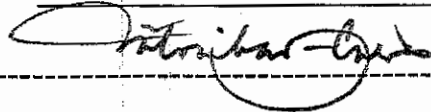


EN BANC

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

PROMULGATED:

April 18, 2023



X-----X

CONCURRENCE

LAZARO-JAVIER, J.:

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

The *ponencia* declares as void Section 2(2), Revenue Regulations (RR) No. 4-2014¹ for having been issued in excess of the jurisdiction of the Department of Finance (DoF). The provision states:

Section 2. Policies and Guidelines –

x x x x

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

¹ March 3, 2014.



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

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


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

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

Allow me to expound.

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

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



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

The question to be decided is whether the fifth amendment rights of Johanson would be violated if he were required to produce his personal appointment books for the years 1979, 1980 by order of the grand jury subpoena. Because we conclude that production would violate his fifth amendment rights, we affirm the district court order quashing this portion of the subpoena duces tecum directed against his attorneys.

“The fifth amendment protects against ‘compelled self-incrimination, not (disclosure of) private information.’” *Fisher v. United States*, 425 U.S. 391, 401, 96 S. Ct. 1569, 1576, 48 L. Ed. 2d 39 (1976), quoting *United States v. Nobles*, 422 U.S. 225, 233 n.7, 95 S. Ct. 2160, 2167 n.7, 45 L. Ed. 2d 141 (1975). **This proposition in no way contradicts the proposition to which we today adhere: that the fifth amendment protects an accused from government-compelled disclosure of self-incriminating private papers, such as purely personal date books.**

This can hardly be characterized as novel. **It is a firmly embedded tenet of American constitutional law that the fifth amendment absolutely protects an accused from having to produce, under government compulsion, self-incriminating private papers.** As the Supreme Court has said “the Fifth Amendment privilege against compulsory self-incrimination protects an individual from compelled production of his personal papers and effects as well as compelled oral testimony.” *Bellis v. United States*, 417 U.S. 85, 87, 94 S. Ct. 2179, 2182, 40 L. Ed. 2d 678 (1975). See, e. g., *United States v. Calandra*, 414 U.S. 338, 346, 94 S. Ct. 613, 619, 38 L. Ed. 2d 561 (1974); *Couch v. United States*, 409 U.S. 322, 330, 93 S. Ct. 611, 616, 34 L. Ed. 2d 548 (1972); *United States v. White*, 322 U.S. 694, 699 & 701, 64 S. Ct. 1248, 1252, 88 L. Ed. 1542 (1943); *Boyd v. United States*, 116 U.S. 616, 6 S. Ct. 524, 29 L. Ed. 746 (1886).

x x x x

Moreover the policies underlying the fifth amendment proscription against compelled self-incrimination support protection of an accused from having to produce his private papers. **One well recognized policy stems from “our respect for the inviolability of the human personality and of the right of each individual ‘to a private enclave where he may lead a private life’....”** *Murphy v. Waterfront Commission*, 378 U.S. 52, 55, 84 S. Ct. 1594, 1597, 12 L. Ed. 2d 678 (1964). **The fifth amendment “respects a private inner sanctum of individual feeling and thought and proscribes state intrusion to extract self-condemnation.”** *Couch v. United States*, 409 U.S. 322, 327, 93 S. Ct. 611, 615, 34 L. Ed. 2d 548 (1972). **The fifth amendment in its self-incrimination clause enables the citizen to create a zone of privacy which government may not force him**

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

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

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

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

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

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

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

³ *Id.*

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

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

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

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

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

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

⁴ *Id.*

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

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

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

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

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

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

- (A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;
- (B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures or consortia and registered partnerships, and their members;
- (C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;
- (D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; and
- (E) To cause revenue officers and employees to make a canvass from time to time of any revenue district or region and inquire after and concerning all persons therein who may be liable to pay any internal

revenue tax, and all persons owning or having the care, management or possession of any object with respect to which a tax is imposed.

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

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

- a. In ascertaining the correctness of any return, or
- b. In making a return when none has been made, or
- c. In determining the liability of any person for any internal revenue tax, or
- d. In collecting any such liability, or
- e. In evaluating tax compliance.

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

Notably, deliberations of the Bicameral Conference Committee on Ways⁷ show that the coercive process for production of evidence is to be directed to a third person, **not to the taxpayers themselves** and only with respect to examination of tax returns, thus:

CHAIRMAN ENRILE. Section 5 – Power of the Commissioner to obtain information and to summon, examine and to take testimony of persons. Section 5, Mr. Chairman. We just re-wrote this provision, Mr. Chairman, to make it more understandable.

x x x x

CHAIRMAN JAVIER. This deals with the power of the Commissioner to obtain an information on a regular basis from any person other than the person whose liability, internal revenue tax liability is subject to audit or investigation.

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



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

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

CHAIRMAN ENRILE. **Summon you.**

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

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

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

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

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

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

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

CHAIRMAN JAVIER. Yes, the Gentleman from Albay.

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

CHAIRMAN ENRILE. No, you do not have to ...

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

CHAIRMAN ENRILE. No.

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

CHAIRMAN ENRILE. That's correct.

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

CHAIRMAN ENRILE. It does not refer to banks.

CHAIRMAN JAVIER. ...excludes, excludes banks.

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

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

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

HON. FIGUEROA. Mr. Chairman.

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

HON. FIGUEROA. Mr. Chairman.

CHAIRMAN JAVIER. Well, distinguished Gentleman from Samar.

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

CHAIRMAN ENRILE. Section?


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

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

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

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

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



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

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

CHAIRMAN ENRILE. I beg your pardon.

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

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

CHAIRMAN ENRILE. That is precisely the power.

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

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

CHAIRMAN JAVIER. No, no.

CHAIRMAN ENRILE. We are obtaining information from other sources.

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

CHAIRMAN ENRILE. Well---

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

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

⁸ *Id.* at 57-64.

Confidentiality differs from Privacy

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

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

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

Section 24. Disqualification by reason of privileged communication. — The following persons cannot testify as to matters learned in confidence in the following cases:

- (a) The husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter’s direct descendants or ascendants;
- (b) ***An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment,***

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

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

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

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

nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity;

- (c) *A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in capacity, and which would blacken the reputation of the patient;*
- (d) A minister or priest cannot, without the consent of the person making the confession, be examined as to any confession made to or any advice given by him in his professional character in the course of discipline enjoined by the church to which the minister or priest belongs;
- (e) A public officer cannot be examined during his term of office or afterwards, as to communications made to him in official confidence, when the court finds that the public interest would suffer by the disclosure. (21a) (Emphasis supplied)

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

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

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

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

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

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

(d) Confidentiality

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

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

Section 1. Primary Duty - **The dentist's, dental hygienist's, and dental technologist's primary duty** of serving the public is accomplished by **giving his/ her professional service** to the best of his/her capabilities in accordance **with established standards of care and by conducting himself/herself in a manner befitting a professional of high esteem.**

Section 6. Irreproachable Conduct - **The dentist shall conduct himself/herself in a manner completely above suspicion or reproach.** The dentist shall not allow his/her name to cover up illegal acts such as misrepresentation of industrial/commercial/private establishments required by law to engage the services of a dentist or for illegal practitioners, quacks, or charlatans; or to provide certification without due basis.

Section 10. Bioethics - **Every dentist** participating in research projects involving procedure in the oral cavity to any person/s **must conform to international ethical standards taking into considerations the human**

rights of the subjects and duly informing them of the outcome and risks of the study. Each subject must have a signed informed consent form/s obtained at the onset of the study; and in instances where changes in the research protocol is essential for the completion of the study, **another signed informed consent form must be obtained from the subjects. In the event that minors are the subjects of the study, parental consent must be obtained.**

Section 11. Records Keeping - Every dentist must obtain baseline medical and dental record for all patients of his/her office, The said **record** must include, among others, his/her treatment plan, diagnostic records such as radiographs, blood test record/results, consent form. **Medical clearance must be filed with the patients' dental records and must be in his/her safekeeping for at least ten (10) years.** (Emphases supplied)

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

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

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

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

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

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

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

18

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

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



AMY C. LAZARO-JAVIER