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