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 **READ:** SAJ Marvic M.V.F. Leonen reiterated the need to address the “colossal and perennial problem” of jail congestion in the country in his message to the new lawyers of the IBP Caloocan-Malabon-Navotas Chapter on May 25, 2024 at the Manila Hotel.

SC: Requiring Professionals to Submit Appointment Books to Monitor Tax Compliance Violates Right to Privacy

May 31, 2024

The Supreme Court has invalidated a regulation from the Bureau of Internal Revenue (BIR) that requires self-employed professionals to submit their rates and register appointment books to monitor their tax compliance.

In a Decision penned by Senior Associate Justice Marvic M.V.F. Leonen, the Supreme Court *En Banc* declared void portions of Section 2(1) and 2(2) of BIR Revenue Regulation (RR) No. 4-2014, or the *Guidelines and Policies for the Monitoring of Service Fees of Professionals*, for violating the right to privacy of professionals and their clients.

Issued on March 3, 2014, RR No. 4-2014 required all self-employed professionals to (a) submit an affidavit indicating the rates, manner of billing, and the factors that they consider in determining service fees; (b) register their books of account and appointment books containing the names of

their clients, and their meeting date and time; and (c) issue a BIR-registered receipt showing the 100% discount for pro bono cases, in cases where no professional fees are charged by the professional and paid by the client.

On April 22, 2014, the Court issued a temporary restraining order prohibiting the implementation of RR No. 4-2014 following several petitions filed by professional associations, who likewise prayed that the BIR regulation be struck down as unconstitutional.

In partially granting the present consolidated petitions, the Supreme Court ruled that the portions of Section 2(1) and 2(2) of RR No. 4-2014 which require professionals to submit a schedule of fees and register their appointment books were invalid. It also permanently enjoined the Department of Finance and the BIR from implementing these provisions.

On the requirement to submit a schedule of fees, the Court found this exceeded the BIR's authority for being irrelevant in its primary duty of assessment and collection of tax due.

While the BIR may collect information, this is limited to concluded transactions, which are taxable services. The required affidavit of schedule of fees, however, is only indicative and does not bind professionals, who can ultimately charge higher or lower.

For lawyers in particular, Canon 20 of the then *Code of Professional Responsibility* already lists the factors in determining their professional fees. The present *Code of Professional Responsibility and Accountability* likewise provides the same in Canon III, Section 41.

On the requirement to register appointment books, the Court found this violated the privacy rights of professionals and their clients.

Under the Constitution, the privacy of communication and correspondence is inviolable, except upon court order or as required by law for public safety and order.

The Court emphasized that individuals have a reasonable expectation of privacy when scheduling appointments with professionals.

When considered individually, names and appointment dates may seem harmless. However, compiling all the times a person consults with a professional could reveal a pattern of behavior. This pattern could potentially disclose private information or lead to inferences that should have remained confidential.

“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,” stressed the Court.

Further, such a requirement violates the ethical standards of professionals bound by strict rules of confidentiality between the professional and the client.

The Court however upheld the requirement to register books of accounts for falling within the scope of the BIR’s authority under the *Tax Code* to monitor the fees charged by professionals in assessing taxable income.

Likewise upheld was the requirement to issue receipts for *pro bono* services, which neither raises ethical concerns nor equates to regulating the practice of the legal profession, a power that belongs exclusively to the Court. The Court held this was a valid tax measure that the BIR may employ to ascertain the correct amount of taxes payable by self-employed professionals. *(Courtesy of the Supreme Court Public Information Office)*

FULL TEXT of G.R. Nos. 211772 and 212178 (*IBP v. Purisima and Jacinto-Henares; Association of Small Accounting Practitioners in the Philippines, Inc. v. Purisima and Jacinto-Henares*), April 18, 2023, at: <https://sc.judiciary.gov.ph/211772-212178-integrated-bar-of-the-philippines-and-philippine-college-of-physicians-philippine-medical-association-inc-philippine-dental-association-vs-secretary-cesar-v-purisima-of-the-departm/>

Full text of the Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa at: <https://sc.judiciary.gov.ph/211772-212178-concurring-opinion-justice-alfredo-benjamin-s-caguioa/>

Full text of the Concurrence of Associate Justice Amy C. Lazaro-Javier at: <https://sc.judiciary.gov.ph/211772-212178-concurrence-justice-amy-c-lazaro-javier/>

Full text of the Concurring Opinion of Associate Justice Rodil V. Zalameda at: <https://sc.judiciary.gov.ph/211772-212178-concurring-opinion-justice-rodil-v-zalameda/>

Full text of the Concurring Opinion of Associate Justice Maria Filomena D. Singh at: <https://sc.judiciary.gov.ph/211772-212178-concurring-opinion-justice-maria-filomena-d-singh/>

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