professionals at the time these Regulations became effective are required to submit the required affidavit and register its official appointment books within thirty (30) days from date of effectivity of these Regulations.

SECTION 4. Penalty Clause. — Any violation of the provisions of these Regulations shall be subject to the penalties provided for in Sections 254 and 275, and other pertinent provisions of the NIRC of 1997, as amended.

SECTION 5. Repealing Clause. — Any rules and regulations or parts thereof inconsistent with the provisions of these Regulations are hereby repealed, amended, or modified accordingly.

SECTION 6. Effectivity. —The provisions of these Regulations shall take effect after fifteen (15) days following publication in any newspaper of general circulation.[1]

The *ponencia* partially granted the separate Petitions for Prohibition and *Mandamus*[2] filed by the IBP and ASAPPI, as well as the Petitions-in-Intervention[3] of PCP, PMAI and PDA, and declared void Sections 2(1) and

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1 Bureau of Internal Revenue, Revenue Regulations No. 4-2014, at <https://www.bir.gov.ph/images/bir_files/internal_communications_1/Full%20Text%20RR%202014/fulltextRR4_2014.pdf> (last accessed on February 26, 2023).

2 *Rollo* (G.R. No. 211772), pp. 3–38; *rollo* (G.R. No. 212178), pp. 3–36.

3 *Rollo* (G.R. No. 211772), pp. 50–73, 99–110, and 148–170.

2(2) of the assailed RR, for having been issued in excess of the DOF's jurisdiction.[4] The *ponencia* thus permanently enjoined the DOF and the BIR, their officers, agents and employees, from implementing the unconstitutional provisions.[5]

Senior Associate Justice, Hon. Marvic Mario Victor F. Leonen has discussed the issues in this case with utmost clarity. Nonetheless, I wish to add to the *ponencia*'s discussions relating to Section 2(1) of RR No. 4-2014. It should be noted that, under the said provision, self-employed professionals, such as lawyers, physicians, dentists, and accountants represented by the petitioners and the petitioners-in-intervention, are required to "submit an affidavit indicating the rates, manner of billings and the factors they consider in determining their service fees upon registration and every year thereafter on or before January 31."[6]

I disagree with the respondents' position that the submission of the affidavit by a self-employed professional is a reasonable requirement, the same being necessary for the performance of the BIR's duties.

First, the submission of the affidavit indicating the rates, manner of billings, and the factors that the professional considers in determining service fees is outside the scope of the BIR's delegated legislative authority.

While the power to enact laws is lodged with the legislature under the principle of separation of powers, this power may be delegated to the executive to fill in the details of the law.[7] To be a valid delegation, however, the executive issuance must remain within the scope of authority given by the legislature.[8]

An examination of Section 5 of the National Internal Revenue Code of 1997 (**NIRC**) shows that the information that the BIR Commissioner may obtain from a taxpayer pertain to concluded, and therefore taxable, transactions.

> SEC. 5. *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* – In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

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4 *Ponencia*, p. 45.
5 *Id.*
6 Revenue Regulations No. 4-2014, sec. 2(1).
7 *Province of Pampanga v. Exec. Sec. Romulo and DENR*, G.R. No. 195987, January 12, 2021 [Per J. Leonen, *En Banc*].
8 Id.

(A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;

(B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the *Bangko Sentral ng Pilipinas* and government-owned or -controlled corporations, **any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements** of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members; *Provided*, That the Cooperative Development Authority shall submit to the Bureau a tax incentive report, which shall include information on the income tax, value added tax, and other tax incentives availed of by cooperatives registered and enjoying incentives under Republic Act No. 6938, as amended: *Provided, further*, That the information submitted by the Cooperative Development Authority to the Bureau shall be submitted to the Department of Finance and shall be included in the database created under Republic Act No. 10708, otherwise known as "The Tax Incentives Management and Transparency Act (TIMTA)."

(C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;

(D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; and

(E) To cause revenue officers and employees to make a canvass from time to time of any revenue district or region and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care, management or possession of any object with respect to which a tax is imposed.

The provisions of the foregoing paragraphs notwithstanding, nothing in this Section shall be construed as granting the Commissioner the authority to inquire into bank deposits other than as provided for in Section 6(F) of this Code. (Emphasis supplied)

Of note is Section 5's purpose of ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance. The power of the BIR Commissioner to obtain information under paragraph (b) is, therefore, circumscribed by the grounds for which the power may be invoked.

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.[9] Corollarily, under the doctrine of *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its meaning may be made clear and specific by considering the company of the words in which it is found or with which it is associated.[10] Construing "any information" literally will lead to an unrestrained and unchecked power of the BIR to require the taxpayer to provide virtually any information that it may arbitrarily choose.

Although Section 5 expressly states that the information so obtained may be "any" information, the same is delimited by the subsequent enumeration: costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of taxable entities, including their members. This too the *ponencia* observed.

The affidavit required under Section 2(1) of RR No. 4-2014, in contrast, pertains to rates, manner of billing, and factors employed before service is rendered by the self-employed professional. The distinction is crucial because the BIR's assessment and collection powers come into play only upon the happening of a taxable event, *i.e.*, the rendition of service by the self-employed professional. The exercise of the BIR Commissioner's powers under Section 5 is clearly hinged on assessment and collection. To my mind, the submission of the required affidavit has no bearing on the (1) ascertainment of the correctness of any return, (2) the making of a return when none has been made, (3) the determination of the liability of any person for any internal revenue tax, (4) the collection of any such liability, or (5) in evaluating tax compliance.

Thus, the affidavit, which is merely indicative of the value of the services to be performed, is immaterial to the taxing authority. Even though a statement of the indicative value is disclosed to the client or person for whom the service shall be performed, the tax to be collected will still be assessed on the basis of the value of the services actually performed, charged and paid.

By expanding the kind of information that the BIR can require, the public respondents unduly expanded the grant of delegated legislative authority to it by virtue of Section 5. Congress, in enacting the Tax Code, clearly intended, as expressed in its language, that the BIR may only request such information that is pertinent to tax assessment and collection, particularly, information that reveals the value of services already performed. The

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9 *Philippine International Trading Corp. v. COA*, 635 Phil. 447 (2010) [Per J. Perez, *En Banc*].

10 *Kua v. Barbers*, 566 Phil. 516 (2008) [Per J. Azcuna, First Division].

submission of such affidavits under the auspices of RR No. 4-2014 is, thus, arbitrary.

Second, I find that the submission of affidavits under RR No. 4-2014 constitutes an invalid exercise of police power.

In differentiating the State's police power and the power of taxation, the Court, in *Planters Products, Inc. v. Fertiphil Corp.*,[11] ruled:

> Police power and the power of taxation are inherent powers of the State. These powers are distinct and have different tests for validity. Police power is the power of the State to enact legislation that may interfere with personal liberty or property in order to promote the general welfare, while the power of taxation is the power to levy taxes to be used for public purpose. The main purpose of police power is the regulation of a behavior or conduct, while taxation is revenue generation. The "lawful subjects" and "lawful means" tests are used to determine the validity of a law enacted under the police power. The power of taxation, on the other hand, is circumscribed by inherent and constitutional limitations.
>
> . . . While it is true that the power of taxation can be used as an implement of police power, the primary purpose of the levy is revenue generation. If the purpose is primarily revenue, or if revenue is, at least, one of the real and substantial purposes, then the exaction is properly called a tax.[12]

That RR No. 4-2014 was issued in the exercise of the State's police power is apparent from Section 1, which identifies affidavit submission, in particular, as a complement to the BIR's campaign to enjoin professionals to register as taxpayers under Section 236 and to issue official receipts and invoices under Sections 113 and 237 of the NIRC. Section 1 likewise mentions a "pressing need to monitor the service fees charged by self-employed professionals."

True, the second paragraph likewise states that RR No. 4-2014 is intended to aid BIR personnel in conducting tax audit and boost revenue collections in the professional sector. However, this does not automatically mean that such regulation comes within the scope of the State's taxation power. It should be noted that RR No. 4-2014 imposes no new tax or levy. Instead, it unmistakably pinpoints to monitoring fees as its principal purpose. The imposition creates an added burden on the part of the taxpayer-professional to submit additional documents in order to fulfill the BIR's self-avowed objectives.

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11 572 Phil. 270 (2008) [Per J. R.T. Reyes, Third Division].

12 *Id.* at 293–294.

While it has long been recognized that "[t]axation may be made the implement of the state's police power,"[13] government is not precluded to pursue the converse, that is, to use police power to enforce its power to tax. In this case, it is clear, that the government, in a purported bid to address tax compliance and curb tax evasion among a certain class of taxpayers, sought to leverage police power by imposing onerous requirements to self-employed professionals. Again, it is worth emphasizing that the regulation in question does not impose a new tax but provides requirements for compliance of the taxpayers.

As early as the case of *The United States v. Dominador Gomez Jesus,*[14] the Court has established that police power is exercised to ensure "extends to the protection of the lives, limbs, health, comfort, and quiet of all persons and the protection of all property within the state. Persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the state."[15] The orderly and efficient enforcement of our taxation laws, clearly fall among these avowed objectives of police power, given that taxation provides the life blood of government, its collection is indispensable to the government's continued existence and ability to protect its population. As such, it is necessary to distinguish between the power to tax per se, and the power to regulate the people's behavior as regards tax compliance, which partakes of police power.

Given that RR No. 4-2014 is demonstrably anchored on police power, it becomes critical to determine whether it passes the twin tests of lawful purpose and lawful means. Expansive and extensive as its reach may be, police power is not a force without limits.[16] It has to be exercised within bounds – lawful ends through lawful means, *i.e.*, that the interests of the public generally, as distinguished from that of a particular class, require its exercise, and that the means employed are reasonably necessary for the accomplishment of the purpose while not being unduly oppressive upon individuals.

I do not find the avowed purpose of RR No. 4-2014 as genuine.

There is no logical nexus between the affidavits and registration under Section 236 and the issuance of official receipts and invoices under Sections 113 and 237. RR No. 4-2014 is unnervingly silent as to how the submitted affidavits can be used in relation to assessment and collection. It does not pinpoint what bearing these affidavits have on the taxpayer-professional's registration, nor to the issuance of official receipts and invoices. If the purpose is to boost revenue collections, how will the information disclosed in

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13 *Lutz v. Araneta*, 98 Phil. 148 (1955) [Per J. J.B.L. Reyes, First Division].
14 31 Phil. 218 (1915) [Per J. Johnson, *En Banc*].
15 *Id.*
16 *Zabal v. Duterte*, 846 Phil. 743 (2019) [Per J. Del Castillo, *En Banc*].

the affidavits impact the taxes paid and returns submitted by the taxpayer-professional? If the submissions are not binding, why did the BIR require them in the first place? The BIR cannot simply request and retain information for retention's sake.

RR No. 4-2014's self-appointed purposes of aiding BIR personnel in conducting tax audits and boosting revenue collections, must be compatible with its statutory power and duty of assessment and collections of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith.[17] Corollarily, its power to request information from the taxpayer is further restricted by Section 5 itself, for the purposes of ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance. Failure to identify the relationship between the requested information and assessment and collection constitutes a fatal flaw. Simply put, there is no lawful purpose here.

I am uncomfortable in leaving the question of the specific purpose of the affidavits unanswered because it goes into the reasonableness of RR No. 4-2014. We cannot set aside how the BIR Commissioner will use the disclosed information because it will serve as the litmus test of whether there is a genuine lawful purpose behind RR No. 4-2014.

The *ponencia* aptly observes that the submitted affidavits do not, after all, bind the professional under the Tax Code nor RR No. 4-2014, should the Court allow these as now required submissions under RR No. 4-2014, they can become the basis of perjury charges.

For perjury to exist, (1) there must be a sworn statement that is required by law; (2) it must be made under oath before a competent officer; (3) the statement contains a deliberate assertion of falsehood; and (4) the false declaration is with regard to a material matter.[18]

By giving imprimatur to RR No. 4-2014, simply because the public respondent BIR Commissioner has deemed such information necessary to her duties, the Court may effectively affirm that the information so submitted are material matters to the taxing authority, the deliberate false declaration of which can result in criminal liability. Sure, case law is abundantly clear that for perjury charges to prosper, it must be proven that it was committed with intent to be dishonest. However, what worries me is the not too remote possibility that mere mistakes in the affidavit, or discrepancies between the

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17 NATIONAL INTERNAL REVENUE CODE, sec. 2.

18 *Masangkay v. People*, 635 Phil. 220 (2010) [Per J. Del Castillo, First Division].

indicated value of services and the fees actually charged, would result in a deluge of criminal cases against professionals filed by disgruntled clients.

More alarmingly, it is worrisome that the BIR arrogated unto itself the authority to monitor the fees charged by self-employed professionals, each of whom have their own regulatory bodies, which in the case of physicians, dentists, and accountants, are the various professional regulatory boards supervised by the Professional Regulation Commission, and in the case of lawyers, no less than by this Court. RR No. 4-2014 thus encroaches on the functions endowed by Congress and the Constitution in so far as the regulation of professions is concerned.

To reiterate, the power of the BIR, as granted by Congress through Section 5, is hyper-focused on assessment and collection. RR No. 4-2014, by highlighting monitoring of service fees of professionals as its self-described purpose, shifted the intended objective of Congress to one that it did not sanction.

The submission of the affidavits under Section 2(1) of RR No. 4-2014 may seem innocuous and would not create an undue burden on the self-employed professionals, but there must always be a lawful purpose behind it. Absent a lawful purpose, RR No. 4-2014 must be struck down for being an invalid exercise of police power.

The importance of a lawful purpose behind an administrative regulation was highlighted by the Court in the recent case of *Philippine Stock Exchange, Inc. v. Secretary of Finance*.[19] Albeit analyzed and resolved using the right to privacy, I find the Court's discussion on the purpose behind a similar Revenue Regulation, which mandated a withholding agent to list down the Philippine Central Depository (PCD) Nominees as payees, disclosing at the same time all the principals and their personal information in the alphalist, apt and relevant.[20]

> Looking into the ultimate purpose of RR 1-2014, the Chief Justice noted that even without the disclosure of the personal information, the BIR is able to collect withholding taxes due from dividend income. Further, the personal information sought by the BIR through RR 1-20 14 are already available publicly in the reportorial documents that corporations, especially listed companies, submit to SEC. As the RR l-2014's purported objectives of efficient collection of withholding taxes and collection of personal information are already rightly met even before its issuance (or even during its suspended enforcement by virtue of this Court's TRO), the Chief Justice posed this question: what is RR 1-2014's ultimate purpose then?

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19 G.R. No. 213860, July 5, 2022 [Per J. Hernando, *En Banc*].
20 *Id.*

> RR 1-2014 states that it is issued for "purposes of ensuring that information on all income payments paid by employers/payors, whether or not subject to the withholding tax x x x, are monitored by and captured in the taxpayer database of the Bureau of Internal Revenue (BIR), with the end in view of establishing simulation model, formulating analytical framework for policy analysis, and institutionalizing appropriate enforcement activities."
>
> For the Court, and as emphasized by the Chief Justice, these objectives are vague and highly subjective.[21]

The same observation avails in the case of RR No. 4-2014.

A final word.

In so far as lawyers are concerned, may I also point out that the Code of Professional Responsibility and Accountability (**CPRA**) includes a provision requiring IBP Chapters to provide a recommended schedule of fees, something which the *ponencia* likewise noted in the case of IBP Cebu. Canon III, Section 41 states:

> SECTION 41. *Fair and reasonable fees.* — A lawyer shall charge only fair and reasonable fees.
>
> Attorney's fees shall be deemed fair and reasonable if determined based on the following factors:
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> . . . .
>
> (e) **The customary charges for similar services and the recommended schedule of fees, which the IBP chapter shall provide[.]**

This provision under the CPRA will better aid the noble purpose of transparency sought by the BIR, and which this Court very much shares. Thus, the information sought by the BIR through RR No. 4-2014 can be more reliably obtained through a schedule of fees published by impartial actors such as the IBP Chapter.

All told, I concur in the *ponencia* that Sections 2(1) and 2(2) of RR No. 4-2014 must be struck down for being unconstitutional, subject to the foregoing discussions.

MARIA FILOMENA D. SINGH
Associate Justice

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21 *Id.*

EN BANC

G.R. No. 211772 – INTEGRATED BAR OF THE PHILIPINES, Petitioners, **v. SECRETARY CESAR V. PURISIMA OF THE DEPARTMENT OF FINANCE AND COMMISSIONER KIM S. JACINTO-HENARES OF THE BUREAU OF INTERNAL REVENUE,** Respondents, **PHILIPPINE COLLEGE OF PHYSICIANS, PHILIPPINE MEDICAL ASSOCIATION, INC., PHILIPPINE DENTAL ASSOCIATION,** Petitioners-in-Intervention; **G.R. No. 212178 – ASSOCIATION OF SMALL ACCOUNTING PRACTITIONERS IN THE PHILIPPINES, INC.,** Petitioner, **v. HON. SECRETARY OF FINANCE, CESAR V. PURISIMA AND HON. COMMISSIONER OF INTERNAL REVENUE, KIM S. JACINTO-HENARES,** Respondents.

PROMULGATED:

April 18, 2023

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CONCURRENCE

LAZARO-JAVIER, *J.*:

Benjamin Franklin, one of the founding fathers of the United States once said "*Three can keep a secret, if two of them are dead.*" In this digital age when amassed information and comprehensive dossier are species of power that can rival a state, "*professional confidentiality*" becomes important and sacrosanct more than ever.

The *ponencia* declares as void Section 2(2), Revenue Regulations (RR) No. 4-2014[1] for having been issued in excess of the jurisdiction of the Department of Finance (DoF). The provision states:

> Section 2. Policies and Guidelines –
>
> x x x x
>
> 2. Self-employed professionals are obligated to register the books of accounts and official appointment books of their practice of profession/occupation/calling before using the same. The official appointment books shall contain only the names of the client and the

[1] March 3, 2014.

> date/time of the meeting. They are likewise obligated to register their sales invoices and official receipts (VAT or non-VAT) before using them in any transactions.

Insofar as it mandates the registration of appointment books of self-employed professionals, the provision is said to be in violation of the people's constitutional right to privacy. Thus, the *ponencia* opines that "[w]hen persons consult with professionals like a lawyer, doctor, accountant, or dentist, they may reasonably expect privacy. Mandating the registration of their appointment books, containing their clients' names and the date when they consulted, to monitor tax compliance, is an unreasonable state intrusion into the people's right to privacy.

The *ponencia* further states that the mere chance that a person's informational privacy may be subject to the prying eyes of the State is already an unreasonable intrusion. Considering the risks, this information must not be readily and publicly knowable. It is not an imagined fear for petitioners to state that clients and patients may think twice in consulting with professionals if the government can create a dossier on them based on sensitive information extracted from the appointment book. The *ponencia* underscores the nature of their trade and profession requiring strict adherence to the confidentiality rule when professional relationships are forged; and discusses at length the attorney-client relationship and doctor-patient confidentiality rule.

I do agree with the *ponencia* that Section 2(2), RR 4-2014 is an unreasonable intrusion into the people's right to privacy. Too, what is at stake is the livelihood of self-employed individuals or professionals and what the provision requires of them is to "*self-disclose*" information gathered in the course of rendering their professional services. It may or may not be a privileged information but as the *ponencia* correctly points out, clients and patients may think twice before consulting with professionals if the government can create a dossier on them based on sensitive information extracted from the appointment book.

Allow me to expound.

Section 2(2), RR 4-2014 violates constitutional and substantive rights

Indeed, Section 2(2), RR 4-2014 violates not only the right to privacy but also the right against self-incrimination, and the confidentiality rule governing the professional relationship of the parties sought to be covered. In

US Court of Appeals,[2] the appellate court quashed a subpoena duces tecum compelling the taxpayer to produce pocket date books:

> **The question to be decided is whether the fifth amendment rights of Johanson would be violated if he were required to produce his personal appointment books for the years 1979, 1980 by order of the grand jury subpoena.** Because we conclude that **production would violate his fifth amendment rights**, we affirm the district court order quashing this portion of the subpoena duces tecum directed against his attorneys.
>
> "The fifth amendment protects against 'compelled self-incrimination, not (disclosure of) private information.'" Fisher v. United States, 425 U.S. 391, 401, 96 S. Ct. 1569, 1576, 48 L. Ed. 2d 39 (1976), quoting United States v. Nobles, 422 U.S. 225, 233 n.7, 95 S. Ct. 2160, 2167 n.7, 45 L. Ed. 2d 141 (1975). **This proposition in no way contradicts the proposition to which we today adhere: that the fifth amendment protects an accused from government-compelled disclosure of self-incriminating private papers, such as purely personal date books.**
>
> This can hardly be characterized as novel. **It is a firmly embedded tenet of American constitutional law that the fifth amendment absolutely protects an accused from having to produce, under government compulsion, self-incriminating private papers.** As the Supreme Court has said "the Fifth Amendment privilege against compulsory self-incrimination protects an individual from compelled production of his personal papers and effects as well as compelled oral testimony." Bellis v. United States, 417 U.S. 85, 87, 94 S. Ct. 2179, 2182, 40 L. Ed. 2d 678 (1975). See, e. g., United States v. Calandra, 414 U.S. 338, 346, 94 S. Ct. 613, 619, 38 L. Ed. 2d 561 (1974); Couch v. United States, 409 U.S. 322, 330, 93 S. Ct. 611, 616, 34 L. Ed. 2d 548 (1972); United States v. White, 322 U.S. 694, 699 & 701, 64 S. Ct. 1248, 1252, 88 L. Ed. 1542 (1943); Boyd v. United States, 116 U.S. 616, 6 S. Ct. 524, 29 L. Ed. 746 (1886).
>
> x x x x
>
> Moreover the policies underlying the fifth amendment proscription against compelled self-incrimination support protection of an accused from having to produce his private papers. **One well recognized policy stems from "our respect for the inviolability of the human personality and of the right of each individual 'to a private enclave where he may lead a private life'...."** Murphy v. Waterfront Commission, 378 U.S. 52, 55, 84 S. Ct. 1594, 1597, 12 L. Ed. 2d 678 (1964). **The fifth amendment "respects a private inner sanctum of individual feeling aud thought and proscribes state intrusion to extract self-condemnation."** Couch v. United States, 409 U.S. 322, 327, 93 S. Ct. 611, 615, 34 L. Ed. 2d 548 (1972). **The fifth amendment in its self-incrimination clause enables the citizen to create a zone of privacy which government may not force him**

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[2] United States Court of Appeals, Third Circuit, 632 F.2d 1033 (3d Cir. 1980). <https://law.justia.com/cases/federal/appellate-courts/F2/632/1033/218284/> Last accessed on January 22, 2024 at 12:45 p. m.

to surrender to his detriment. Griswold v. Connecticut, 381 U.S. 479, 484, 85 S. Ct. 1678, 1681, 14 L. Ed. 2d 510 (1965).

Nor are these expressions of allegiance to the concept that a man ought not to be compelled to produce his private papers for use against him in a criminal action without relevance to modern American society. Our society is premised on each person's right to speak and think for himself, rather than having words and ideas imposed upon him. This fundamental premise should be fully protected. Committing one's thoughts to paper frequently stimulates the development of an idea. Yet, persons who value privacy may well refrain from reducing thoughts to writing if their private papers can be used against them in criminal proceedings. This would erode the writing, thinking, speech tradition basic to our society.

But it is not the policies of privacy alone which underlie our refusal to permit an accused to be convicted by his private writings. We believe that the framers of the Bill of Rights, in declaring that no man should be a witness against himself in a criminal case, evinced "their judgment that in a free society, based on respect for the individual, the determination of guilt or innocence by just procedures, in which the accused made no unwilling contribution to his conviction, was more important than punishing the guilty."

The idea that an accused is entitled to certain rights developed slowly. But the Anglo-American theory of criminal justice has taken many steps, albeit one at a time, since the days of Star Chamber and the High Commission. In Entick v. Carrington, an English decision issued in 1765, the foundation was laid disallowing conviction on the basis of government seized private papers of the accused. It was not just the intrusion of the search which offended the Court, but the compelled use of a man's private papers as evidence used to convict him. As Lord Camden, writing for a unanimous court recognized, "papers are often the dearest property a man can have."

The American origins of this right may be seen as early as 1776 in the constitution of Virginia. Section 8 of the Virginia Declaration of Rights, in the midst of the enumeration of the rights of criminally accused, declared: Nor can he be compelled to give evidence against himself. Since an accused person at that time in Virginia was not permitted the right to testify at his trial, "he could neither be placed on the stand by the prosecution nor take the stand if he wished", the guarantee secured by the Virginia constitution would have been meaningless, unless it meant that by not being "compelled to give evidence against himself" that **an accused could not be forced to give his private writings to be used as evidence against him in a criminal trial.**

But even if the somewhat obscured origin of this right dates back only one century, to the decision in Boyd, it has been staunchly heralded as a basic right of an accused. We believe that failure to continue to preserve this right, which we believe basic, would be a step backward in what has been a long and bitterly contested battle to accord rights to persons who stand accused of crime.[3]

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3 *Id.*

> **Therefore, we do not believe that the government can compel production of the pocket date books of Johanson, which are his wholly personal papers, without violating his guarantees under the fifth amendment.** These books were his own, kept on his person, with all entries recorded by him, not by third persons. We believe he had a rightful expectation of privacy with regard to these papers. **His fifth amendment privilege is transferred to protect the same documents when in Johanson's attorneys' hands by an effective merger with the attorney-client privilege. For this reason, we affirm the district court decision to quash the portion of the subpoena duces tecum ordering production of Johanson's private papers, his personal date books.**[4] (Emphases supplied)

When local statutes are patterned after or copied from another country, the relevant construction given by the foreign courts are entitled to great weight *vis-à-vis* our own interpretation of such local statutes.

In *Amadeus v. CIR*,[5] the Court of Tax Appeals *En Banc*, ordained that "[w]ithout doubt, Philippine tax laws were based on the federal tax laws of the United States. And in accord with established rules of statutory construction, the decisions of American courts construing the federal tax code are entitled to great weight in the interpretation of our own tax laws."[6]

Recognizing this legal truism, *the Court, time and again, has looked into US doctrines, principles, and interpretations to guide it in its own construction, and application of similar tax laws in the cases before it. Unless the legislature overhauls our entire tax system and purge it of American influence, US jurisprudence is here to stay as a guiding source for our own construction and application of tax laws in the country.*

Here, the fact that the provision does not require the submission of the appointment book itself does not make it less infirm. For by requiring the registration of each appointment book, every single piece of information found therein is necessarily subjected to full access by the Bureau of Internal Revenue (BIR) which can simply use it to jumpstart a deeper inquiry and scrutiny, to the prejudice of the individuals whose names and other circumstances are listed there; and even to the professionals themselves who own the appointment books.

Specifically, for the self-employed individuals or professionals themselves, the pieces of information found in the appointment book are enough for the BIR to formulate suppositions, albeit untrue, on their taxable income. As admitted by the BIR itself, these pieces of information will only be used if it finds that the taxpayer targeted for investigation is violating tax

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4 *Id.*

5 CTA EB Case No. 1532 (CTA Case No. 8578), April 5, 2018 [Per J. Uy, *En Banc*].

6 *Id.*, *citing* CIR v. CA, 385 Phil. 397 (2000) [Per Gonzaga-Reyes, Resolution].

laws. In reality, therefore, the required registration of the appointment book is no different from requiring the appointment book itself to be handed to the BIR.

In requiring the production of the desired pieces of information, the BIR acts ultra vires or in excess of its authority under Section 5, National Internal Revenue Code

Respondent DoF Secretary justifies the issuance of RR 4-2014, invoking the then original provision of Section 5 of the National Internal Revenue Code (NIRC), *viz.*:

> Section 5. *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* – In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
>
> (A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;
>
> (B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures or consortia and registered partnerships, and their members;
>
> (C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;
>
> (D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; and
>
> (E) To cause revenue officers and employees to make a canvass from time to time of any revenue district or region and inquire after and concerning all persons therein who may be liable to pay any internal

> revenue tax, and all persons owning or having the care, management or possession of any object with respect to which a tax is imposed.
>
> The provisions of the foregoing paragraphs notwithstanding, nothing in this Section shall be construed as granting the Commissioner the authority to inquire into bank deposits other than as provided for in Section 6(F) of this Code.

As worded, however, Section 5, NIRC does not authorize the BIR to compel the very taxpayers to **"self-disclose,"** but simply to collect and examine information **from a person**, other than the taxpayers themselves and only for any of the following purposes:

a. In ascertaining the correctness of any return, or

b. In making a return when none has been made, or

c. In determining the liability of any person for any internal revenue tax, or

d. In collecting any such liability, or

e. In evaluating tax compliance.

None of these purposes comes to the fore insofar as the required registration of appointment books of self-employed professionals is concerned. What the BIR had ominously said was that the collection of information by virtue of Section 2(2), RR 4-2014 serves as a prelude to an investigation for tax fraud or the like in the future.

Notably, deliberations of the Bicameral Conference Committee on Ways[7] show that the coercive process for production of evidence is to be directed to a third person, **not to the taxpayers themselves** and only with respect to examination of tax returns, thus:

> CHAIRMAN ENRILE. **Section 5 – Power of the Commissioner to obtain information and to summon, examine and to take testimony of persons. Section 5, Mr. Chairman. We just re-wrote this provision, Mr. Chairman, to make it more understandable.**
>
> x x x x
>
> CHAIRMAN JAVIER. **This deals with the power of the Commissioner to obtain an information on a regular basis from any person other than the person whose liability, internal revenue tax liability is subject to audit or investigation.**

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7 Bicameral Conference Committee (Committee on Ways and Means) dated October 1, 1997.

CHAIRMAN ENRILE. In other words, outside of the taxpayer.

CHAIRMAN JAVIER. **Yes. For example, Mr. Chairman, supposing I have transactions with the taxpayer who is investigated, does it mean that the Commissioner of Internal Revenue can…**

CHAIRMAN ENRILE. **Summon you.**

CHAIRMAN JAVIER. … summon me and ask me to give information?

CHAIRMAN ENRILE. That's correct. If you sold to me a piece of land and I paid you, the BIR can get the information from me.

CHAIRMAN JAVIER. Well, Mr. Chairman, you know, we...I have some misgivings about this because, you know, we already lifted, no, we rejected...in the House we did not adopt the recommendation of Finance that the secrecy of the bank deposits be opened…

CHAIRMAN ENRILE. No, this has nothing to do with the bank secrecy.

CHAIRMAN JAVIER. **Well, how will the Commissioner say that you are a third person insofar as this provision is concerned? I have transaction with a bank, the Commissioner goes to the bank and says, "You're a third person insofar as this provision is concerned, so you give us the information."**

CHAIRMAN ENRILE. **Not necessarily. We are not talking here of bank secrecy. We are talking here of, let's says as I said, I bought from you a piece of land. And the Bureau does not believe that the price is accurate and, in fact, it was not accurate. The Bureau is entitled to ask questions from me if, indeed, what was reflected by the seller as a proceed of the same is accurate. This is just a simple way of illustration.**

HON. LAGMAN. Can we just follow up on that example, Mr. Chairman.

CHAIRMAN JAVIER. Yes, the Gentleman from Albay.

HON. LAGMAN. So, following that example, suppose there is evidence that the proceeds of the sale was deposited with Bank A…

CHAIRMAN ENRILE. No, you do not have to …

HON. LAGMAN. The Commissioner does not have the authority to inquire from the bank because…

CHAIRMAN ENRILE. No.

HON. LAGMAN. So, definitely, this would not in any way be involving the secrecy of bank deposits, of bank accounts.

CHAIRMAN ENRILE. That's correct.

CHAIRMAN JAVIER. So, I just want to get the confirmation that the person referred to here who is not subject to investigation.

CHAIRMAN ENRILE. It does not refer to banks.

CHAIRMAN JAVIER. ...excludes, excludes banks.

CHAIRMAN ENRILE. That's correct, Your Honor, except Bangko Sentral.

HON. DIAZ (R). **May I ask about Bangko Sentral, Mr. Chairman. Is the Commissioner entitled to get, for example, the audit reports of the Bangko Sentral which may contain all types of information about borrowers and depositors, assuming for the sake of argument it does? I think the concern is, is this particular phrase without limit because it says any information?**

CHAIRMAN ENRILE. Your Honor, the present law is broad as this one. You read the present law.

HON. FIGUEROA. Mr. Chairman.

CHAIRMAN ENRILE. We just clarified it in order to make it more effective for purposes of tax administration.

HON. FIGUEROA. Mr. Chairman.

CHAIRMAN JAVIER. Well, distinguished Gentleman from Samar.

HON. FIGUEROA. **I think Section 6 pertains to examination of income tax returns.**

CHAIRMAN ENRILE. Section?

HON. FIGUEROA. Section 6 of this...this pertains...this is Section 16, now Section 6.

CHAIRMAN ENRILE. This was really Section 16, I think, and transposed as Section 5.

HON. FIGUEROA. **Is this in connection with the examination of income tax return, Mr. Chairman?**

CHAIRMAN ENRILE. May I have the Tax Code. Do we have the Tax Code here? **What was this Section 5 before? This used to be Section 7 of the Tax Code, power of the Commissioner to obtain information examine, summon and take testimony. Section 7 of the present Code has been transformed as Section 5 in order to have an orderly presentation of the entire codal provisions.**

The wording of the present Code says "Section 7. Power of the Commissioner to obtain information, examine, summon and take testimony. For the purpose of ascertaining the correctness of any return, making a return, where none has been made determining the liability of any person for any internal revenue tax, or collecting any such liability, the Commissioner is authorized: (1) to examine any books, papers, record or other data which may be relevant or material to such inquiry; (2) to obtain information from any office or officer of the national and local governments, government agencies or its instrumentalities including the Central Bank of the Philippines and government-owned or controlled corporations," etcetera. We simply refined it to reflect the true intent of this paragraph.

Incidentally, Mr. Chairman, I'm involved in business. I was the one who wrote this provision and I am not going to write a provision that would hurt me as a taxpayer.

CHAIRMAN JAVIER. **Well, my concern here... (inaudible) was because this might be later on questioned as unconstitutional, as amounting to constructive search and seizure.**

CHAIRMAN ENRILE. I beg your pardon.

CHAIRMAN JAVIER. **As amounting to constructive search and seizure because the person who** (sic) **is not under tax investigation.**

CHAIRMAN JAVIER.... (continuing) investigation is being summoned to produce documents and--- We are under the--- Well. I'm not against this provision.

CHAIRMAN ENRILE. That is precisely the power.

CHAIRMAN JAVIER. **I am just trying to make it of record here that--- this is just my observation that--- because right now under the 1987, which is also in the 1973 Constitution, all searches and seizures for whatever nature and whatever purpose are now covered by the--- will be covered by warrants.**

CHAIRMAN ENRILE. **We are not searching. Mr. Chairman, we are not searching the taxpayer.**

CHAIRMAN JAVIER. No, no.

CHAIRMAN ENRILE. **We are obtaining information from other sources.**

CHAIRMAN JAVIER. **From a third person, yeah.** That's the problem because this person might just make an objection – "You know, I'm not the subject of your investigation." and he might refuse.

CHAIRMAN ENRILE. Well---

CHAIRMAN JAVIER. **Because, you know, this can also be used for fishing expedition against the** (sic) **even against the person who will be investigated. That's only my concern. I have no objection to this provision.**[8] (Emphasis supplied)

To repeat, when the questioned BIR regulation seeks to compel the very taxpayers themselves to disclose information that may be used against them in a court of law, the BIR illegally exceeds the bounds of the law, violates the right of persons against self-incrimination, and even destroys the cloak of confidentiality between the professionals and their clients.

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[8] *Id.* at 57–64.

Confidentiality differs from Privacy

Sissela Bok, Swedish Writer, Philosopher and Educator said– "*Confidentiality refers to the boundaries surrounding shared secrets and to the process of guarding these boundaries. While confidentiality protects much that is not in fact secret, personal secrets lie at its core. The innermost, the vulnerable, often the shameful: these aspects of self-disclosure help explain why one name for professional confidentiality has been "the professional secret." Such secrecy is sometimes mistakenly confused with privacy; yet it can concern many matters in no way private, but that someone wishes to keep from the knowledge of third parties.*"[9] Thus, the need to differentiate.

Confidentiality differs from the right to privacy. *Privileged information* or confidential information borne out of professional relationship and the *right to privacy* are different. Privileged information was meant to be kept secret characterized by trust and willingness to confide in the other.[10] This is borne out of a professional relationship created when a client sought the services of a professional. It is a private relationship with confidence reposed in the professional capability of the person rendering services. The right to privacy is the constitutional right to be left alone. It is defined as "the right to be free from unwarranted exploitation of one's person or from intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities."[11] It is the right of an individual "to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned."[12]

Section 24, Rule 130 of the Rules of Court relevantly ordains:

> Section 24. Disqualification by reason of privileged communication. — The following persons cannot testify as to matters learned in confidence in the following cases:
>
> (a) The husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants;
>
> (b) ***An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment,***

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9 https://www.azquotes.com/quote/1241125, Last accessed on January 24, 2024 at 12:40 p.m.

10 Page 339, Black's Law Dictionary, 9th Edition.

11 *Sps. Bill and Victoria Hing v. Alexander Choachuy, Sr., et al.*, 712 Phil. 337 (2013) [Per J. Del Castillo, Second Division], *citing Social Justice Society v. Dangerous Drugs Board*, 570 SCRA 410 [Per J. Velasco, *En Banc*].

12 *Id.*, citing Tolentino, Arturo M., Commentaries and Jurisprudence on the Civil Code of the Philippines, 1990 Edition, Volume I, p. 108.

> ***nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity;***
>
> (c) ***A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in capacity, and which would blacken the reputation of the patient;***
>
> (d) A minister or priest cannot, without the consent of the person making the confession, be examined as to any confession made to or any advice given by him in his professional character in the course of discipline enjoined by the church to which the minister or priest belongs;
>
> (e) A public officer cannot be examined during his term of office or afterwards, as to communications made to him in official confidence, when the court finds that the public interest would suffer by the disclosure. (21a) (Emphasis supplied)

For Accountants, Republic Act No. 9298 or "*Philippine Accountancy Act of 2004*," Section 29 requires the Certified Public Accountant (CPA) to treat all working papers, schedules, and memoranda as confidential and privileged unless subpoenaed by court, tribunal or administrative body, *viz.*:

> Section 29. Ownership of Working Papers. - **All working papers, schedules and memoranda** made by a certified public accountant and his staff in the course of an examination, including those prepared and submitted by the client, incident to or in the course of an examination, by such certified public accountant, except reports submitted by a certified public accountant to a client **shall be treated confidential and privileged and remain the property of such certified public accountant** in the absence of a written agreement between the certified public accountant and the client, to the contrary, **unless such documents are required to be produced through subpoena issued by any court, tribunal, or government regulatory or administrative body**. (Emphases supplied)

Though Section 29 specifically enumerates working papers, schedules and memoranda as confidential and privileged, Section 24, Republic Act No. 9298 provides that the Professional Regulatory Board of Accountancy, upon notice and hearing, may suspend or revoke the practitioner's certificate of registration and professional identification card for violation of the ethical standards governing their profession:

> Section 24. Suspension and Revocation of Certificate of Registration and Professional Identification Card and Cancellation of Special Permit. - The **Board shall have the power**, upon the notice and hearing, **to suspend or revoke the practitioner's certificate of registration and professional identification card or suspend his/her from the practice of his/her profession** or cancel his/her special permit **for any of the causes or ground**

> mentioned under Section 23 of this Act or any of the provisions of this Act, and its implementing rules and regulations, the **Certified Public Accountant's Code of Ethics and the technical and professional standards of practice for certified public accountants.** (Emphasis supplied)

The International Federation of Accountants 2013 Code of Ethics for Professional Accountants, adopted by the Professional Regulatory Board of Accountancy through Resolution No. 263, Series of 2015, as a rule requires a professional accountant to respect confidentiality of information acquired as a result of professional and business relationships per Section 100.4(d) on Fundamental Principles:

> (d) Confidentiality
>
> A **professional accountant should respect the confidentiality of information acquired as a result of professional and business relationships** and should **not disclose any such information** to third parties without proper and specific authority **unless there is a legal or professional right or duty to disclose.** Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the professional accountant or third parties. (Emphases supplied)

For the practice of dentistry, Republic Act No. 9484 or "*The Philippine Dental Act of 2007*" likewise ordains dentists to conduct themselves in accordance with the profession's ethical standards. Section 22 of the law authorizes the Professional Regulatory Board of Dentistry to nullify or cancel a Dentist's Certificate of Registration and Professional Identification Card for unprofessional and unethical conduct. Thus, Sections 1, 6, 10, and 11 of The Code of Ethics for Dentists, Dental Hygienists, and Dental Technologists, adopted by the Professional Regulatory Board of Dentistry in Board Resolution No. 14, Series of 2008 provide:

> Section 1. Primary Duty - **The dentist's**, dental hygienist's, and dental technologist's **primary duty** of serving the public is accomplished by **giving his/ her professional service** to the best of his/her capabilities in accordance **with established standards of care and by conducting himself/herself in a manner befitting a professional of high esteem.**
>
> Section 6. Irreproachable Conduct - The **dentist shall conduct himself/herself in a manner completely above suspicion or reproach.** The dentist shall not allow his/her name to cover up illegal acts such as misrepresentation of industrial/commercial/private establishments required by law to engage the services of a dentist or for illegal practitioners, quacks, or charlatans; or to provide certification without due basis.
>
> Section 10. Bioethics - **Every dentist** participating in research projects involving procedure in the oral cavity to any person/s **must conform to international ethical standards taking into considerations the human**

> **rights of the subjects** and duly informing them of the outcome and risks of the study. Each subject must have a signed informed consent form/s obtained at the onset of the study; and in instances where changes in the research protocol is essential for the completion of the study, **another signed informed consent form must be obtained from the subjects. In the event that minors are the subjects of the study, parental consent must be obtained.**
>
> Section 11. Records Keeping - Every dentist must obtain baseline medical and dental record for all patients of his/her office, The said **record** must include, among others, his/her treatment plan, diagnostic records such as radiographs, blood test record/results, consent form. **Medical clearance must be filed with the patients' dental records and must be in his/her safekeeping for at least ten (10) years.** (Emphases supplied)

Verily, lawyers, doctors, dentists, and accountants are required to preserve confidentiality in their respective fields, either by law, rules, or their respective codes of professional ethics, or a combination thereof. Any breach thereof carries the corresponding penalty of suspension or revocation of the privilege to practice their respective professions.

In fine, for the BIR to compel a professional to divulge any information acquired in confidence is to force the professional to violate such trust or break the seal of confidentiality that he or she is sworn to keep.

Section 2(2), RR 4-2014 is void for failure to comply with the provisions of the Data Privacy Act (2016)

Under the Data Privacy Act, the BIR is bound to prove that the information it requires under Section 2(2), RR 4-2014 are "necessary in order to carry out the functions of public authority, in accordance with a constitutionally or statutorily mandated function pertaining to law enforcement or regulatory function. . ."[13]

The assailed provision does not explain that this is so. Section 2(2) also violates the requirement for data sharing between government agencies in that there are mechanisms by which to conduct such data sharing.[14]

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[13] *See* Section 5(d), Implementing Rules and Regulations of DPA, Privacy Policy Office Advisory Opinion No. 019-035 dated November 6, 2019. <https://privacy.gov.ph/wp-content/uploads/2023/05/2019-Compendium_rev-2-Single-1.pdf> Last accessed on January 22, 2024, 12:45 p.m.

[14] *See* NPC Circular No. 2020-03 dated December 23, 2020. < https://www.privacy.gov.ph/wp-content/uploads/2021/01/Circular-Data-Sharing-Agreement-amending-16-02-21-Dec-2020-clean copy-FINAL-LYA-and-JDN-signed-minor-edit.pdf > Last accessed on January 22, 2024 at 1:00 p.m..

A final word. The government asks what is wrong with knowing the identities of the people that professionals meet in course of rendering service to their clients. For allegedly, the obtained data are intended to only stay inside the government's filing cabinet, albeit in the future, they may be retrieved and used against these very same people should they eventually become suspects for tax fraud or the like. This pronouncement coming from the horse's mouth, so to speak, instantly fortifies why the assailed Section 2(2), RR 4-2014 should indeed be slayed at sight.

I therefore **CONCUR** with the *ponencia*.

AMY C. LAZARO-JAVIER